

(1869) 04 CAL CK 0019

Calcutta High Court

Case No: Special Appeal No. 2074 of 1868

Gagai Gura Chawa

APPELLANT

Vs

Tetai Abom

RESPONDENT

Date of Decision: April 15, 1869

Judgement

Norman, J.

The plaintiff sues for the possession of 30 bigas of land, which he alleges that he purchased from the defendant's father, on the 4th of May 1863, for rupees 12. As evidence of the purchase he puts in a transfer endorsed upon the patta by the defendant's father. The lower appellate Court, reversing the decision of the Munsiff of Sibsagur, has given the plaintiff a decree, relying upon the endorsement as proving that the defendant's father transferred the patta to the plaintiff. The objection taken before us is that this endorsement has been rejected by the first Court, upon the ground that it was cot stamped; and as such, it was improperly admitted in evidence by the lower appellate Court. Baboo Abhaya Charan Bose, the appellant's vakeel, refers us to section 14 of Act X of 1862, by which it is provided that no deed, for which any duty shall be payable u/s 2 of this Act, shall be received as creating or transferring any right, or as evidence in any civil proceeding in a Court of Justice, unless such deed, instrument or writing shall bear a stamp of a value not less than that indicated to be proper for it by the schedule annexed to the Act. Under the 23rd clause of schedule A, a conveyance, or instrument of any description whatever, executed for the sale or transfer, for a consideration, of any land or other property, moveable or immoveable, or of any right or interest in any land, when the purchase money therein expressed shall not exceed rupees 100, shall bear a stamp of one-rupee. The plaintiff's case is that this endorsement on the patta was an instrument of transfer, for a money-consideration of the land to which the patta relates, and therefore, according to the plaintiff's own case, it required a stamp of one rupee. We think the objection taken by the appellant's vakeel is well founded. The instrument in question is not admissible in evidence; and as the rest of the evidence is not consistent with the defendant's case, which is, that this property

came into his hand as khurdua, i.e., executor, manager, or trustee of the defendant's father, we reverse the decision of the lower appellate Court, and dismiss the suit with costs.