

(1877) 12 CAL CK 0005

Calcutta High Court

Case No: None

Gunno Singh

APPELLANT

Vs

Latafut Hossain and
Others

RESPONDENT

Date of Decision: Dec. 10, 1877

Citation: (1878) ILR (Cal) 337

Hon'ble Judges: Richard Garth, C.J; Birch, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

In this case we think that the Subordinate Judge has taken a wrong view of the so-called instrument of mortgage. We consider that it did not amount to a mortgage at all, but that it was merely a covenant not to alienate any property of the debtor until payment of the money advanced. The case decided by the Full Bench--Rajkumar Ram Gopal Narayan Singh v. Ram Dutt Chowdhry 5 B.L.R. 264 which has been relied upon by the respondent, is, in our opinion, an authority in favour of the view which we now take. The instrument before the Court in that case referred to a specific property by name; and there were expressions in the instrument which led the Court to think, that the parties intended that property to be pledged. But the Chief Justice in that case expressly says, that if the question there had been whether a bond for payment of money, with a simple covenant not to alienate the obligor's property until payment, constituted a mortgage, he thought that question should be answered in the negative.

2. Now here we have precisely that case. We have simply a covenant that the debtor, the person borrowing the money, will not part with any of his property until payment of the debt; and we have no such expressions as those which in the Pull Bench case induced the Court to hold that the instrument amounted to a mortgage. Those expressions were,--"should we make all these transactions with respect to the said land" (that is, the particular lands which were mentioned in the bond) "the

instrument relating thereto shall be deemed invalid, and as executed in favour of nominal parties for evading payment of the money covered by the said land". In the absence of any such expressions here, we think that the Full Bench decision does not apply, and that this deed merely amounted to a general covenant not to part with any of the debtor's property.

3. The result will be, that the decision of the Subordinate Judge will be reversed, and the judgment of the Munsif restored with costs in this Court and in the Court below.