

(1878) 09 CAL CK 0004

Calcutta High Court

Case No: None

Oghra Singh

APPELLANT

Vs

Ablakhi Kooer and
Another

RESPONDENT

Date of Decision: Sept. 3, 1878

Acts Referred:

- General Clauses Act, 1868 - Section 6
- Registration Act, 1877 - Section 50

Citation: (1879) ILR (Cal) 536

Hon'ble Judges: R.C. Mitter, J; Maclean, J

Bench: Division Bench

Judgement

Mitter, J.

The only point that has been raised before us is that Section 50 has no application to this case, because that section refers only to documents the registration of which is optional.

2. We think that this contention is valid. Section 50 is as follows;--" Every document of the kinds mentioned in Clauses 1 and 2 of Section 18 shall, if duly registered, take effect as regards the property comprised therein against every unregistered document relating to the same property." Now, in this case, in order to apply Section 50, it must be made out that the defendant's document is one of the kinds mentioned in Clauses 1 and 2 of Section 18; but it is quite clear that the document does not come within those clauses, because the property in suit was sold to the defendant for Rs. 200. That being so, it is quite clear that Section 50 has no application. This view of the section in question has been taken by this Court in the case of *Ryasuttulla v. Doorga Churn Paul*; (15 B.L.R. 294, 24 W.R. 121). That decision has been recently followed by Mr. Justice Ainslie and Mr. Justice Lawford in Special Appeal No. 809 of 1877, decided on the 14th September 1877. It is true, as pointed

out by Mr. Justice Macpherson in the case of Ryasuttulla v. Doorga Churn Paul (15 B.L.R. 294 : 24 W.R. 121), just referred to, that the result of this construction of the law is somewhat anomalous; but in a case like this, where the rights of the parties are intended to be taken away by a penal legislation of the kind referred to in Section 50, the language of the law must be construed very strictly against any derogation of right.

3. We are, therefore, of opinion that Section 50 of Act VIII of 1871 has no application to this case.

4. It has been contended on behalf of the respondent that the matter before us should be governed by Section 50 of the present Registration Act.

5. We find that the suit was instituted on the 1st March 1876, and the present Registration Act came into operation on the 1st of April 1877. We, therefore, think that, u/s 6 of the General Clauses Act (I of 1868), the proceedings in this case having been commenced before the present Registration Act came into operation, must be governed by the Act of 1871. We are, therefore, of opinion that this contention is of no force.

6. The judgment of the lower Appellate Court must be set aside, and the case remanded to that Court to be tried upon the remaining question raised between the parties.

7. Costs will abide the result.