

(1879) 05 CAL CK 0009

Calcutta High Court

Case No: None

Daimoddee Paik

APPELLANT

Vs

Kaim Taridar and
Another

RESPONDENT

Date of Decision: May 28, 1879

Acts Referred:

- Evidence Act, 1872 - Section 92

Citation: (1880) ILR (Cal) 300

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

Bench: Division Bench

Judgement

Jackson, J.

The point raised in this special appeal is one which was considered on more than one occasion previously. We have no doubt that the Judge is in error in thinking that the parties are at liberty to rely upon the evidence furnished by the conduct of parties for the purpose of varying, adding to, or subtracting from the terms of a written contract. The evidence so given can only be evidence of an agreement which, as it was not written, must have been oral, and that is in distinct violation of the terms of Section 92 of the Evidence Act. The case decided by the Pull Bench was before the Evidence Act came into force, and moreover, I understand, in that case there was a written instrument relied upon, viz., a kabuliat, and the evidence of conduct was adduced by the learned Chief Justice as giving support to that written instrument so as to make it probable that the parties had really intended a mortgage and not a sale out-and-out. I am referred to the case of Madhub Chunder Roy v. Gungadhur Shamunt (11 W.R., 450), heard by Mr. Justice Markby and myself, in which we both separately expressed the same opinion, which the present Division Bench expressed only last week in another special appeal. I observed in that case: "I confess that I have some difficulty in comprehending the distinction between the admissibility of evidence of a verbal contract to vary a written instrument, and the

admissibility of evidence showing the acts of the parties which after all are only indications of such unexpressed unwritten agreement between the parties"; and Mr. Justice Markby said: "It seems to me very difficult to understand the distinction there drawn between evidence of a parol agreement contradicting the terms of a written contract being inadmissible, and evidence of the parties contradicting the terms of such a contract being admissible." Although we both accepted the ruling of the Full Bench, which, it is to be borne in mind, was a ruling of three Judge against two, in regard to the particular case in which it was given, we think the judgment of the Munsif in this case, refusing to admit parol evidence, was right, and that the judgment of the lower Appellate Court must be reversed with costs.

2. I would add also, that it appears to me very material to consider this Section (92) of the Evidence Act with the provisions of the Registration Act. It is highly important, and clearly in accordance with the intention of the legislature in passing the Registration Act, that parties should be compelled to register the precise contract which they have made. It would be extremely inconvenient if parties should register as a bill-of-sale what afterwards turns out on the evidence of conduct to be merely a mortgage.

3. Another observation I would make in this case is this: It appears to me to be no answer to the direct provisions of a particular section of an enactment, to say that the enactment was described in terms as an enactment "to consolidate, amend, and define the provisions of previously existing laws, and that the particular rule contended for is not to be found among the previously existing laws. It is sufficient if the provision relied upon is a part of the Act, whatever the description of the purposes of the Act may be.