

ibrahim Vs. Ramnarain

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SooperKanoon Citation : sooperkanoon.com/477816

Court : Allahabad

Decided On : May-31-1912

Reported in : 16Ind.Cas.483

Judge : Chamier, J.

Appellant : ibrahim

Respondent : Ramnarain

Judgement :

Chamier, J.

1. This was a suit for the recovery of Rs. 300 on the basis of a registered deed of mortgage. The plaintiff sued as the assignee of the original mortgagee. The defendants were the descendants of the mortgagor. It appears that the plaintiff produced evidence that the writer of the deed and all the marginal witnesses were dead; that the deed was in the handwriting of the person who purported to have written it out, and that the signatures of the witnesses were in their handwriting. On a consideration of all the evidence, the Munsif decided that it was safe to make the presumption permitted by Section 90 of the Evidence Act, the deed being one 35 years old. He found that the document was genuine, and he held that it was for the defendants to rebut the admission made by the executant of the deed at the time of registration that he had received the consideration.

2. Both the Courts below have held that the deed was supported by consideration.
3. In second appeal, two points are taken.
4. The first point is that the recital of the consideration and the admission as to the receipt of consideration are not evidence against the defendants that the deed was for consideration. It is quite clear that the recital in the deed and the admission are evidence against the defendants, who claimed through the executant of the deed. The second point is that inasmuch as the Munsif allowed evidence to be given that the deed was in the handwriting of the person who purported to have written it, and that the signatures of the witnesses were in the handwriting of those persons, he could not make the presumption allowed by Section 90 of the Evidence Act. I was referred to Section 4 of the Evidence Act, which runs as follows: 'Whenever it is provided by this Act that the Court may presume a fact, it may either regard such fact as proved, unless and until it is disproved or may call for proof of it.' On the strength of this, it is argued that if a Court allows evidence to be given as to genuineness of a document, then it cannot make the presumption allowed by Section 90.
5. I have no hesitation in overruling this contention. It is just as well for a Court to take any evidence that is available before deciding whether or not it will make the presumption allowed by Section 90 of the Evidence Act.
6. In practice, a Court does not generally decide whether it will make the presumption or not until all the evidence in the case is before it. The evidence that was taken in the present case certainly tended to show that it was safe to presume that the document was genuine.
7. The appeal is dismissed.