
(1889) 03 CAL CK 0017
In the Calcutta High Court

Ashanulla Sardar

APPELLANT

Vs

Topa Bibi

RESPONDENT

Date of Decision : 15-03-1889

Acts Referred:

Registration Act, 1877 — Section 17, 18

Citation : (1889) ILR (Cal) 509

Hon'ble Judges : Wilson, J; Prinsep, J

Bench : Division Bench

Judgement

Wilson, J.—The only question argued before us, and the only one properly open upon second appeal, is, whether a suit will lie on the part of a purchaser to compel registration of his kobala in a case in which the value of the property conveyed is under one hundred rupees, and registration is therefore not made compulsory by the Registration Act.

2. We think it clear that under the present Registration Act III of 1877 the suit lies. Section 17 of the Act says, "that certain documents shall be registered." Section 1(3) says, "that certain other documents may be registered." Section 32 says that "every document to be registered whether such registration be compulsory or optional, shall be presented.....by some person executing or claiming under the same." The effect seems to be that any person therein described may exercise the option given by Section 18.* The following sections lay down rules as to whose presence is ordinarily necessary to justify registration. And Sections 36 to 39 provide for compelling the attendance of such persons as well as of witnesses. Part XII of the Act, dealing with the mode of refusal to register and its consequences, with appeals against such refusal, and in the last resort a suit in a Civil Court, is perfectly general in its terms.

3. Two cases were cited as authorities for a contrary view—Ahsuna begum v. Kheerun Singh 10 W.R. 360 and an Anonymous case 6 Mad. H.C. Ap. 9 from the Madras High Court Reports. As to those cases it is enough to say that the Judges had in them to deal with a different Act from that now before us, and especially

different in this, that it did not expressly give a right of suit as the present Act does. Under the present Act we entertain no doubt that the suit lies. Any other conclusion would lead to very grave consequences; for since the passing of the Transfer of Property Act the omission to register documents of the kinds mentioned in Section 18 of the Registration Act may lead to much more serious results than before. The appeal is dismissed with costs.

* Documents of which registration is optional.

[Section 18-Any of the documents next hereinafter mentioned may be registered under this Act (that is to say).

(a) Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of a value less than one hundred rupees, to or in immovable property:

(b) Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest:

(c) Leases of immovable property for any term not exceeding one year, and leases exempted u/s 17:

(d) Instruments (other than wills) which purport or operate to create, declare, assign, limit or extinguish any right, title or interest to or in movable property:

(e) Wills:

(f) All other documents not required by Section 17 to be registered:]