

Privy Council Appeal No. 62 of 1942

Allahabad Appeal No. 19 of 1938

Chaudhary Paras Ram Singh and others - - *Appellants*

v.

Babu Raja Mohan Manucha and others - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT ALLAHABAD

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF
THE PRIVY COUNCIL, DELIVERED THE 24TH NOVEMBER, 1943

Present at the Hearing:

LORD ATKIN

LORD PORTER

SIR GEORGE RANKIN

[*Delivered by SIR GEORGE RANKIN*]

The plaint in this case was filed in the Court of the Subordinate Judge at Agra on 11th August, 1930, by one Moti Lal Manocha, a banker and moneylender, resident at Faizabad. He died in 1933 and respondents 1 to 4 have been substituted in his stead. He impleaded two sets of defendants. The first set are now respondents 6 to 9, who take no part in this appeal. They include two persons called Rup Narain and his son, Raj Narain, whose acts as borrowers and mortgagors come into question in this case. The other set of defendants are the present appellants sometimes referred to by their family designation as "the Chaudharys." The plaintiff sued to enforce a mortgage made by deposit of a title deed dated 26th February, 1863, to certain land and buildings in the city of Agra. He alleged that early in September, 1923, Rup Narain and Raj Narain, who carried on business at Delhi, arranged in August, 1923, to borrow Rs.30,000 from him upon a promissory note and upon the terms that title deeds of property worth about Rs.60,000 would be deposited as security. He alleged further that the title deed of 1863 had been handed over as security in Delhi to his brother-in-law, Lakshmi Narain, who was acting on his behalf, together with a promissory note dated 3rd September, 1923, carrying interest at 12 per cent. with half-yearly rests and a receipt also dated 3rd September, 1923; and that these three documents had been forwarded to himself (the plaintiff) at Faizabad by a letter of 6th September from Lakshmi Narain. The letter (exhibit 4) is as follows:

" Rai Sahib Rup Narain, Bar-at-Law and Magistrate, 1st Class.

Delhi,

6th September, 1923.

MY DEAR BROTHER,

Herewith the pro-note, receipt and the title-deed. This deed is a joint sale-deed of two properties in favour of Lala Ram Chand through whom Mr. Rup Narain has inherited the property. Munshi Gurdial Singh, father of Mr. Rup Narain obtained the succession certificate with regard to this property on 1st September, 1863, along with other properties left by

L. Ram Chand his uncle. I have seen the original certificate and if you require I will send a certified copy of the same to you. Out of these two houses one has been recently re-built and consists of 6 shops and double storied 'bala-khanas' on them yielding a monthly rent of Rs.187 net. The present market value of this property is between 60 or 70 thousand rupees. Mr. Rup Narain is placing this one property with you as an additional and collateral security for his pro-note of Rs.30,000. In case he requires this document back any time before the payment of your debt, he will place with you another deed of a property recently acquired by him through a decree of court. I hope you will find this all in order and satisfactory. Your cheque has been endorsed over by Mr. Rup Narain to the Imperial Bank for collection and no sooner he gets the money he will send you Rs.1,000 your commission.

I really thank you for so promptly complying with my request.
With respects to elders and love to children.

I am your sincerely,

(Sd.) LAKSHMI NARAIN."

[With kind regards.

6th September, 1923. (Sd.) Rup Narain.]

The promissory note was renewed on 21st August, 1926, for the sum of Rs.42,000 and the new note was registered by the Sub-Registrar at Delhi. In 1928 insolvency proceedings were begun against Rup Narain which resulted in adjudication in the following year, and on 11th March, 1929, a notice requiring payment of Rs.55,162 as due under the renewed note was served on him by the plaintiff.

The appellants were impleaded as persons who had taken a later mortgage over the property in suit with knowledge of the plaintiff's mortgage and had later still taken a sale-deed. On 12th October, 1923, Rup Narain and Raj Narain executed a mortgage bond (exhibit 11) in favour of a vakil at Agra called Pandit Parbhu Dayal in which they recited their indebtedness to him on hundis to the amount of Rs.1,25,000 and purported to hypothecate therefor certain properties including the property now in suit, stating in the bond that "the title deeds of this property are with Rai Sahib Babu Moti Lal and hence the same have not been made over to Panditji." On 13th June, 1924, Rup Narain and Raj Narain executed a mortgage deed over the same properties in favour of the appellants' predecessors for Rs.30,000 and interest thereon. This deed recited the previous deed of 12th October, 1923, and stated that the sum lent was left with the lender to pay off Pandit Parbhu Dayal in respect of this property pursuant to that deed. It was further recited: "And the property aforesaid is now free from all sorts of hypothecation lien. I shall take back the former 'asnads' relating to the property from Babu Moti Ram and shall give them at once to Chaudhri Sahibs aforesaid." Finally, by deed (exhibit Y) dated 1st January, 1928, the mortgagors reciting that they had persuaded the appellants' predecessors to purchase the property as the interest was mounting, transferred it to them by way of conditional sale on terms which need not here be detailed.

