
(1870) 03 CAL CK 0024

Calcutta High Court

Case No: Special Appeal No. 2138 of 1869

Madhusudan
Mazumdar

APPELLANT

Vs

Gayaram Mazumdar

RESPONDENT

Date of Decision: March 2, 1870

Judgement

Kemp, J.

The decision of the Subordinate Judge of West Burdwan appears to us to be clearly wrong. The special respondent, the plaintiff below, is a mortgagee. The sum for which the property was mortgaged being less than 100 rupees, registration under clause 1, section 18 of Act XX of 1866, was optional. The plaintiff's deed was not registered, and is dated the 6th Asar 1273 (June 19th, 1866) The defendant's deed of conveyance, although it is of subsequent date, being dated the 23rd Asar 1273 (July 6th, 1866) is duly registered; and, therefore, the plaintiff's deed not being registered must, u/s 50 of Act XX of 1866, give way to the registered document of the defendant which relates to the same property: Munsoor Ali v. Azmut Ali 9 W.R. 282 and Gobind Chunder Roy v. Porno Chunder Sein 10 W.R. 36 (37). The decision of the lower appellate Court is reversed. The case must be remanded to the lower appellate Court to try the third issue raised, namely whether the defendant's kabala is genuine or not.