

(1908) 11 CAL CK 0033
In the Calcutta High Court

Gostho Behary Ghosh and Another

APPELLANT

Vs

Rohini Gowalini and Others

RESPONDENT

Date of Decision : 10-11-1908

Acts Referred:

Citation : 4 Ind. Cas. 541

Hon'ble Judges : Mitra, J;Chitty, J

Bench : Division Bench

Judgement

1. This is an appeal in a suit in ejectment. The plaintiffs claimed title as legal representatives under the Hindu law of inheritance of one Kailash. The defendant was a concubine of Kailash who claimed title by virtue of a kobala executed by Kailash.

2. Both the lower Courts have found that the kobala was genuine. The Munsif, however, held that no consideration passed and that the transaction evidence by the kobala was a paper transaction which was probably brought about by the importunities of Kailash's mistress. There is no evidence, however, we are informed, of any pressure having been put by Kailash's mistress upon Kailash to execute the document in question. It was only a suggestion of the Munsif and it was not based on evidence.

3. The Subordinate Judge has not come to any distinct finding whether consideration passed or not, but the consideration stated in the document was only Rs. 49. He is of opinion that the kobala which is registered is sufficient to pass the ownership of the property covered by it to the vendee. The proposition of law underlying this statement is laid down too broadly by the Subordinate Judge. The mere registration of a deed of transfer is not sufficient in itself to convey title. We need only refer to the decision of this Court in *Mauladan v. Rughunandan Pershad Singh* 27 C. 7.

4. What the Court has to see is what was the intention of the vendor if no consideration passed. The intention may be presumed from circumstances.

Positive evidence of intention is very seldom available. In the present case, there is, we are informed, no direct evidence on one side of the other. It is, however, pointed out by the lower appellate Court that Kailash was living with the defendant and that the defendant was an object of affection to him. He could have alienated the property in favour of the defendant by a deed of gift or bequeathed it by a Will. If he has executed the kobala, the intention must be presumed, whether consideration passed or not, that he intended that the defendant should have possession of the property and should hold it under the kobala executed by him.

5. In *Lal Achal Ram v. Raja Kazim Husain Khan* 9 C.W.N. 477; 321. A. 113; 27 A. 271; 8 O.C. 155; 15 M.L.J. 197 the Judicial Committee, in a case very similar to the present, held that a plaintiff claiming in ejectment under a transfer from the true owner need not prove payment of consideration, if the terms of the conveyance are otherwise reasonable. We are, therefore, of opinion that, notwithstanding that the Subordinate Judge has laid down too broadly that mere registration was sufficient to complete the transfer, the facts are sufficient to show that the intention of Kailash was to make over the property to defendant and, therefore, the kobala ought to prevail against the title by inheritance claimed by the plaintiffs. The appeal, therefore, fails and is dismissed with costs.