

(1906) 07 CAL CK 0001
In the Calcutta High Court
Case No : Appeal from Order No. 202 of 1904

Dina Nath Das

APPELLANT

Vs

Matimala Dassya

RESPONDENT

Date of Decision : 30-07-1906

Acts Referred:

Citation : (1906) 07 CAL CK 0001

Final Decision : Dismissed

Judgement

1. The only question that we have to consider in this appeal is whether a certain document described as an aposhnama executed between the Plaintiff and the Defendant could be received in evidence in the case. The question arises in this way: The Defendant held a certain decree against the Plaintiff, and the latter similarly held two decrees against the Defendant; and they settled their differences in the following manner, as recited in the aposhnama in question:-"The disputes that were going on between you and me about jote jamas and monies are now amicably settled as follows: -I obtained a decree against you for mesne profits in suit No. 231 of 1893 in the Court of the first Munsif of District Pubna and you obtained a decree for costs in suit No. 41 of 1886 in the Court of the Subordinate Judge of the said district and a decree on account of crops in suit No. 347 of 1895 in the Small Cause Court, and a decree in suit No. 96 of 1890 in the Court of the first Munsif of the said district against me. Out of the same, you voluntarily give up to me the jotes Nos. 2 and 3 as per boundaries given below and my decree is set-off against your decree and we give up our claims against each other under our respective decrees. In future, neither I nor my heirs nor you nor your heirs will be competent to attempt to realise the money by execution of decree or any other means. If it should be done, it will be disallowed. To this effect, I voluntarily execute the aposhnama in consideration (satisfaction) of decree." Notwithstanding this aposhnama, the Defendant executed his decree, and realised the amount covered thereby. Thereupon, the Plaintiff brought the suit, out of which this appeal has arisen, to recover from the Defendant damages caused to him by reason of the improper act of the

Defendant, in executing the decree which he held against him (the Plaintiff). In support of his case, the Plaintiff sought to put in evidence the aposhnama and, as already stated, the question was raised between the parties, whether this document was admissible in evidence; and this question has been determined by the Court of Appeal below in favour of the Plaintiff. On the appeal by the Defendant, the learned vakil on his behalf has relied upon the terms of sec. 118 of the Transfer of Property Act, and contended that it was not admissible in evidence. That section runs thus:-"When two persons mutually transfer the ownership of one thing for the ownership of another, neither thing or both things being money only, the transaction is called an " exchange." A transfer of property in completion of an exchange can be made only in manner provided for the transfer of such property by sale." The question here is, whether there was any exchange or transfer of the ownership of any property by the parties to this transaction. It will be observed, upon the document, that the decree which the Defendant held against the Plaintiff, and which he subsequently executed, was not transferred to the Plaintiff, nor were the decrees which the Plaintiff held against the Defendant transferred to the Defendant though, no doubt, the jotes referred to were made over to the Defendants as part of the consideration for the settlement of accounts, as we take it, between the parties arising out of the three decrees. It seems to us that the very essence of a transaction of exchange within the meaning of sec. 118 of the Transfer of Property Act-that essence being mutual transfer of two things-is wanting in this instance.

2. In this connection, reference may usefully be made to sec. 49 of the Registration Act. That section runs as follows:-"No document required by sec. 17 to be registered-shall affect any immoveable property comprised therein.... or be received as evidence of any transaction affecting such property.... unless it has been registered in accordance with the provisions of this Act." It will be observed that, though the document in question does affect certain immoveable properties yet, so far as the present case is concerned, the Plaintiff does not ask it to be received as evidence of any transaction affecting immoveable property. It is sought to be used as evidence of a transaction affecting moveable property only. In this view of the matter, we think the Court of Appeal below was right in holding that the document in question could be used in evidence, though it was not registered. The learned vakil for the Appellant has urged that if this document be admitted in evidence without registration, his client would be greatly prejudiced in relation to the jotes Nos. 2 and 3, which were made over to his client under this document, the document in question being not registered. We are not called upon to consider this matter in the present case. All that we have to do is to see whether this is but an exchange within the meaning of sec. 118 of the Transfer of Property Act such as to require registration. The result is that this appeal is dismissed with costs, two gold mohurs.