

(1925) 01 CAL CK 0040

Calcutta High Court

Case No: None

Chandra Kumar Kritiratna
Bhattacharjee and Others

APPELLANT

Vs

Alam Khan and Others

RESPONDENT

Date of Decision: Jan. 15, 1925

Citation: 87 Ind. Cas. 546

Hon'ble Judges: Mukerji, J; Ewart Greaves, J

Bench: Division Bench

Judgement

Mukerji, J.

The only question in this appeal is as to whether the document, Ex. A in the case, is a deed of mortgage by conditional sale or a deed of an out-and-out sale with the condition of re-purchase attached to it. The Courts below have held that the document in question is one of an-out-and-out sale with a condition of re-purchase.

2. It is contended on behalf of the appellants that this view is not correct and that there are indications which can well be gathered from the terms of the document which go to show that the transaction was really one of mortgage by way of conditional sale. It is stated that in the first part of the document all sorts of rights are undoubtedly conferred upon the vendee but that towards the end of the document there is a clause to the effect that if within a period of seven years a particular amount, namely, the consideration mentioned in the document was not re-paid then the vendor will have to give up the land and in that case the sale would become valid like an absolute sale and it would then divest the vendors of their title and confer upon the vendee the right to make sale of gift with effect from the expiry of the aforesaid period. It is urged on behalf of the appellants that this latter condition attached to the document shows an intention to the effect that the document is not to be regarded as a document for an out-and-out sale; special reliance is also placed on behalf of the appellants upon the word "principal" which is used for the consideration money which is to be re-paid within the period of seven

years mentioned above. On behalf of the respondents it is contended that the conditions by which all the proprietary rights were conferred upon the vendee clearly show that the intention was to sell the property, and that the condition mentioned in the latter part of the document only had the effect of reserving to the vendors the right to get back the property, in the event of the consideration money being re-paid within a period of seven years. It is not necessary to refer to the cases that have been noticed by the Courts below in their judgments, for, as has been observed by the Judicial Committee in the case of *Narasingerji Gyanagerji v. Panuganti Parthasaraudhi Rayanim Garu* 82 Ind. Cas. 993 : 40 C.L.J. 481 : AIR (1924) (P.C.) 226 : 47 M. 729 : 20 L.W 701 : 10 O. & A.L.R. 1172 : 47 M.L.J. 809 : (1924) M.W.N. 915 : 27 Bom. L.R. 4 : 29 C.W.N. 246 : 51 I.A. 305 : 26 P.L.R. 18 : 23 A.L.J. 161 : L.R. 6 A. (P.C.) 41 : 1 C.W.N. 684 (P.C.), each case has got to be decided upon the intrinsic evidence afforded by the terms of the document and upon consideration of surrounding circumstances. There are two outstanding features in this case and they have been noticed by the Court of first instance. They are, firstly, that the consideration money mentioned in the document- really represents the actual price of the land at the date when the document was executed and secondly, that the plaintiffs have come to Court for obtaining possession of the lands more than 40 years after the date of the document. These undoubtedly, are circumstances which go to show that the intention of the parties was to make an out-and-out sale. With regard to the terms and stipulations relied upon by the learned Vakil appearing for the appellants they are not inconsistent with the transaction which would amount to an out-and-out sale. In the document which formed the subject-matter of discussion in *Chandi-Charan Chowdhury v. Nabin Chandra De* 67 Ind. Cas. 113, a Bench of this Court had to deal with terms very similar to these that are to be found in the document before us. In that document also it was mentioned that, the vendee was to enjoy and possess the land by virtue of transaction and that if a particular amount was re-paid within a certain period the vendee would release by a deed of sale all the lands and that if the money could not be paid within that time the deed of sale would be regarded as a deed of absolute sale and then the proprietary rights would accrue upon the vendee. No doubt there was also in that document a specific mention to the effect that the vendee would be entitled, to deal with the property under a proprietary right from the date of the document but an absence of mention to that effect, such as there is in the document before us, "does not, in my opinion, really affect the substance of the document itself for if the intention of the vendor was that if the money was re-paid within seven years, the property would be re-conveyed to the vendor he would naturally not make a mention of the power to make sale or gift of the property in "the meantime specifically. Upon these considerations, I think that the Courts below have come to a right decision and the appeal accordingly fails and is dismissed with costs.

Greaves, J.

3. I agree.