

(1970) 11 CAL CK 0002
In the Calcutta High Court
Case No : A.F.A.D. No. 713 of 1959

Haji Mokshed Mondal and Others

APPELLANT

Vs

Del Rouson Bibi and Another

RESPONDENT

Date of Decision : 10-11-1970

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 101
Transfer of Property Act, 1882 — Section 53A

Citation : AIR 1971 Cal 162 : 75 CWN 277

Hon'ble Judges : P.N. Mookerjee, J;Amiya Kumar Mookerji, J

Bench : Division Bench

Advocate : Amitava Dutta, Sushil Kumar Biswas and Amal Chandra Chatterji, for the Appellant;Lala Hemanta Kumar and Manick Chandra Banerji, for the Respondent

Final Decision : Dismissed

Judgement

P.N. Mookerjee, J.—This appeal is by the plaintiff and it arises out of a suit for declaration of title and confirmation of possession and permanent injunction.

2. The plaintiff's case was that he was the owner of the disputed property and was in possession of the same.

3. The defence was a denial of the plaintiff's title and possession with a specific plea that defendant No. 1 was in possession of the disputed property, since her marriage with the plaintiff's son, in lieu of dower.

4. The courts below have concurrently found in favour of the defendant on the question of possession. They have also concurred in finding that the disputed property was given to the defendant at the time of her marriage with the plaintiff's son in lieu of dower. They have, eventually, dismissed the plaintiff's suit primarily on the ground that, as against defendant No. 1, the plaintiff was not entitled to any relief in view of Section 53-A of the Transfer of Property Act. The plaintiff, feeling aggrieved by the concurrent decisions of the two courts

below, dismissing his suit, has preferred this second appeal to this Court.

5. In our opinion, this appeal must fail on a twofold ground. In the first place, the plaintiff's case of possession not having been accepted by any of the two courts below, the suit for declaration of title and confirmation of possession cannot succeed. In the second place, the plaintiff's claim against defendant No. 1 would fail u/s 53-A of the Transfer of Property Act. Admittedly, defendant No. 1 married the plaintiff's son Ayub on the disputed property being given to her in lieu of dower. There was a Kabilnama which clearly supported the above position. It has also been concurrently found by the two courts below that defendant No. 1 was put in possession of the disputed property in lieu of her dower, as aforesaid. It is well known that Mohamman marriage is a contract, vide 38 Cal WN 747 = Saburannessa Vs. Sabdu Sheikh and Others, , of which dower is the consideration, and that a transfer in lieu of dower is in the nature of a Hiba-bil-Ewaz. In that context, the Kabilnama, in the instant case, was the document of transfer and contained in it the relevant agreement or contract of transfer in writing. It was of course, not registered, but, even if it required registration, having regard to the fact that defendant No. 1 was put in possession of the disputed property in pursuance of that contract and the further fact that defendant No. 1 has married the plaintiff's son Ayub in terms of or in accordance with her said contract and thus performed her part of the same. Section 53-A of the Transfer of Property Act would preclude the plaintiff from enforcing any rights against defendant No. 1 in respect of the disputed property inconsistent with or not mentioned in the said contract. The said Section 53-A of the Transfer of Property Act would, accordingly, bar the plaintiff's present suit.

6. In the premises, we would dismiss this appeal, but, in the circumstances of this case, we would make no order for costs in this Court.

Amiya Kumar Mookerji, J.

7. I agree.