

Sree Nath Holdar Vs Sree Knata Holdar

Court: Calcutta High Court

Date of Decision: May 10, 1910

Citation: 6 Ind. Cas. 477

Hon'ble Judges: Doss, J

Bench: Single Bench

Judgement

Doss, J.

The plaintiff sued as purchaser of a plot of land for delivery to him of a kobala by the defendant, on his paying to the latter the

sum of Rs. 21 as stated by him to be the unpaid balance of the purchase-money. The kobala was executed by the defendant and was presented by

him for registration, and after registration it was taken back by him from the Registry Office and is now in his own possession.

2. The learned District Judge has found that the plaintiff has not paid any portion of the sum of Rs. 99, which was the purchase-money for the

kobala. As the kobala, though executed, has not been delivered to the plaintiff and the latter has not paid any portion of the purchase-money, I am

of opinion that the plaintiff has acquired no title to the property. It has been laid down in the cases of Sheo Narain Singh v. Durbari Mahton 2

C.W.N. 207, Mauladan v. Rughu Nandan, Fershad Singh 27 C. 7, Manaji Singh v. Sarat Lal Mahto 4 C.L.J. 334 that mere registration of a deed

of sale, unaccompanied by delivery of the deed to the vendee, does not make the transaction a completed one, and that mere registration of the

document does not pass title if it was intended by the parties that the title should pass only upon the consideration money being paid. In this view it

becomes unnecessary to discuss the question raised in the Courts below as to whether the defendant was entitled to prove as a defence to this suit

that there was a contemporaneous oral agreement between the parties that the consideration money was not to be paid in cash but that in lieu

thereof the plaintiff was to execute in favour of the defendant a mokarari mourasi lease of some other land, the salami for such lease being the

consideration reserved in the kobala. The learned District Judge held that it was not open to the defendant to raise this defence in this suit. Had it

been necessary for me to express any opinion on that point, I should have thought, having regard to the authorities, that the Court was bound to

come to a finding upon that point before awarding a decree for possession in favour of the plaintiff. The cases of Sah Lal Chand v. Indrajit 4

C.W.N. 485 : 22 A. 370 : 27 I.A. 93, Lala Himmat Sahai Singh v. Llewhellen 11 C. 484 and Gopal Singh v. Laloo Lall 10 C.L.J. 27 : 2 Ind.

Cas. 953 clearly establish the position that not with standing an admission in a sale-deed that the consideration has been received, it is open to the

vendor to prove that no consideration has been actually paid or that the consideration was different from that stated in the sale-deed.

3. For these reasons the appeal is decreed, the decree of the lower appellate Court set aside and that of the Court of first instance restored with

costs in all the Courts.