SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com

Sawa Vs. Kuka

Sawa Vs. Kuka

SooperKanoon Citation : sooperkanoon.com/750376

Court : Rajasthan

Decided On : Feb-02-1951

Reported in : AIR1951Raj66

Judge : Bapna, J.

Acts : Evidence Act, 1872 - Sections 62, 64 and 65

Appeal No. : Second Appeal No. 216 of 1950

Appellant : Sawa

Respondent : Kuka

Advocate for Def. : Bhanwar Lal, Adv.

Advocate for Pet/Ap. : Hamir Lal, Adv.

Disposition : Appeal dismissed

Judgement :

Bapna, J.

1. This is a second appeal in a suit for redemption. The pltf sued the resp for redemption of a field on the allegation that it; had been mtged for a sum of Rs. 50/- about 14 years ago but the deft was not prepared to redeem the possession after taking the amount of mtge money. The suit was instituted on 7-7-1945. The deft

denied the mtge & alleged that the field had been actually sold by a dead dated the Asad Vadi 1 St. 1992 in lieu of Rs. 50/-. The trial Ct dismissed the suit & the same judgment was upheld in appeal.

2. It was argued that the deed relied upon by the deft being unregistered was inadmissible in evidence & since the deft virtually admitted the pltf's prior title & the suit was not barred by limitation, the pltf should succeed even if the mtge was not proved. It was also argued that the transaction of mtge was by oral contract & the evidence led in support thereof should have been accepted by the two Cts. The learned counsel for the resp argued that whatever may have been the law in Mewar prior to 1948, the provisions of the Indian T. P. Act & the Indian Registration Act were made applicable after 1948, i.e., during the pendency of this litigation & that the sale-deed was admissible for the collateral purpose of showing how the possession of the deft started & also for the purpose of taking advantage of the doctrine of part performance laid down in Section 53A, T. P. Act. The Registration Act of Merwar III (3) of St. 1988 was introduced on 1-7-1932 & toy Section 5 thereof, deeds of mtge were required to be registered irrespective of the amount secured by the mtge. It was contended for the appit that this provision was applicable only If the transaction was evidenced by a deed but that in the present case the mtge was oral &, therefore, oral evidence should have been accepted. I find, however, on going through the evidence that every one of the witnesses of the pltf states that the transaction of mtge was effected by a deed. The pltf who is P. W. 4 states that the deed of mtge was executed 9 or 10 years ago. P. W. 1 Dewa states having seen the deed of mtge & having been asked by the deft's father to attest it but that he did not do so. P. W. 2 Bhamra also said that the transaction was reduced to writing. P. W. 3 Bhagga said that he had seen with Jalu - deft's father - the deed after it had been executed. Learned counsel for the applt argued that in the plaint no reference had been made to the deed but in view of the admission of the pltf & all his witnesses, there is no doubt that according to the pltf the transaction of mtge was entered into by the execution of a deed of mtge. The statement of the pltf was recorded on 2-11-1946, & in that statement he had stated that the deed was executed 9 or 10 years ago, that is, some time in 1936 or 1937. That this deed was not registered is evident from the fact that none of the witnesses has alleged its registration & in fact learned counsel for the applt

tried to argue that the document was not brought into existence at all. Under the law in Mewar which has been referred to above, - registration of a deed of mtge was compulsory. The point now remains to be considered is whether secondary evidence of a document which is required to be registered under the law but has not been so registered is admissible. The law is well settled that if the original document is inadmissible in evidence owing to its being unstamped or unregistered, secondary evidence is inadmissible vide 'Janardhan Kashinath v. Janardhan Vishwanath', A.I.R. (14) 1927 Nag 214: (101 IC 839). Section 65, Evidence Act presupposes that but for one or more of the barriers to its production stated in the section, the document would have been capable of proving its contents under Section 64 read with Section 62. It would, therefore, be a manifest absurdity to hold that secondary evidence may be given to establish a fact, proof whereof by primary evidence is forbidden. Under no circumstances can secondary evidence be admitted as a substitute for inadmissible primary evidence. Where a party comes into Ct resting his claim on a written title which the law requires to be registered, he cannot, when he has failed to register, & is, in consequence, unable to use his title-deed, turn round & say that he could prove his title by secondary evidence. The various cases in support of the above proposition are cited in Monir's Law of Evidence, 1948 Edn, at p. 528. The pltf's oral evidence of the terms of the deed of mtge was, therefore, inadmissible in evidence. The two Cts have rightly held that the pltf has failed to prove the mtge relied upon by him & that he is not entitled to succeed.

3. The next plea taken by the deft as to his being the owner of the property under the sale deed cannot be accepted as the deed is not registered. The plea on the doctrine of part performance will only come in for examination if the pltf files the suit on the basis of his title. The learned counsel intimated that the pltf had filed the suit for possession on the basis of title & is pending in the lower Ct. The contention raised by the learned counsel for the resp about the admissibility of the document by virtue of the enforcement of the T. P. Act & the Indian Registration Act need not also be examined in this appeal. As a result, this appeal has no force & is dismissed with costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com