(1909) 07 CAL CK 0039

Calcutta High Court

Case No: None

Mohamad Yusuffe and Others		APPELLANT
	Vs	
Jashodha Kumar Das Purkaista and Others		RESPONDENT

Date of Decision: July 13, 1909

Judgement

Chitty and Carnduff, JJ.

The only question which arises in this appeal is whether the transaction between the parties was a mortgage by conditional sale, or was an out and out sale by the plaintiffs to the defendants with a contract for re-purchase within four years. This question depends on the construction to be placed upon the documents in the case. The kabala is not before us but it is admitted that it was an out and out sale for a sum of Rs. 625. The deed was registered and, under it, the defendants took possession of the property. On the same day that the kahala was executed, an ekrarnama was signed by the predecessor of the defendants, and it contained these terms: I promise to you in the presence of the witnesses to my purchasing kabala noted on the margin that if you repay Rs. 625 the amount of purchase-money, and the amount of costs incurred by me for the purchase within four years from this date then I or my successors will be bound to give up in your favour the aforesaid lands and Jamas. If you do not repay the money, you shall not be entitled to lay any claim after expiry of the term." There is nothing in that document to indicate that Rs. 625 had been advanced by way of loan or that the lands were taken by the defendants as security for such loan or that there was any question of repayment of a loan. In this respect, the case appears to us to be not distinguishable from the case of Kinuram Mondol v. Nitye Chand Sirdar 11 C.W.N. 400. The contemporaneous document in that case was in terms very similar to that in the present case. This case is distinguishable from that of Mutha Venkatachelapati v. Pyanda Venkatachelapati 27 M. 348 because in that case the contemporaneous document distinctly indicated that the transaction was by way of mortgage. It was there held that such a document required registration and was not admissible in evidence and could not

affect the property in question. If the ekrarnama as simply a contract for repurchase, as we think that it is, it could not require registration and the plaintiffs'' suit would be simply for specific performance of that agreement. In form, the plaintiffs'' suit appears to us to be one for specific performance. The prayer is one calling upon the defendants to execute a kabala in respect of the lands in suit on repayment by the plaintiffs of the purchase-money and costs. For these reasons, we think that the decision of the Additional District Judge is correct and the appeal is, accordingly, dismissed with costs.