

---

**(1954) 06 CAL CK 0014**  
**In the Calcutta High Court**  
**Case No : Second Appeal No. 861 of 1949**

|                 |    |            |
|-----------------|----|------------|
| Charubala Sahu  | Vs | APPELLANT  |
| Snehalata Maity |    | RESPONDENT |

---

**Date of Decision :** 18-06-1954

**Acts Referred:**

Registration Act, 1908 — Section 52, 58, 58(1), 58(2), 87

**Citation :** (1956) 2 ILR (Cal) 460

**Hon'ble Judges :** P.N. Mookerjee, J

**Bench :** Single Bench

**Advocate :** Manindra Krishna Ghose and Bhupal Chandra Roy Chowdhury, for the Appellant; Apurba Charan Mukherjee and Mukunda Behari Mullick, for the Respondent

**Final Decision :** Dismissed

---

## Judgement

P.N. Mookerjee, J.—This appeal is by Defendant No. 2 and it arises out of a suit for declaration of title and recovery of possession.

2. The suit property originally belonged to the husband of Defendant No. 1. On the death of the original owner, his widow, Defendant No. 1, inherited the suit property. Thereafter, according to the Plaintiff, she executed a kabala for legal necessity in respect of this property in her favour on June 6, 1943. The Plaintiff alleges that Defendant No. 1 duly received the consideration and then the document was presented for, registration on September 23, 1943 and it was duly registered according to law. The Defendant No. 2 claims the suit property under a kabala, executed by Defendant No. 1 in her favour on August 7, 1943 and registered on August 14, 1943. The Defendant No. 2's case is that the Plaintiff's kabala was ante-dated and, further, that it was not executed by Defendant No. 1 and never registered by her but that the execution and registration was obtained by the Plaintiff through some false impersonation. Defendant No. 1, though duly summoned, did not appear in the suit. Both the courts below have rejected the defence case and decreed the suit in the Plaintiff's favour. Hence this second

appeal by the contesting Defendant No. 2.

3. It has been found by both the courts below that the allegations of Defendant No. 2 that the Plaintiff's kabala was ante-dated and that its execution and registration was obtained through false impersonation of Defendant No. 1 are not true. That finding, on the state of the materials on record, cannot be challenged in second appeal and must be accepted by me. Mr. Roy Chowdhury, who appears on behalf of the Appellant (Defendant No. 2) however, argues that, on the admitted facts about registration, no title passed to the Plaintiff on the basis of the kabala in her favour. He points out that, in that kabala, the record (endorsement) of admission of execution by the sub-registrar was not endorsed by the Defendant No. 1 as required by Section 58 of the Indian Registration Act. He further points out that it is the admitted case of the parties that the receipt u/s 52 of the said Act was not endorsed over to the Plaintiff. From these facts, Mr. Roy Chowdhury argues that the registration of the document was invalid and that, in any event, it did not pass any title to the Plaintiff as the necessary intention to pass title was wanting. I am finable to accept either of these two contentions of Mr. Roy Chowdhury.

4. On the first question, the position appears to be almost clear that, in spite of non-endorsement by the Defendant No. 1 u/s 58(1)(a) of the Indian Registration Act the registration was valid. On the materials before me there can be little doubt that the courts below were right in holding that the Plaintiff's kabala was duly executed by Defendant No. 1. That document also, so it seems to me, contains the sub-registrar's note of refusal as required by Sub-section (2) of Section 58 of the Act and the registration was, therefore, valid under this latter Sub-section. But, even taking it at the worst, the defect, pointed out by Mr. Roy Chowdhury, is a mere "defect in procedure" not affecting the validity of the document or the registration thereof (vide, Section 87) and cannot, therefore, affect the vendee's title.

5. On the other question also, it appears, that there is no evidence that it was the intention of the parties to the sale, viz., the Plaintiff and Defendant No. 1, that title would pass only on delivery of the document of sale to the Plaintiff. Clearly also the materials indicate that the consideration money was duly paid to and received by Defendant No. 1. In these circumstances, the mere non-delivery or non-endorsement by Defendant No. 1 of the receipt u/s 52 of the Indian Registration Act would not justify a finding that the title to the property did not pass to the Plaintiff under that kabala. Mr. Roy Chowdhury has drawn my attention to the decisions of this Court in the cases of Harihar Mukerji v. Harendra Nath Mukerji ILR (1910) . Cal. 754 : 6 I.C. 417 and Jogendra Narain Roy Chowdhury v. Manmatha Nath Chatterjee (1916) 34 I.C. 106 : A.I.R (1917) Cal. 589. and to the decision of the Patna High Court in the case of Raju Mahton v. Hossaini Mian (1920) 59 I.C. 171 : AIR (1920) Pat. 774 in support of his argument that mere registration of the document in the absence of delivery of it to the vendee would not be sufficient to pass title. In my opinion, however, none

of these decisions really assists the Appellant. All those cases are based on the broad principle that, where the intention of the parties is that the transfer will be effective only when something has been done and it is not shown that that requisite condition has been fulfilled, mere registration of the document would not be enough to pass title. The observations, made by the learned Judges, were in that connection and, accordingly, they can have no application to the present case where, as I have already said, there is nothing on the record to show that anything on which the parties intended that the transfer would depend was left undone.

6. I. accordingly, hold that the submissions made by Mr. Roy Chowdhury in support of this appeal, cannot be accepted and the appeal must fail.

7. The appeal is, accordingly, dismissed. But in the circumstances of this case, I direct the parties to bear their own costs in this Court.