

SHRI NARAYAN SINGH

A

v.

RANDHIR SINGH

[SUPREME COURT, 1964 (Hammett P.J.), 19th, 28th August]

B

Civil Jurisdiction

Land—registration of title—registered proprietor not affected by notice of adverse claim against his vendor—title indefeasible except in case of fraud misrepresentation or adverse possession—Land (Transfer and Registration) Ordinance (Cap. 136) ss.14, 63, 65.

Mortgage—action by mortgagor for account—exercise of power of sale by mortgagee—title of purchaser—Land (Transfer and Registration) Ordinance (Cap. 136) ss.14, 63, 65.

C

When a mortgagee of land subject to the Land (Transfer and Registration) Ordinance exercises his power of sale the title of the purchaser, once he has become the registered proprietor of the land, is absolute and not subject to challenge by reason of his having had notice that the mortgagor had instituted proceedings against the mortgagee for an account. Under section 14 of the Ordinance the title of a registered proprietor may be challenged only on the grounds of fraud, misrepresentation or adverse possession.

D

Action by former registered proprietor against purchaser at sale by mortgagee.

E

K. C. Ramrakha for the plaintiff.

D. Whippy for the defendant.

The facts sufficiently appear from the judgment.

F

HAMMETT P.J.: [28th August, 1964]—

This action concerns 7 acres of native land held under a Native Lease and arises in the following circumstances.

On the 5th of September, 1940, Native Lease No. 6076 over 7 acres of land called 'Virewarewa No. 2' at Momi was granted to Maharaji for a period of 21 years from the 1st of November, 1938, at a rent of £4.4.0 a year.

G

On the 21st of June, 1957, Maharaji granted a mortgage, No. 65192, over this lease to Santa Singh to secure a loan of £240 at interest at 8% per annum.

H

On the 15th of July, 1958, Maharaji transferred this lease to her son, Shri Narayan Singh, the plaintiff in this present action.

On the 22nd of February, 1960, this Native Lease over these 7 acres was extended for a period of 9 years from 1st November, 1959, at the increased rent of £9.16.0 a year.

A On the 8th of October, 1961, the plaintiff issued a writ against the mortgagee, Santa Singh, (Civil Action No. 199 of 1961) claiming, *inter alia*, that an account be taken and that an injunction be granted restraining Santa Singh from exercising his powers of sale under the mortgage.

B On the 20th of October, 1961, in Civil Action No. 199 of 1961 the Supreme Court granted the plaintiff, Shri Narayan Singh, an injunction restraining the mortgagee, Santa Singh, from exercising his powers of sale for a period of 28 days.

C This injunction was not renewed and expired in November, 1961, by effluxion of time. Civil Action No. 199 of 1961 is still pending and has not yet been brought to trial by the plaintiff.

D On the 23rd of May, 1962, Santa Singh, in exercise of his powers of sale under his mortgage No. 65192, sold the lease in question to Randhir Singh, the defendant in this present action, for the sum of £350.0.0. This transfer was approved by the Native Land Trust Board on the 24th of May, 1962, and was registered on the 8th of June, 1962.

E On the 23rd of May, 1962, Randhir Singh granted a mortgage No. 80330 over the lease to Sarvan Singh to secure the loan to him of the sum of £150.0.0. This mortgage was registered on the 8th of June, 1962.

F On the 2nd of January, 1963, Shri Narayan Singh, the present plaintiff, issued the writ in this Action (Civil Action No. 1 of 1963) against Randhir Singh, the defendant, in which he claimed an order that the defendant Randhir Singh "re-transfer" to the plaintiff Shri Narayan Singh Lease No. 6076 on the ground that at the time the transfer of the lease to Randhir Singh was made he, Randhir Singh, had had notice of the claim which the plaintiff Shri Narayan Singh was making against the mortgagee, Santa Singh, in Civil Action No. 199 of 1961.

In his defence Randhir Singh admits having had notice of the claims of the plaintiff Shri Narayan Singh against the mortgagee, Santa Singh, in Civil Action No. 1 of 1961 but denies that the plaintiff is thereby entitled to the relief he seeks.

G By way of counterclaim the defendant claims possession of the land of which he is and has been since the 8th of June, 1962, the registered proprietor of the existing lease on the ground that the plaintiff has been, and is, in unlawful occupation of the land in spite of repeated requests of the defendant to the plaintiff to move away therefrom. He also claims damages against the plaintiff for "wrongful occupation" of the land from the 8th of June, 1962, until possession is given. To this counterclaim the plaintiff has not delivered a defence. It is conceded by counsel for the plaintiff that the counterclaim has not been defended or opposed.

At the trial of the Action it was pointed out by the Court to Mr. Ramrakha, who appeared as counsel for the plaintiff, that from the pleadings it appeared that the plaintiff's solicitor had not given consideration to the provisions of the Land (Transfer and Registration) Ordinance (Cap. 136) relating to the powers of a mortgagee to sell or to the effect of a sale by a mortgagee in exercise of his powers of sale which are contained in sections 63 and 65. It is clear that the purchaser from a mortgagee when registered as the proprietor, as has been done in the case of the defendant in this Action, is deemed to be the transferee of such land. Under the provisions of section 14, the title of the defendant as a proprietor of the lease in dispute in this case is absolute and is not subject to challenge merely because of notice of such claims as were raised in Civil Action No. 1 of 1961 but only on the grounds of (1) fraud, (2) misrepresentation or (3) adverse possession. None of these grounds are alleged by the plaintiff in the Statement of Claim which does nevertheless seek to challenge the title of the defendant, the registered proprietor of the lease. For the plaintiff, Mr. Ramrakha said he had only recently been instructed to appear in the matter and did not draw the pleadings. He said he felt bound to concede that on these pleadings the plaintiff could not possibly succeed in his claim. In these circumstances he called no evidence to support the plaintiff's case.

The defendant counterclaimed for possession of the said land and Mr. Ramrakha, for the plaintiff, conceded that since no defence of the counterclaim had been filed the defendant was entitled to an order for possession.

In support of his claim for damages for the plaintiff's wrongful occupation of the land from the 8th of June, 1962, onwards at the rate of £500 per annum, the defendant himself gave evidence. He said that he himself had paid the rent of £9.16.0 per annum together with the sum of £2.10.0 per annum Fire and Hurricane Insurance premium on the house and kitchen. In addition he gave evidence which was, however, illogical and quite unacceptable in respect of his alleged loss of income at the rate of £500 a year by reason of the plaintiff's occupation of the land. Having regard to the whole of the facts before me I assess the defendant's damages at the rate of £24.0.0 per annum with effect from the 8th of June, 1962, until the date the possession is given to him.

There will be therefore judgment for the defendant on the claim with costs to be taxed and also judgment for the defendant on the counterclaim for possession and for damages at the rate of £24.0.0 per annum from the 8th of June, 1962, until the date of delivery of possession to him.

Mr. Ramrakha for the plaintiff has asked that the plaintiff be allowed three months within which to give possession. In my view this is too long in the circumstances of this case, save upon terms. I do, therefore, order that possession be given within 30 days of the date of this judgment provided, however, that if the plaintiff deposits in Court the sum of £100.0.0 within 30 days on account of the damages and costs awarded against him, I direct that there be no execution without leave within 90 days of the date of this judgment. When

the costs have been taxed and ascertained they must be paid in full within 14 days thereafter, failing which the defendant is at liberty to apply for leave to issue execution.

Judgment for the defendant.