
(1878) 06 CAL CK 0016

Calcutta High Court

Case No: None

Mattongeney Dossee

APPELLANT

Vs

Ramnarain Sadkhan

RESPONDENT

Date of Decision: June 17, 1878

Acts Referred:

- Registration Act, 1877 - Section 17, 49

Citation: (1879) ILR (Cal) 83

Hon'ble Judges: Richard Garth, C.J; Markby, J

Bench: Division Bench

Judgement

Richard Garth, C.J.

We think that the Judge is quite right in holding that the document in question is not admissible in evidence.

2. It has been argued by Mr. Bonnerjee on behalf of the appellant that we are concluded here by the authority of the Full Bench case of Lachmipat Sing Dugar v. Mirza Khairat Ali 4 B.L.R., F.B. 18, which was decided under the provisions of Act XX of 1866, Section 49.

3. The words of that section run as follows: "No instrument required by Section 17 to be registered shall be received in evidence in any civil proceeding in any Court, or shall affect any property comprised therein, unless it shall have been registered in accordance with the provisions of this Act"; and it was held by the Full Bench that where a document was divisible in its nature, and consisted partly of a bond for Rs. 2,000, and partly of a mortgage of certain property to secure payment of the money, the document was receivable in evidence without registration for the purpose of proving the bond-debt, though it was not so admissible for the purpose of enforcing the security.

4. The Court seems to have considered that the general words "no document shall be received in any Civil Court" ought not to be read in their widest sense but only as rendering the document inadmissible in evidence for the purpose of affecting the mortgaged property.

5. The words of the present Act are different. Section 49 says that "no document required by Section 17 to be registered shall (without being registered) be received as evidence of any transaction affecting any Immovable property comprised therein."

6. Now, in this case, the document is not divisible It discloses one transaction only; and that the transaction which the plaintiff must necessarily prove for the purpose of making out his case.

7. It may be doubtful indeed, whether, having regard to the terms of the loan, the defendant is personally liable for the money; and whether the only remedy of the plaintiff is not against the mortgaged property. But whether this was so or not, the transaction was single and indivisible, and we think it is impossible to say, having regard to the words of s.49, that the instrument was admissible in evidence for the purpose of proving that transaction.