
(1868) 06 CAL CK 0011

Calcutta High Court

Case No: Special Appeal No. 2573 of 1867

Girija Singh

APPELLANT

Vs

Giridhari Singh

RESPONDENT

Date of Decision: June 13, 1868

Final Decision: Allowed

Judgement

Macpherson, J.

The plaintiff (who is the appellant before us) sued for possession of certain lands which he claimed under a kubala, or bill of sale, dated the 29th October 1866, and duly registered in accordance with the provisions of Act XX of 1866. The defendants contend that the land belongs to them, and that they purchased it from the persons through whom the plaintiff's vendors make their title, in Bysak 1262 (April or May 1855), and have been in possession ever since. The defendants' kubala is dated the 2nd Bysak 1262 (April or May 1855), but is not registered. The Lower Appellate Court has decided in favour of the defendants, finding that the property was really sold to them, as alleged; that they paid full consideration for it, and that they were at once put in possession, and have been in possession ever since.

2. In appeal it is contended, that the Lower Appellate Court has erred in not giving the preference to the plaintiff's kubala, it having been duly registered, while the other is not registered at all.

3. Section 100 of Act XX of 1866 enacts, that " every instrument of the kinds mentioned in Sections 17 and 18, which shall have been executed in any such part of British India, before the date on which this Act shall come into operation therein, shall be accepted for registration if it be duly presented for registration, within twelve months from such date." The defendants' kubala, therefore, might have been registered under Act XX of 1866, if it had been presented for registration within twelve months after the Act came into force in Gya. Then Section 50 of Act XX says, that " every instrument of the kinds mentioned in Clauses 1, 2, and 3 of Section 18 shall, if duly registered, take effect as regards the

property comprised therein against every unregistered instrument relating to the same property." It is contended that, as the defendants' kubala is an instrument of the kind mentioned in Clauses 1 and 2 of Section 18, and as it has not been registered, as it might u/s 100 have been, the plaintiff's duly registered instrument takes effect as against it.

4. It appears to me that whatever might be the position of the parties, if it were a mere question as to which deed was to be given effect to, the plaintiff is not entitled to recover in the present instance. The defendants' kubala was duly executed, and, according to the law then in force, it was in no degree essential that it should be registered; the purchase-money was paid in full; and possession was then given, and has ever since been held under it. The transfer of the property to the defendants was complete, and nothing was wanting to perfect it according to the law then in force. When it is found as a fact that a bona fide purchase has been followed by eleven years' possession, the position of the purchaser is far stronger than if he were seeking possession for the first time under his deed of sale, and the question is not merely one as to the effect to be given to the deed as against a deed of later date registered under Act XX of 1866. I do not think that Section 50 of Act XX of 1866 is to be construed as vitiating all titles acquired prior to the passing of that Act, unless the instruments, on which they rest, are registered u/s 100. Had such been the intention, registration of old deeds would have been made compulsory, and it would have been declared expressly that, unless registered, instruments registered under Act XX of 1866 should take effect before them. I think that Section 50 must be read as applying to instruments, the registration of which is optional u/s 18, but not as applying to instruments registered u/s 100. I think, therefore, that this appeal ought to be dismissed with costs.

Bayley, J.

I concur in the above judgment and the reasons for it. The transaction took place under the old law. I do not think the deeds then executed can be set aside if bona fide in every way, and supported by long possession as this is. I also would dismiss this special appeal.

¹[Sec. 50:--Every instrument of the kinds mentioned in Clauses 1, 3 and 8 of Section 18 shall, if duly registered, take effect, as regards the property comprised therein, against every unregistered instrument relating to the same property, whether such other instrument be of the same nature as the registered instrument or not.]

Sec. 100:--Any thing contained in this Act to the contrary notwithstanding, every instrument of the kinds mentioned in Sections 17 and 18, which shall have been executed in any such part of British India before the date on which this Act shall come into operation therein, shall be accepted for registration if it be duly presented for registration within twelve months from such date.]

Registered instruments relating to immovables of which the registration is optional, to take effect against unregistered instruments.

Time for registering. instruments executed in such territories before extension of this Act.