

(1927) 08 CAL CK 0021
In the Calcutta High Court

Barsik Nandi Mandal and Another

APPELLANT

Vs

Gurudas Pal and Others

RESPONDENT

Date of Decision : 03-08-1927

Acts Referred:

Registration Act, 1908 — Section 17

Citation : AIR 1928 Cal 107

Judgement

1. This suit is brought to recover khas possession of certain land on declaration of the plaintiff's title thereto. The lower appellate Court has passed a decree in favour of the plaintiff in respect of one only of the plots of land in dispute. Now, the plaintiff seeks to recover khas possession. He was a mortgagee of the property in suit and the mortgage-debt and the interest thereon at all material times exceeded Rs. 100 and it has been found as a fact by the lower appellate Court that the value of the mortgaged property was not Rs. 100. In his capacity as a mortgagee the plaintiff is not entitled to immediate khas possession of the property. But in support of his claim to khas possession he tendered in evidence a document in the following manner:

Being unable to pay up the mortgage debt, principal and interest I give up the right and possession of the properties mortgaged to the mortgagee and by so doing I am absolved from the liability of the mortgage debt.

2. That document was not registered, but it was the foundation of the plaintiff's claim to possession in the suit.

3. The only issue which need be considered upon this appeal is whether or not it was incumbent upon the plaintiff to prove that this document had been duly registered before it became admissible in evidence for the purpose of proving his title to khas possession. The document was in Bengali, but as we apprehend the meaning of the document, (it has been translated into English) we think that the effect of the document was that the mortgagor assigned all his right and interest in the immovable property subject to the mortgage in consideration of the mortgagee forgoing his right to recover the mortgage-debt and the interest

thereon. In our opinion, a document of that description must necessarily be registered u/s 17, Registration Act; and if it was not registered it was not permissible for the plaintiff to rely upon that document for the purpose of founding his claim in the suit. The result is that this document was not admissible in evidence and the plaintiff's claim to khas possession of the one plot for which the decree was passed in the lower appellate Court must fail.

4. The result is that the appeal is allowed, the decree appealed against set aside and the suit dismissed with costs in all Courts.

5. The cross-objection is not pressed and is dismissed without costs.