

(1871) 03 CAL CK 0012
In the Calcutta High Court

Cowar Kalikrishna Roy

APPELLANT

Vs

Cowar Rajkumar Roy

RESPONDENT

Date of Decision : 13-03-1871

Acts Referred:

Citation : (1871) 03 CAL CK 0012

Final Decision : Allowed

Judgement

Norman, J.—The agreement was tendered in evidence and received by Mr. Justice Markby notwithstanding an objection that it required registration. Mr. Kennedy, for the defendant Rajkumar, has renewed that objection before us. We think that the objection must prevail.

2. The first part of the deed to which Mr. Kennedy called our attention is as follows:--

This indenture witnesseth * * * that the real property belonging to the said idols and which the parties are entitled to hold as representatives of Raja Shukmai and as trustees thereof are those set forth in the Schedule B.; and that Rajkumar Roy, with all other necessary parties, shall execute a conveyance to Cowar Rajkumar Roy, Cowar Kalikrishna Roy, Cowar Jagoband Roy, Cowar Shamdas Roy, and Cowar Debendranarayan Boy in trust for the idols and duly register the same.

3. If the deed stopped here, it might be fairly contended that this is a mere contract as to certain enumerated properties, that it assumes the existence of rights and does not purport or operate to create rights within the meaning of section 13 of Act XVI of 1864. But then follow provisions as to talook Mirzapore limiting and declaring the rights of the parties to the enjoyment of the same and containing provisions as to the leases to be granted of the same and as to the mode of enjoyment of the properties in Schedule B., which clearly create or declare the interests of the parties in the same. There is a provision for the forfeiture of the interest of any one who may renounce Hinduism and become a convert to any other religion.

4. There is also a recital that Sukbazar is no longer undivided, but that four-fifths of it belong to Rajkumar, and a declaration that Sukbazar is not liable to be sold, and that the parties would not seek to have the same sold under the direction of the High Court or otherwise as directed by the Master on his report.

5. There is a declaration that it was unnecessary to carry out the directions of the will of Raja Shukmai with respect to the entertaining of strangers at Bindabun Dham, and that the parties should not seek to have the direction of the will and report of the Master in this respect for the sale of the landed property-charged carried out thus extinguishing the right of the parties to have the 15,000 rupees raised for that purpose.

6. There is also a provision for the building of a Thakurbari on the lands mentioned in Schedule B.; that the Thakurbari is to be the property of the idols; that till the Thakurbari is built the idols shall remain in the house of Cowar Rajkumar Roy, the undertaking to allow free access to all persons entitled to take part in the worship. It appears to us impossible to say that the deed which contains these provisions does not fall within the terms of section 13 of Act XVI of 1884. "We are of opinion that the deed is not admissible in evidence, and therefore we reverse the decision of Mr. Justice Markby, and direct that the suit be dismissed. This dismissal, however, will be without costs as against Cowar Rajkumar Roy, but with costs as regards the defendant Cowar Debendranarayan Roy. The costs paid to the plaintiff by Cowar Rajkumar Roy must be refunded.

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I Act XVI of 1864, sec. 13--"No instrument being a deed of gift of immoveable property, no lease of immoveable property for any period exceeding one year, no instrument (other than a deed of gift as aforesaid) which purports or operates to create, declare, transfer, or extinguish any right, title, or interest of the value of Rs. 100 or upwards in any immoveable property, and no instrument which acknowledges the receipt or payment of any consideration on account of the creation, declaration, transfer or extinction of any right, title, or interest as above of such value as aforesaid in any immoveable property, shall be received in evidence in any civil proceeding in any Court, or shall be acted upon by any public officer, if such instrument shall have been executed on or after the date on which this Act shall come into operation, and if the property to which such instrument relates shall be situate in any part of British India in which this Act is in force, unless the same shall have been registered in the manner and within the time prescribed by this Act."

(2) S.V. Mutu Ramen Chetty and Another Vs. Mark Ridded Currie and Another .

(3) 4 B.L.R., F.B., 18.

(4) Act XX of 1866, sec. 17.--"The instruments next hereinafter mentioned shall be registered, provided the property to which they relate shall be situate in a

district in which, and provided they shall have been executed on or after the date on which, Act XVI of 1864, or this Act, shall have come, or shall come, into operation,--that is to say:--

1. Instruments of gift of immoveable property.
2. Instruments (other than an instrument of gift) 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 the value of Rs. 100 and upwards to or in immoveable property,
3. Instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation, or extinction of any such right, title, or interest: and
4. Leases of immoveable property for any term exceeding one year." Section 49.--"No instrument required by section 17 to be registered shall be received in evidence in any civil proceeding in any Court; or shall be acted upon by any public servant, as defined in the Indian Penal Code, or shall affect any property comprised therein, unless it shall have been registered in accordance with the provisions of this Act.