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SooperKanoon Citation : sooperkanoon.com/806749

Court : Chennai

Decided On : Jan-10-1912

Reported in : 14Ind.Cas.65

Judge : Miller and ;Sundara Aiyar, JJ.

Appellant : Challa Venkata Reddy and anr.

Respondent : Devabaktunni and anr.

Judgement :

1. We cannot go behind the Subordinate Judge's finding that the transaction was not a nominal transaction. We cannot say that he has failed to consider any important evidence on this question.

2. The next contention is that the Subordinate Judge was wrong, having found that the transaction was intended by the parties to be a mortgage, in holding that he was unable, with reference to Section 92 of the Indian Evidence Act, to give effect to it as a mortgage. His view is clearly in accordance with Bala Krishna Das v. Legge 27 I.A. 158 which is explained in Ac utaramaraiu v. Subbaraju 25 M.k 7. The Privy Council decision in Maung Rayin v. Ma Shwe La (1911) 2 M.W.N. 30: 12 Ind. Cas. 39 cited on behalf of the appellants, lays down only that fraud antecedent to the execution of a document which led to the execution of the document in its actual form, or fraud intended against a third party, which would render the enforcement of the contract contrary to public policy, can be proved by

parol evidence, but does not depart from the rule in *Bala Krishna v Legge* 27 I.A. 158. In *Pertap Chunder Ghose v. Mohsindra Nath Purhait* 16 I.A. 233 the Privy Council lays down only that a misrepresentation, which induced a party to execute a document, may be proved as rendering the document invalid. *Navalabai v. Sivubhai* 8 Bom. L.R. 761 is to the same effect. *Krishna Bai v. Rama Bala* 8 Bom. L.R. 764 seems to go too far, if it is meant that an agreement to enforce a particular term in a document can be proved so as to give the document an effect which is not in accordance with its terms, for that would, it seems to us, be contrary to the decision in *Bala. Krishna, Das v. Legge* 27 I.A. 158 : 4 C.W.N. 153.

3. In *Hanif-un-Nissa v. Faiz-un-Nissi* 13 C.L.J. 510 : 8 A.L.J. 373 the Privy Council held that, in the case of a document which purported to be a sale, it could be shown that the ostensible consideration for the sale was not to be enforced and that the transaction was really a gift. This case does not affect the question before us; it has always been held that the statement of the consideration for a transfer of property is not one of the terms of the grant within the meaning of Section 92 of the Indian Evidence Act, when the instrument is executed only by the transferor.

4. These authorities do not support the appellant, and we must hold that the Subordinate Judge has arrived at the correct conclusion on this question. We, therefore, dismiss the second appeal with costs.

In S.A. No. 1350 of 1910.

5. This case follows S.A. No. 1349 of 1910, and, for the reasons as recorded in our judgment therein, we dismiss this second appeal also with costs.