

Original Suit No. 818 of 1868.

1869
April 22.

Mancharji Sorabji Chulla. *... Plaintiff.*
Kongseoo et al..... *... Defendants.*

Constructive Notice—Purchaser for Value—Tenant in Possession—Charitable Trust—Person in Possession as the object of a Charitable Trust.

If the purchaser of an estate for value takes with notice, actual or constructive, of a trust, he is bound by such trust to the same extent and in the same manner as the person from whom he purchased.

A person purchasing an estate where there is a tenant in possession is bound to inquire into the title of such tenant, and if he neglects to do so he takes subject to such rights as the tenant may have.

The equities are the same where there is a person in possession as the object of a charitable trust and under the trust.

The facts of this suit sufficiently appear from the judgment of the Court.

The case was tried by Couch C.J. in the First Division Court. The hearing concluded on the 6th of March, having occupied several days.

White and Marriott for the plaintiff.

Dunbar and McCulloch for the defendant's.

Cur. adv. vult.

April 22. Couch, C.J.—There was a suit by a mortgagee to recover possession of a house and land situate to the north of the Erskine Road in Bombay, of which the defendants were the occupiers.

For some time previous to 1859 the premises belonged to Bibi Saheb, of whom they were purchased by four persons, Walter Johnson, Hoongee Jackson, Vanghoo Athavoo, and Chiojun Cooeson, and were conveyed to them by a deed dated the 1st of June 1859. On the 11th of February 1861 those four persons mortgaged the premises to Muhammad bin Abdulla bin Ferrah for Rs. 3,000, and on the 8th of April 1863 the premises were conveyed to Sonabai, the widow of Hormasji Jamsetji, in mortgage, to secure Rs. 5,000

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part of which was applied in paying off the previous mortgage. On the 11th of August 1866 the property was put up for sale by public auction by Sonabai, under a power of sale contained in the deed of mortgage, and Hoongee Jackson and one Appung Thuckwan became the purchasers at the price of Rs. 7,000. The premises were conveyed to them by Sonabai by a deed dated the 3rd of January 1867, and on the same day they mortgaged them to the plaintiff to secure the sum of Rs. 6,000, which was paid to Sonabai in part payment of the purchase-money. The plaintiff has shown a legal title to the possession of the premises; but the defendants allege that they were purchased for the purpose of devoting them as an asylum for poor and destitute Chinese inhabitants of Bombay, and for a temple for their Chinese deities Konkon and Oouchoo; that the purchase-money was raised by subscriptions, and the conveyance was made in the names of Walter Johnson, Hoongee Jackson, Vango Athavoo, and Chinjun Cooeson, who were old Chinese inhabitants of Bombay; and that they were trustees of the premises for the Chinese community of Bombay, and the defendants were in occupation, as being poor members of the Chinese community. The question which have to be determined are, therefore, whether the premises were held by Walter Johnson and the three others upon trust for charitable purposes, as alleged; and whether the plaintiff is bound by the trust. [His Lordship here reviewed the evidence upon which he came to the conclusion that the premises were held upon trust for the charitable purposes alleged, and proceeded.]

It is necessary, therefore, to determine the second question. The established doctrine of Courts of Equity is, that if a purchaser of an estate at its full value takes with notice of a trust, he is (subject to the protection afforded by the statutes of limitation) bound to the same extent and in the same manner as the person of whom he purchased; for, knowing another's right to the property, he throws away his money voluntarily and of his own free will. And this applies equally to a mortgagee, who is *pro tanto* a purchaser; *Jones v. Smith*

(a). The doctrine is applicable to charities in the same manner as between private persons, with, it seems, an exception in favour of charities; for it has been ruled that a purchaser without notice from a purchaser with notice shall be bound by the claim of the charity. Also if the trustee sell the land to a *bona fide* purchaser without notice, and afterwards himself becomes the owner of the lands, though for a good, and valuable consideration, the trust as to him revives again, and he shall restore the land to the trust.

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Notice is either actual or constructive; and in this case the Court has to consider what amounts to constructive notice. This is not an easy matter, for much depends upon the circumstances of each particular case. What is sufficient to put a purchaser upon inquiry is good notice; that is, where a man has sufficient information to lead him to a fact, he shall be deemed cognisant of it. In Equity it is sufficient to charge a man with knowledge that he had that before him, which, if he had used due diligence, would have afforded the knowledge he desires: *Spackman v. Evans* (b).