The Trial Judge held that the title deed was not given to the plaintiff with a view to create a security for the loan, that if it was so given no valid security was thereby created, that the plaintiff was only entitled to a money decree against the first set of defendants (now represented by respondents 6 to 9), and that as against the appellants the suit should be dismissed.

The High Court in appeal on 21st April, 1938, reversed this decision and gave the plaintiff a preliminary mortgage decree for sale, it not being disputed before them that a mortgage could be created at Delhi by deposit of title deeds. It was contended in the High Court that the letter of Lakshmi Narain to the plaintiff, dated 6th September, 1923, was a fabrication, and that the title deed was not enclosed therewith to the plaintiff. This contention was rightly rejected by the learned judges who point out in their judgment that there is no evidence in support of it and that the oral evidence to the contrary is supported by the documents. Mr. Rewcastle for the appellants disclaimed any contention that the letter was a fabrication and confined himself to questioning whether there was any intention to create a security. Their Lordships however see no room for doubt upon that point. The letter of 6th September, 1923, being

written by the plaintiff's agent to the plaintiff cannot be regarded as itself constituting the agreement between lender and borrower, and their Lordships cannot find that it has at any time been suggested that the security is invalid by reason that the letter was not registered. What then is the position of the appellants, who took their interest in the property in suit with knowledge that the title deeds were on 12th October, 1923, with Moti Lal? It has been suggested that they merely supposed this to mean that the property had been offered to Moti Lal as a prospective purchaser and that he was looking into the title before making up his mind. But this suggestion is without substance even as regards the date 12th October, 1923, while in relation to the date, June 1924, it is plainly impossible. No lender would have been content to accept it even if it had been solemnly put forward by the borrower. The plaintiff was in business as a moneylender, and to say that he held the deed was much as if the borrower had said that his deeds were with his bank. That a mortgage should have to be executed while a prospective purchaser had got so far as to be looking into the title is not in itself probable: and even if the prospective purchaser could not make up his mind he could return the deed when he had read it, or give a receipt for it to enable the mortgage to go through. Lenders are not uninterested in prospective purchasers from whom they would get their money back immediately. The finding of the High Court that Pandit Parbhu Dayal and the appellants had notice of the plaintiff's mortgage is fully justified. The question is not whether they were negligent in not enquiring whether their borrower had parted with the title deeds. If that had been the only point it would on the facts of this case have required careful consideration. But they were told that he had parted with the deeds to the plaintiff and they made no enquiry of the plaintiff—the only person to whom the enquiry could safely or usefully be addressed. They were put on enquiry whether the security offered to them by Rup Narain and Raj Narain was offered in fraud of the plaintiff. This is now shown to be the truth as an enquiry would have at once disclosed. There is no ground for the contention that the title deed of 1863 was not a proper and sufficient deed to be deposited for the purpose of creating a security over the property in suit. As the Transfer of Property Act was never applied to the Punjab and does not invalidate mortgages made in Delhi by deposit of title deeds the plaintiff's security must have effect; and the appellants having taken title at a later date and with notice of the plaintiff's right have no claim to priority (cf. *Varden Seth Sam v. Luckpathy Royjee Lallah* (1862) 9 M.I. A. 303, 322-3). It has not been contended that the Registration Act confers priority in such a case and their Lordships find it unnecessary to discuss that statute. They will humbly advise His Majesty that this appeal should be dismissed. The appellants will pay the costs of respondents 1 to 4, who are at liberty if necessary to add their costs to their security.

In the Privy Council

CHAUDHARY PARAS RAM SINGH
AND OTHERS

v.

BABU RAJA MOHAN MANUCHA
AND OTHERS

DELIVERED BY SIR GEORGE RANKIN

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