
(1923) 01 MAD CK 0042
In the Madras High Court

P. Baba Sah and Another

APPELLANT

Vs

Hajee Mohamed Akbar Sahib and Others

RESPONDENT

Date of Decision : 10-01-1923

Acts Referred:

Specific Relief Act, 1877 — Section 27

Citation : AIR 1923 Mad 563 : 73 Ind. Cas. 297 : (1923) 17 LW 541

Hon'ble Judges : Walter Schwabe, C.J;Wallace, J

Bench : Division Bench

Judgement

1. The substantive point for decision in City Civil Court Appeal No. 29 of 1921 is, whether on the date of his purchase under Exhibit IV appellant (4th defendant) had notice of the prior agreement by first defendant to sell the same property to the plaintiff. Plaintiff owns the superstructure on the land bought by appellant under Exhibit IV from defendants Nos. 2 and 3, who in their turn had bought under Exhibit III from first defendant. It is not disputed that plaintiff held an agreement prior to both Exhibits? III and IV from first defendant to sell the land to him.

2. Appellant admitted in evidence that at the time of his purchase, he learnt from Exhibit III that the superstructure belonged to plaintiff, and that he made no enquiry of plaintiff under what right he occupied the land. It appears that he made no enquiries whatever, either from his vendors, (e.g., whether they were receiving the ground rent from anyone), or from first defendant their vendor, or from plaintiff, or from the sub-tenants actually in occupation of the superstructure under plaintiff. Such utter absence of reasonable enquiry is either wilful or grossly negligent.

3. The general principle of constructive notice in such a case is that notice of occupation (of the property purchased) by a person other than the vendor, which indicates that the vendor is not entitled to present possession, at once puts the purchaser on enquiry as to the interest that occupier holds in the property. The usual case is where the property is physically occupied by tenants, and then the

purchaser is, by that occupation itself which puts him on enquiry, in law affected with notice of the interest which these tenants have in the property. He is by their occupation not affected with notice of more than the terms on which they hold, including any agreement collateral to their leases, but he is not bound to enquire, nor are they bound to answer to whom they pay rent, so that the purchaser is not in such a case affected with notice of the tenant's lessor's title or rights. This is the general principle laid down in a series of English cases from *Daniels v. Davison* (1809) 16 Ves. 249 : 33 E.R. 10 R.R. 171 onwards, succinctly dealt with in *Hunt v. Luck* (1901) 1 Ch. 45 : 70 L.J. Ch. 30 : 83 L.T. 479 : 49 W.R. 155 : 17 T.L.R. 3. The principle has been embodied in India in Section 27 of the Specific Relief Act and Section 3 of the Transfer of Property Act.

4. So that, where nothing more is known to the purchaser, or would be known to him on reasonable enquiry, than the fact that certain tenants are in occupation under a tenant right, he is not affected with notice of more than the facts as to those tenants' rights. But when, beyond this, the purchaser is directly informed and, therefore, knows of the occupation of the property by another whether by himself or by his sub-tenants, he is equally put upon notice to enquire into the interest of that other. This is no extension of the principle above-mentioned, but a mere application of it. It makes no difference in principle whether the occupation by another is brought to his notice by physical occupation or by direct information. Where, then, the purchaser is definitely informed that another is in occupation of the property whether himself directly or through sub-tenants does not matter, he is at once put on enquiry as to the nature of the interest of that other in the property. This application of the general principle is clearly set out in *Hunt v. Luck* (1901) 1 Ch. 45 : 70 L.J. Ch. 30 : 83 L.T. 479 : 49 W.R. 155 : 17 T.L.R. 3 quoted above, and has been followed in India in the case reported as *Faki Ibrahim v. Faki Gulam Mohidin* 60 Ind. Cas. 986 : 45 B. 910 : 23 Bom. L.R. 335. The absence of such enquiry will fasten the purchaser with all the equities which the occupier holds against the purchaser's vendor.

5. Now, in the present case, appellant knew, and apparently knew nothing more than, that plaintiff was the owner of the superstructure, and appellant does not say whether he knew that plaintiff was not occupying it himself. With such knowledge it was incumbent on him to enquire into the nature of the interest held by plaintiff, and, if he wilfully abstained, as he did, from making any enquiry, or was grossly negligent, as he was, in making enquiry, he will be, in law, affected with notice of any fact which he would have come to know had he made such enquiry. Such an enquiry would have told him that plaintiff was a tenant under first defendant, and would also, as soon as he enquired the period of plaintiff's interest in the land, i.e., the period of the tenancy, as he was also bound to do, have informed him that the tenancy was to come to an end as soon as first defendant executed and registered the deed of sale of the land which he had agreed to sell to plaintiff. We must, therefore, hold that appellant wilfully abstained from, or grossly neglected to make, an enquiry which would have informed him of the prior agreement by first defendant to sell the land to plaintiff.

which precluded first defendant from selling it to his (appellant's) vendors and that appellant had in law constructive notice of that fact. Plaintiff is entitled then and has an equity, to repel the claim of the appellant, who made no enquiry as to the nature of his possession. Where appellant made no enquiry at all, he is taken to have had constructive notice of all the equities in favour of plaintiff. The fact that his immediate vendor was not first defendant, but purchasers from first defendant, does not affect this question of notice.

6. Appellant, then, though possibly a purchaser in good faith was a purchaser with notice of the contract to sell of which plaintiff now seeks specific performance and cannot, therefore, [vide Section 27, Specific Relief Act) resist the plaintiff's suit.

7. We, therefore, agree with the lower Court's decision, though the reasons given" by it are hardly adequate. It follows that this appeal must be dismissed and we dismiss it with costs to plaintiff and half costs to first defendant, payable by appellant. The defendants Nos. 1 to 4 will within one month from to-day execute the conveyance directed by the decree of the lower Court regarding the land in schedule A, and on" execution thereof the Rs. 1,000 now in deposit in the lower Court will be paid out to 4th defendant.

C.C.A. Nos. 30, 33 AND 34 of 1921.

C.C.C. App. No. 30 of 1921 follows No. 29 of 1921 and is dismissed with costs (excluding Vakil's fee). C.C.C. App. Nos. 33 and 34 of 1921 are not pressed before us and are dismissed with costs to 4th defendant and half costs to first defendant (in C.C.C. App. No. 33 of 1921) payable by appellant. (One Vakil's fee for both).