

Badhri Narain Singh Vs. Kodo Sah

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Court : Kolkata

Decided On : Dec-01-1914

Reported in : 28Ind.Cas.138

Judge : Coxe and; Richardson, JJ.

Appellant : Badhri Narain Singh

Respondent : Kodo Sah

Judgement :

Coxe, J.

1. This appeal arises out of a suit for a declaration that a certain deed, of sale, dated the 31st May 1910, is a forged document. The Courts below have held that it was a forged document and the defendants have appealed. The first argument on behalf of the appellants is that the Subordinate Judge on appeal has erred in law, in saying that the burden of proof lay heavily upon the defendants to prove by clear and satisfactory evidence that the plaintiff did really execute this kobula. Apparently registration of this kobala was directed under Section 75 of the Registration Act, 1908, and it is argued that the effect of that order of registration was to throw the whole burden of proof in this case on the plaintiff. The learned Pleader for the appellants very frankly concedes that this argument is opposed to the decision in the case of Mohima Chunder Dhur v. Jugal Kishore Bhattacharji 7 C. 736 : 9 C.L.R. 471. But it seems to me that in this case the question of the

burden of proof does not arise. The learned Subordinate Judge in appeal goes far beyond saying that the defendant has failed to prove that the bond is genuine.

2. He comes to the positive conclusion, on a consideration of the whole case, that the documents is forged. On that finding the question of the incidence of the burden of proof cannot arise.

3. Secondly, it is contended that the lower Appellate Court has misconstrued certain documents. The Judge has held on a consideration of the kobala in suit, together with another sale-deed that was effected by the plaintiff in favour of one Ram Narain Singh shortly after the alleged date of the kobala in suit, that some of the lands covered by this kobala in suit were not included in the sale to Ram Narain Singh. We have looked into this document and it appears to us that no question of construction of the document arises; the finding of the Court below is a finding of fact with which we cannot interfere in second appeal.

4. Thirdly, it is contended that no cause of action, such as is required by Section 39 of the Specific Relief Act, has been shown. But clearly if the plaintiff has still some interest in the land, which is said to be covered by this kobala, he has clearly a cause of action.

5. Another small point has been taken, but it was never raised in the Courts below, and we have not sufficient materials before us to deal with it.

6. The appeal is dismissed with costs.

Richardson, J.

7. I entirely agree.