

Abdul Alim Vs. Abdul Sattar

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Court : Kolkata

Decided On : Apr-05-1935

Reported in : AIR1936Cal130

Appellant : Abdul Alim

Respondent : Abdul Sattar

Judgement :

McNair, J.

1. This is an appeal from a decision of the Court of the Subordinate Judge, 3rd Court, Tipperah, allowing an appeal from the Court of the Munsif Kasba, which dismissed the plaintiff's suit. The question for determination is the title to a plot of land which originally belonged to Jainuddin and which the plaintiff bought from his three sons in Magh 1335 B.S. The defendant claims it on the ground that Jainuddin's widow and son mortgaged the land to him and put him in possession in lieu of paying interest, and finally sold it to him in 1320 B.S. The kobala by which this sale was effected was not registered and the learned Munsif in the trial Court held that it was inadmissible in evidence as a title deed, but could be admitted to show the nature and character of the defendant's possession since its date.

2. He held further that the plaintiff had not proved that his vendors had been in possession within 12 years of the date of the kobala and that the defendant had been in adverse possession for more than 12 years. The lower appellate Court

found that there was no transfer of possession and therefore no sale to the defendant and that was conceded by his pleader in the trial Court. It was held however that the unregistered kobala could not be used to prove adverse possession, and that in the absence of such proof the plaintiff's title prevailed.

3. The property in dispute is tangible immoveable property of a value less than Rs. 100 and a sale can be effected under the provisions of Section 54, para. 3, T. P. Act, either by a registered instrument or by delivery of the property. Section 4, T. P. Act, provides that this paragraph shall be read as 'supplemental to' the Registration Act, and the question has arisen whether an instrument of sale of tangible immoveable property of a value less than Rs. 100 must be treated as being compulsorily registrable as coming within the provisions of Section 17, Registration Act.

4. A Full Bench of the Madras High Court in *Rama Sahu v. Gowro Ratha* 1921 Mad 337 and a Full Bench of the Allahabad High Court in *Sohan Lal v. Mohan Lal* 1928 All 726, have held that however illogical it may seem the words used do not incorporate the provision of the Transfer of Property Act into Section 17, Registration Act, and the result is that the reference in Section 49, Registration Act, cannot be deemed to be applicable to the provisions of Section 54, Transfer of Property Act, and Section 49 does not make such a document inadmissible in evidence.

5. Section 54, T. P. Act, does however provide that the transfer must be made either by a registered instrument or by delivery of possession. The kobala is not registered and therefore cannot confer title, but on the authority of the above cases it would be admissible for the collateral purpose of showing the nature of possession. The learned Sub-ordinate Judge has relied on the Privy Council decision in *Skinner v. Skinner* 1929 P C 269. The instrument in that case was held definitely to come within the terms of Section 17, Registration Act, so that the provisions of Section 49 of that Act were applicable. As I have already pointed out the instrument in the present case is not incorporated into Section 17, Registration Act.

6. Once the kobala is admitted in evidence to show the nature of the defendant's possession it is difficult to find any fault with the decision that the defendant had been in adverse possession of the land for an uninterrupted period of 12 years. The appeal is allowed with costs both here and in the lower appellate Court and the suit must be dismissed.

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