

(1918) 07 CAL CK 0038
In the Calcutta High Court

Dinabandhu Patra

APPELLANT

Vs

Sanatan Dandapat and Bikram Kar

RESPONDENT

Date of Decision : 16-07-1918

Acts Referred:

Evidence Act, 1872 — Section 71

Citation : 48 Ind. Cas. 624

Hon'ble Judges : Panton, J;Newbould, J

Bench : Division Bench

Judgement

1. This appeal arises out of a suit on a mortgage bond. The execution of the bond was admitted by defendant No. 1, the sole executant. Defendant No. 2 is a purchaser of a part of the mortgaged property. He alone contested the suit, his main objection. being that the bond was invalid for want of consideration; This point was decided in his favour by the first Court; bat that finding has been reversed by the lower Appellate Court and the suit has been decreed against both the defendants.

2. As regards the issue of payment of consideration, the finding of the lower Appellate Court is final in second appeal, but it is now contended that the suit should be dismissed on the ground that there has been no proof of execution of the bond or that it has bean attested according to law.

3. As regards the question of execution, this, it is stated, was admitted in the written statement of defendant No. 1. It also appears to have never been denied by defendant No. 2 and farther, the defendant No. 2 in his evidence stated that the bond had been signed in his presence. It cannot, therefore, be held that there was no evidence to support the finding of the lower Appellate Court and, if there was any evidence at all, this finding is final.

4. As regards the question of attestation, evidence in this case was first given on the side of the defence and the attesting witnesses were examined and they stated that they had signed blank papers and not the completed deed. This

statement by these witnesses is sufficient to attract the operation of Section 71 of the Evidence Act and enable the plaintiff to prove execution by other evidence than that of the attesting witnesses; and this, it has been held, he has been able to do. It has been found that the deed was attested and this also is a finding of fact. Though there seems to be no direct evidence of attestation, this fact could have been inferred from the signatures of the attesting witnesses on the deed when their story of how those signatures came to be there had been disbelieved.

5. The appeal fails and is dismissed with costs.