
(1871) 03 CAL CK 0003

Calcutta High Court

Case No: Special Appeal No. 2211 of 1870

Ishan Chandra and
Others

APPELLANT

Vs

Sujan Bibi

RESPONDENT

Date of Decision: March 29, 1871

Judgement

Mookerjee, J.

The only point submitted for consideration in this special appeal is, whether the Judge was right in rejecting the document, on which the suit was based, for want of registration. The Judge considers that, although the document is described as a bandaknama, yet as possession is given to the plaintiffs for six years on payment of a certain sum of money recited in that document, the document should be considered as a lease, and not an usufructuary mortgage. He says--"There was then a transfer, or the deed in question purported to create a transfer, for six years of immoveable property, and the transfer cannot, I consider, be described as not being a lease. The transaction represented by the deed is a temporary transfer of land in consideration of the receipt of a certain sum of money, and differs only from the mere ordinary form of lease in the money equivalent being paid in a lump sum in advance, instead of by yearly payments in arrear." We have carefully perused the document. We find there is nothing to show that it is a lease, there being no stipulation for payment of any rent. The document appears to be a common bhagbandak or usufructuary mortgage of the property given to the plaintiffs by the defendant for a loan of Rs. 99. It is distinctly termed a bandaknama, and all the conditions contained in that deed show that the defendant, in consideration of the loan that he received from the plaintiffs, agreed that this property should remain in the hands of the plaintiffs for a term of six years, by which time, it appears, it was understood that the whole of this amount would be liquidated. There is no stipulation for payment of rent, and there is no statement that the sum of 99 rupees received was the rent for six years. I can see no difference between this deed and a bhagbandak, or usufructuary mortgage. Now if this is a mortgage, and the amount advanced is only 99 rupees, then u/s 13, as well as u/s 16, Act XVI of 1864, registration was merely optional, and the Judge was not right in

refusing to admit the document as evidence in the case. Section 13 says : No instrument being a deed of gift of immoveable property, no lease of immoveable property for any period exceeding one year, no instrument (other than a deed of gift or lease as aforesaid) which purports or operates to create, declare, transfer, or extinguish any right, title, or interest of the value of 100 rupees or upwards in any immoveable property, and no instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, transfer, or extinction, of any right, title, or interest as above, of such value as aforesaid, "in any immoveable property, shall be received in evidence in any civil proceeding in any Court or shall be acted on by any public officer, if such instrument shall have been executed on or after the date on which this Act shall come into operation, & c."

2. This appears to me to be a creation of a right in the plaintiffs to hold this property in their possession for a term of six years in consideration of Rs. 99 advanced by the plaintiffs to the defendant. I think therefore that the document is not a lease, but it is an usufructuary mortgage, and being a mortgage below Rs. 100, its registration was not compulsory, but optional.

3. It is contended that section 14 enacts that, "the value of the right, title, or interest in any immoveable property created, declared, transferred, or extinguished by any instrument, shall be taken to be the value indicated by the stamp affixed thereto or impressed thereon under Act X of 1862," That the stamp on which this document is engrossed being of the value of 1 rupee, the value of the right created must be, according to this section, considered to be of the value of above 100 rupees, and that therefore, even if it be a mortgage, it ought to have been registered, and could not be received in evidence not having been duly registered under this law. But it appears to me that, looking to Act X of 1862, the Stamp law then in force, the stamp requisite for such a mortgage-deed would be a stamp of 8 annas, and not Re. 1. The amount of the loan is also clearly stated in the document to be Rs. 99. This section does not appear to apply to cases where the value of the right is distinctly stated in the instrument which creates that right. But it appears to me that this section contemplates only cases where there is no fixed or definite value of the interest created stated in the deed. For the purposes of this Act, the Legislature have laid down that the stamp on which such a deed is engrossed, shall be taken to indicate the value of the interest created. It cannot be disputed that this mortgage could have been engrossed on a stamp of 8, annas, the amount of the sum advanced being Rs. 99, according to clause 12, Schedule A of Act X of 1862; and if either from the ignorance of the Stamp law, or from the fact that 8-anna stamps were not then available, the parties engrossed the deed on a higher stamp, I think it cannot be contended that merely from the circumstance of the stamp used being a stamp used for a transfer of an interest of the value of a sum above Rs. 100, the deed becomes a deed, registration of which is compulsory under Act XVI of 1864. I think therefore that the deed being a mortgage deed, and that mortgage being for a sum less than Rs. 100, the registration of such a deed was optional, and the fact of its not having been registered does not render it inadmissible in

evidence in the cause.

4. The case is therefore remanded to the Court of the district Judge for a decision on the merits. Costs to abide the result.