(1869) 09 CAL CK 0009

In the Calcutta High Court

Case No : Regular Appeals Nos. 117, 118 and 127 of 1868

Krishna Kishor Poddar APPELLANT

Vs

Sowdamini Chowdrain and Others RESPONDENT

Date of Decision : 02-09-1869

Acts Referred:

Citation : (1869) 09 CAL CK 0009

Judgement

Sir Barnes Peacock Kt., C.J. and Bayley, J.—I have very little to add to what I stated when these cases ware referred. It appears to me to be clear that the plaintiff is not entitled to recover back his purchase-money. When he purchased under the execution, no title was guaranteed to him. All that was guaranteed to him under clause 7, section 3 of Regulation VII of 1825, was that he should have the rights and interests in the lands, whatever they might be, which belonged to the judgment-debtor. In other words, he was guaranteed that the judgment-debtor should not recover back the lands. In this case the sale was completed, and everything was done which was tantamount to a conveyance," and the sale has not been set aside. In an ordinary case between vendor and purchaser, if the conveyance has been actually executed by all the necessary parties, and the purchaser is evicted by a title to which the covenants do not extend, he cannot recover the purchase-money either at law or in equity: Sugden on Vendors and Purchasers, page 441. There is a great distinction between the case of a purchaser being evicted by title paramount, and that of the conveyance by the vendors being set aside. In the one case the owner of the land recovers notwithstanding the conveyance, because it was a conveyance of his land by a person who had no right to convey it; in the other case, where a sale has been set aside, the purchaser usually has a right to recover back his purchase-money, because it would be inequitable that the vendor should retain the purchase-money when there are grounds for setting aside the Bale by which the contract is put an end to. But a Court of Equity does not set aside a conveyance, simply because the conveying party had no title to the property. There must be something more, such as fraud or the like, to induce the Court to interfere in that manner. A purchaser at a sale in execution knows that all that he purchases is the right and title of the judgment-debtor. He knows that no one guarantees to him that the judgment-debtor has a good title, and he purchases the property with his eyes open, and regulates the price which he bids for the land with reference to the circumstances under which he is purchasing, and the risk he runs.

2. The decision of the lower Court is reversed with costs.

Kemp, J.

3. I understand that the sale in this case was made under Regulation VII of 1825, and not under Act VIII of 1859. I also understand that in this case the sale was not set aside for irregularity, but it was simply declared in a regular suit instituted by a third party that the sate passed nothing. I therefore entirely concur in the judgment, which has just been delivered by the Chief Justice that a suit by the purchaser to recover the purchase-money will not lie.

4. In Brojendur Roy Chowdhry v. Jugurnath Roy 6 W.R. 147 which was decided by Mr. Justice Markby and myself, the sale was held under Act VIII of 1859 and was set aside; therefore u/s 258, Act VIII of 1859, the purchaser in that case was clearly entitled, in my opinion, to recover the purchase-money.

Macpherson, J.

5. It appears to roe perfectly clear that the words used in clause 4 of section 3 of Regulation VII of 1825, which are relied on by Mr. Paul, refer exclusively to cases in which the sale is set aside for irregularity, or the like, by the summary proceedings which may be held under that section.

6. Clause 4 says:--"Whenever a public sale may be set aside as invalid under the preceding clause, or on any account whatever, and no collusion or fraud shall appear on the part of the purchaser, he shall be entitled to receive back his purchase-money." Now the preceding clause is clause 3, and that clause treats exclusively of the summary setting aside of a sale. This shows that the recovery of possession of the property by a third party, through the means of a civil suit subsequently brought, was not contemplated, nor anything save the setting aside of a sale under clause 3. The words "or on any account whatever" must be read with reference to their position, and to the context; and so reading them, there is do doubt they apply only to the setting aside of the sale in a summary way. The whole of section 3 refers to summary proceedings at or about the time of the sale, and has no application whatever to a civil suit brought subsequently by a party to recover lands of which he is dispossessed. And clause 7 expressly says, that it is to be clearly explained to the bidders that nothing is guaranteed to them in the property sold beyond the rights and interests therein of the individuals answerable for the amount of the decree, &c.," which means the rights and interests if any, and whether they be great or whether they be small.

7. Section 258 of Act VIII of 1859, which has been referred to, is in its operation

very similar to clause 4 of section 3 of Regulation VII of 1825. It declares : Whenever a sale of immoveable property is set aside, the purchaser shall be entitled to receive back his purchase money." That section intervenes between sections 256 and 257 (which treat of the circumstances under which a sale may be set aside in a summary manner, for irregularity) and section 259, which says that if a sale is not set aside in a summary manner under those sections, but is confirmed, a certificate shall be granted to the purchaser to the effect that he has purchased the right, title, and interest of the defendants in the property sold." Coming, as section 258 does, between these two sections, and in a portion of the Code which treats exclusively of summary proceedings to be taken with reference to sales in execution of decrees, it seems to me that the declaration that the purchaser shall be entitled to "receive" back his purchase-money after a sale is set aside, applies only to its being set aside summarily, and does not apply to a case where a third party sues to recover the property after the final confirmation of the sale and the granting of a certificate. I have thought it right to make these observations, because I find that, in the case of Brojendur Roy Chowdhry v. Jugurnath Roy 6 W.R. 147, the learned Judges deciding that the purchase-money could be recovered expressly relied on the language of section 258. Loch, J.

I was one of the Judges who decided the case of Greesh Chunder Pottar v. Lookhoda Moyee Debee 1 W.R. 55. I think it right to express my concurrence in the view now expressed by my colleague, Mr. Justice Macpherson. Looking at the position which section 258 holds in the Code, I think it is substantially similar to the provisions of section 3, Regulation VII of 1825; and that its object is to entitle a purchaser to recover his purchase-money when the sale has been summarily reversed under the provisions of section 257 of Act VIII of 1859. When disposing of the case of Greesh Chunder Pottar v. Lookhoda Moyee Debee 1 W.R. 55 we did not keep this sufficiently before us; but we thought that whenever a sale is set aside, the purchase-money ought to be refunded. But as I have said after carefully looking at the law and the position which section 258 holds, I think the opinion there expressed was not correct, and that the purchaser can only recover the purchase-money as provided by section 258, when the sale is set aside u/s 257. Act VIII of 1859, for any irregularity in publishing or conducting the sale.