

(1916) 03 CAL CK 0021
In the Calcutta High Court

Jogendra Nath Datta Chowdhury

APPELLANT

Vs

Haridas Chong and Others, Nayan Ram Chong and Others
and Nimai Chong and Others

RESPONDENT

Date of Decision : 08-03-1916

Acts Referred:

Registration Act, 1908 — Section 77

Citation : 35 Ind. Cas. 778

Hon'ble Judges : Newbould, J

Bench : Single Bench

Judgement

Newbould, J.—These appeals arise out of suits brought u/s 77 of the Indian Registration Act for the registration of certain kabulyats. The plaintiff was granted a decree by the Munsif, who found that the documents in question had been executed by the principal defendants. In hearing the appeals the learned Subordinate Judge appears to have misunderstood the scope of suits u/s 77. As was pointed out in the case of *Broucke W.W. v. Rajah Shaheb Mohan Bikram Shaha* 5 Ind. Cas. 20 : 14 C.W.N. 12 The authorities are clear upon the question as to what may be put in issue in suit under this section. The enquiry before the Registrar u/s 74 and the subsequent enquiry in Court are to be directed to two points only: (a) whether the document has been executed and (b) whether certain requirements of the law for the time being have been complied with by the applicant or person presenting the document for registration". The Court is not concerned with the validity of the document. The judgment of the lower Appellate Court deals with the questions whether the documents were valid and whether they had been freely executed. The learned Subordinate Judge has written in his judgment: "I am unable to hold that the kabulyats were freely executed by the tenants as bona fide documents" and at the conclusion of his judgment, he has written that "as there is no clear proof as to the execution of the kabulyats in question the plaintiff's suit for registration thereof must fail." If there was a finding that the kabulyats had not been executed this would have been conclusive in second appeal. But reading the judgment as a whole it

seems" to me clear that the learned Subordinate Judge did not apply his mind to the question, whether the documents had been executed or not. If the documents were executed by the defendants, the plaintiff would be entitled to a decree even if they were not freely executed and even if they were not bona fide documents. The appeal must, therefore, be remanded for re-hearing by the lower Appellate Court in accordance with the directions expressed in this judgment. Costs will abide the result.