

(1925) 09 BOM CK 0037
In the Bombay High Court

Husensaheb Gajbarsaheb Vajirnaik

APPELLANT

Vs

Hasansaheb Sayad Abdul

RESPONDENT

Date of Decision : 29-09-1925

Acts Referred:

Citation : AIR 1926 Bom 165

Hon'ble Judges : Macleod, C.J

Bench : Division Bench

Judgement

Macleod, C.J.—The plaintiffs sued to recover by equitable partition as owners a one-third share in the suit property. They claimed that the defendant-respondent had conveyed to them by a registered sale deed dated November 16, 1924, his right to the extent of one-third in the inam villages mentioned in the deed for a consideration of Rs. 5000. The suit was filed in 1915. The defendant denied the plaintiffs' claim in toto and averred that it was false and fraudulent; that the plaintiffs obtained the sale-deed sued on by misrepresentation and by taking advantage of his helplessness, illness, ignorance and want of worldly experience; that the defendant did not receive any amount from the plaintiffs for the sale-deed; that the plaintiffs fraudulently got a certain site at Belgaum inserted in the sale-deed for the purpose of getting it registered at Belgaum, though the site did not belong to the defendant; and that accordingly the deed was null and void and must be treated as unregistered.

2. The plaintiffs made all the tenants and occupants of the suit lands in the inam villages, numbering ninety-four persons, defendants in the suit with the result; that there has been very great delay before the suit could be heard. These defendants were eventually discharged) from the suit. The Judge found that the sale-deed sued on was not obtained from the defendant fraudulently and without consideration; but he held that the deed was invalid on the ground of improper registration and dismissed the plaintiff's, suit.

3. We think the case comes within the decision of the Privy Council in Biswanath Prasad v. Chundra Narayan Chowdhari [1921] 48 Cal. 509 following the decision

in *Harendra Lal Roy v. Hari Dasi Debi* [1914] 41 Cal. 972 the Judge found that the property situate within the district of the, Sub-Registrar of Belgaum did not belong to either party : that it was inserted by the party with the knowledge that it did not belong to the defendant ; and that it was inserted for the purpose of giving the Sub-Registrar of Belgaum jurisdiction. That would be a fraud on the registration, and consequently there was no jurisdiction to entertain the document.

4. It has been argued before us that this is a case between a mortgagor and mortgagee. But the point goes to the root of jurisdiction of the Court and the Court is entitled to take cognizance of any fact which shows that the document before it has not been validly registered. Assuming for a moment that the appellants' argument was correct, it would follow that if a mortgagee filed a suit on an unregistered mortgage, and the defendant-mortgagor did not take advantage of the fact that the document was not registered the Court was bound to admit the document. But on a question of jurisdiction, once it is shown that the Belgaum Sub-Registrar had no jurisdiction to register this document, it must follow that the Courts have no jurisdiction to entertain the document because it has not been duly registered. Apart from that the document itself is a document of a thoroughly unsatisfactory nature. The defendant executed it in, favour of the plaintiffs who were to assist the defendant in certain litigation. The plaintiffs do not contend that they have paid any part of the Rs. 5,000 which they promised to pay as consideration for the document. There is no reason, therefore, why we should assist the plaintiffs in getting possession of one-third, share in the suit property when they have paid nothing for it, or give them a decree for a specific performance of the agreement.

5. The appeal will be dismissed with costs.