

Balak and ors. Vs. Aley Hasan and ors.

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SooperKanoon Citation : sooperkanoon.com/472901

Court : Allahabad

Decided On : Oct-31-1916

Reported in : AIR1917All212(1); 37Ind.Cas.304

Judge : Walsh and ;Stuart, JJ.

Appellant : Balak and ors.

Respondent : Aley Hasan and ors.

Judgement :

1. This case unfortunately illustrates the danger of not using precise language at some portion or other of the judgment. We strongly recommend Judges of the Courts below, when giving judgment, whatever they may say in their reasons, to conclude their findings by saying that they find as a fact certain specified things. The sole question raised in this case is whether there was mortgage or not, and inasmuch as a mortgage exists and was recorded in the patwari's papers, the only question is whether it can be satisfactorily proved. The first Court held against it. It is quite true that it held that the witnesses were subservient to the plaintiff and that they were tutored; but if one is to be very precise, it never found that they were not telling the truth. It is only by implication that it found that they were not to be believed. The second Court has done precisely the same thing, with the converse proposition. The second Court has agreed that they were certainly not independent but that they should have been believed, and has sent the case back to be determined upon a basis which would only be legal if it accepted the

execution of the mortgage. We think that the language, although somewhat lacking in precision, can only be fairly construed as a finding of fact that the witnesses were found to be credible witnesses: in other words, that the mortgage was proved. By that finding we are bound, and we must, therefore, dismiss the appeal with costs.

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