

(1906) 02 CAL CK 0027

Calcutta High Court

Case No: None

Abdul Karim

APPELLANT

Vs

Shofiannissa

RESPONDENT

Date of Decision: Feb. 22, 1906

Citation: (1906) ILR (Cal) 853

Hon'ble Judges: Pargiter, J; Ghose, J

Bench: Division Bench

Judgement

Ghose and Pargiter, JJ.

The true question raised in the suit, out of which this appeal has arisen, was as to the genuineness and validity of a deed of wakf propounded by the defendants as having been executed by one Kala Chand, the ancestor of both the parties, in the year 1223 M.S. The plaintiffs are seven of the heirs of the said Kala Chand, and they claimed in the suit their share of the properties left by him, while the defendants set up this wakfnama in answer to the plaintiffs' claim in respect of the properties covered by schedules 6 to 12. The Court of Appeal below has given the plaintiffs a decree, holding, as we understand its judgment, that the wakfnama was not intended to operate as a trust in favour of the mosque- There are, however, passages in the judgment of the District Judge, which may be construed as meaning that that officer did not intend to find that the document in question was not meant to be an operative transaction, but that the executant or the alleged executant thereof, namely, Kala Chand, did some time after the execution thereof rescind the disposition so made. But on looking at the judgment as a whole, we are of opinion that the learned Judge was in no way satisfied as to the genuineness of the document; and he says that, though the presumption as to its genuineness may be inferred from the evidence of its custody that was adduced in the case, yet there is a more serious charge against it, viz., that Kala Chand, in the year 1247 M.S., executed a deed of mortgage in respect of some portion of the property covered by the deed in question. "With reference to the argument that had been addressed by the defendant that the wakfnama could not for that reason be held to be invalid,

because it was not intended that it would come into force until after the grantor's death, the learned Judge says as follows: "The explanation seems to me unsatisfactory. I should infer from the mortgage that the grantor intended to cancel the grant." This observation is made upon the assumption, as we understand it, that the document in question is genuine. But as already mentioned, he was far from being satisfied that it was genuine. However that may be, he nextly refers to the defendants' treatment of the property covered by the wakf subsequent to the death of Kala Chand, and he points out that, as a matter of fact, the heirs of that individual never treated the properties as wakf properties, but as their own private properties. Having regard to these circumstances, the learned Judge says: "No satisfactory explanation has been given of these circumstances, and, on that account, I hold that Exhibit L., the alleged wakfnama, did not operate to create a trust in the property covered by it so as to exclude the plaintiffs from succeeding to their share," or, in other words, the grantor never intended, when he is said to have executed the deed in question, that it should be an operative transaction. In this view of the matter, we are of opinion that the conclusion arrived at by the District Judge is one, which cannot be interfered with in second appeal. The learned vakil for the appellant has, however, contended that the wakfnama was created by a will and that it could only come into operation upon the death of Kala Chand and, therefore, though a portion of the property might have been given away under mortgage and though it may be that the heirs of Kala Chand treated the property generally as their private property, it could not interfere with the operation of the document after the death of Kala Chand, and this event having now taken place, the rights of the heirs of that individual must be regulated with reference to that document. No doubt, a wakf might be created by a will; but it does not follow from this that it must be an operative transaction; and if in the view that the learned Judge has expressed, it was not intended that it should be an operative transaction, no such question as raised by the learned vakil for the appellant arises in this case. For these reasons, we dismiss the appeal with costs.