

(1879) 04 CAL CK 0002

Calcutta High Court

Case No: None

Abdool Aziz Biswas

APPELLANT

Vs

Radha Kanto Kobiraj
and Another

RESPONDENT

Date of Decision: April 24, 1879

Citation: (1880) ILR (Cal) 226

Hon'ble Judges: McDonell, J; Jackson, J

Bench: Division Bench

Judgement

Jackson, J.

The appeal out of which this second appeal arises was dismissed by the Subordinate Judge of Jessore, on the sole ground that the document put in evidence by the plaintiff, and which is called a sale-certificate, was inadmissible by reason of its not being registered. In support of this view of the law, the Subordinate Judge refers merely to a ruling of the Madras High Court (6 Mad. Rep. Appx., XXXIX) relating to a sale-certificate under the late Code of Civil Procedure. That ruling appears to have been a decision not upon argument, though it is, of course, entitled to respect. But it is not necessary for us to say whether we concur with the Madras High Court in holding that a sale-certificate under the late CPC is an instrument declaring an interest in property, and if the value of the interest so declared is one hundred rupees or upwards, that the registration of the instrument is compulsory u/s 17 of Act VIII of 1871, because the present Code differs materially in its language, and because the document in question here was not a sale-certificate at all, and had no connection with the Code of Civil Procedure. It was a document under Reg. VIII of 1819, which is not a Madras Regulation, and therefore could not have been within the contemplation of the Madras Court. This document which the plaintiff produced, and which may have been quite unnecessary, for it is not clear that any question of title arose in the case, was a certificate described in Clause 1, Section 15 of Reg. VIII of 1819, which is in these words: "So soon as the entire amount of the purchase-money shall have been paid in by the purchaser, at any sale made under

this Regulation such purchaser shall receive from the officers conducting the sale a certificate of such payment." It is not clear that the zamindar might not be entitled to demand that the certificate should be given over to him. But in any case, it is a certificate granted for a particular purpose, viz., to entitle the holder of it to register himself. It is not a certificate of sale, but a certificate after the sale is made, showing that the purchase-money has been paid. It is in fact a receipt showing payment of the purchase-money, the sale being an act of the Collector under the Regulation, in consequence of an arrear having taken place. We think there is no authority for holding that such a certificate, or that any paper purporting to be evidence of a sale under that Regulation, requires to be registered. We are not inclined to lay down such a rule ourselves, and we think the Subordinate Judge was wrong in rejecting this document. That being so, the document must be received in evidence, and must be taken into consideration. The case is remanded in order to its trial upon the evidence. If it shall appear that all the evidence which the parties had to give has been produced, then the lower Appellate Court will determine the case itself. If not, the case will have to go back to the Court of first instance. The costs of this appeal will follow the result.