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Court : Kolkata

Decided On : Apr-25-1933

Reported in : AIR1933Cal786

Appellant : Khantamoni Dassi and anr.

Respondent : Biswa Nath Pal and ors.

Judgement :

Pearson, J.

1. This suit was originally brought as a Small Cause Court suit upon a bond. But the formality of registration which was essential was not complied with. Various points were raised, amongst others, that the suit was not maintainable having regard to the fact that the bond was not registered, that the rate of interest was very high and so on. A point was taken before me to the effect that there was no proper finding as regards the execution of the document on the part of the defendants. This however, in my opinion, is not borne out by the defence because the evidence shows that the document was proved which means that the signatures were identified. As regards the question of the bond what the learned Judge did was to say:

It is true that the bond cannot be admitted in evidence as it has not been registered, but it can be admitted in evidence for proving the admission of the defendant.

2. Now, reference has been made before me to the case of Skinner v. Skinner AIR 1929 PC 269. Reliance is placed on the passage in the judgment which, after citing Section 49, proceeds to say:

If an instrument which comes within Section 17 as purporting to create by transfer an interest in immovable property is not registered, it cannot be used in any legal proceedings to bring about indirectly the effect which it would have had if registered. It is not to affect the property, and it is not to be received as evidence of any transaction 'affecting' the property.

3. This, it is said, is an authority for saying that the plaintiff in the present case is not to be permitted to rely on a simple contract contained in the bond for personal covenant to repay. In my opinion the authority just cited does not go so far as that. Emphasis there is laid upon the principle that the document cannot be used in any legal proceedings to bring about indirectly the effect which it would have had if registered, and the effect which is referred to there is obviously intended to be 'affecting' the immovable property. The suit on the simple covenant does not affect the immovable property which is the subject-matter of the earlier part of the bond. It is true that the immovable property may subsequently be called upon to satisfy the decree in the suit. But that is by reason of the general provision of law and not because of any particular stipulation to that effect in the contract itself. I am of opinion therefore that there is no substance in this contention.

4. On the other question, which was argued before me, namely, the interest which has been allowed at the rate of Rs. 37-8-0, it is said that this is extremely burdensome and ought to be interfered with. Before doing that which would really be to interfere with the contract between the parties and the discretion of the Judge, one would have perfectly clear evidence upon which such action will be justified. I am not able to say that the facts in the case are such as would warrant interference. I do not know what the value of the property is relative to the amount advanced or as to the margin of the security. That is hardly a matter one would go into as it is not definitely recited or laid down or appearing in the evidence or the judgment. In this matter also I am unable to assist the petitioner. The result is that the rule must be discharged. No order is made as to costs.