There are many decisions of Courts of Equity where this rule has been applied; but I shall only refer to those which are in their circumstances most like the case before me. In *Taylor v. Stibbert* (c) Lord Rosslyn said: "I have no difficulty to lay down, and am well warranted by authority and strongly founded in reason, that whoever purchases an estate from the owner, knowing it to be in the possession of tenants, is bound to inquire into the estates these tenants have. It has been determined, that a purchaser being told particular parts of the estate were in possession of a tenant, without any information as to his interest, and taking it for granted it was only from year to year, was bound by a lease that tenant had, which was a surprise upon him. That was rightly determined; for it was sufficient to put the purchaser upon inquiry, that he was informed the estate was not in the actual possession of this person with

(a) 1 Hare 43.

(b) Law Rep. 3 E. & I. App. 221, per Lord St. Leonards.

(c) 2 Ves. Jun 437, 440.

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whom he contracted; that he could not transfer the ownership and possession at the same time; that there were interests, as to the extent and terms of which it was his duty to inquire." In *Jones v. Smith (d)* Vice-Chancellor Wigram says: "First, it was said that if a person purchases an estate which he knows to be in the occupation of another than the vendor, he is bound by all the equities which the party in such occupation may have in the land. I do not dispute this proposition: *Allen v. Anthony, Daniels v. Davison, Taylor v. Stibbert*; for possession is *prima facie* evidence of a seisin in fee." In *Daniels v. Davison (e)* the Lord Chancellor held that where there is a tenant in possession under a lease, or an agreement, a person purchasing part of the estate must be bound to inquire on what terms that person is in possession; that a tenant being in possession under a lease, with an agreement in his pocket to become the purchaser, those circumstances altogether give him an equity repelling the claim of a subsequent purchaser who made no inquiry as to the nature of his possession. In *Allen v. Anthony (f)*, quoted by Vice-Chancellor Wigram, the Lord Chancellor said: "It is so far settled as not to be disputed that a person purchasing, where there is a tenant in possession, if he neglects to inquire into the title, must take subject to such rights as the tenant may have." Although *Daniels v. Davison* has always been considered an extreme case, beyond which the doctrine ought not to be extended, it has to that extent been repeatedly acted upon: *Bailey v. Richardson (g)*; *Barnhart v. Greenshiels (h)*; *Knight v. Bowyer (i)*. I am not aware of any decision where the doctrine has been applied to the case of a person being in possession as the object of a charitable trust and under the trust; but I can see no difference in principle between this and the possession of a tenant, as the duty to make inquiry arises from the fact that the estate is not in the actual possession of the vendor. There is the same equity in both cases. I think it is clear, upon the evidence

(d) 1 Hare 60.

(e) 16 Ves. 249; S. C. 17 Ves. 433. (f) 1 Mer. 282.

(g) 9 Hare 734. (h) 9 Moo. P. C. C. 18. (i) 23 Beav. 603.

in the suit, particularly that of Walter Johnson, that at the dates of all the transactions subsequent to the purchase from Bibi Sahab, the premises were not in the occupation of the mortgagee or vendors, and there was in each case sufficient to put the mortgagee or purchaser upon inquiry. The advertisements in the newspapers previous to the mortgage to Sonabai, in April 1863, cannot be considered such an inquiry as the mortgagee was bound to make. Nor would the publicity of the sale in 1866 render it unnecessary. If a purchaser does not think fit to make inquiry, he must take the risk of persons not having made an objection to the sale. Upon the circumstances of this case I am of opinion that Muhammad bin Abdulla, Sonebai, Appung Thuckwan, and the plaintiff were all bound by the trust; I need not determine to what extent the trust revived upon the purchase in 1866 by Hoongee Jackson and Appung Thuckwan, whether as to the whole of the property, or only half, the conveyances being to them as tenants in common. If upon the circumstances Appung Thuckwan cannot be held to have had constructive notice, neither can the plaintiff; and, although the trust might have revived as to the whole, he would be a purchaser without notice. The result of my judgment is, that the plaintiff is not entitled to the relief which he seeks in his plaint, namely, to recover possession of the premises from the defendants, and I decree accordingly, and that the plaintiff pay the costs of the suit.

Attorneys for the plaintiff: *Dallas & Co.*

Attorney for the defendants: *Khanderan Moroji.*

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