

(1917) 07 CAL CK 0013
In the Calcutta High Court

Kumud Kamini Dasi and Others

APPELLANT

Vs

Khudumani Dasi and Another

RESPONDENT

Date of Decision : 20-07-1917

Acts Referred:

Citation : 47 Ind. Cas. 202

Hon'ble Judges : Richardson, J;Fletcher, J

Bench : Division Bench

Judgement

Fletcher, J.—This is an appeal from a decision of the learned District Judge of Murshidabad, dated the 21st March 1916, modifying the decision of the Munsif at Berhampur. The case is a small one and it is unfortunate that we have got to send the case back, as we have no other alternative because the learned District Judge has not disposed of the case in a proper manner. The suit was brought by a mail and his wife, the two plaintiffs, against the man's mother-in-law for a declaration that a certain kobala which bore the vernacular date corresponding to some other date in April 1912 was void and inoperative on the ground that it was obtained by misrepresentation, undue influence and want of consideration, and as a consequence the plaintiff asked for khas possession of certain property. The plaintiff No. 2 in the year 1909 acquired certain plots of land. Of one of these plots or part of the land that was acquired tie defendant No. 1, who is the mother of the plaintiff No. 2, was an under-raiyat and the case is that the mother obtained by the means suggested in the plaint from her daughter this kobala which was executed in her favour. The learned Judge in the lower Appellate Court has dealt, with the case in this way. He says, the evidence shows to me that the consideration money expressed to be paid by the conveyance executed in favour of the mother by the daughter was not, in fact, paid and, therefore, the conveyance is void. Of course that is clearly wrong. The non-payment of the consideration money may be an important item to take into consideration to determine whether the conveyance was or was not a real transaction. But a conveyance, notwithstanding the non-payment of the consideration money, may be a perfectly good transactions.

2. In some cases, the consideration money is not paid as it is expressed to be paid in the deed and the conveyance is a perfectly honest and good one. It has been attempted to support this view of the learned Judge on the ground that the parties intended to pass the property only upon the payment of the consideration money. Of course, there may be such a case, and there are oases where the conveyance is drawn in such a form that the conveyance is conditional and conditional only upon the satisfaction of the consideration money. But that is not the case here. In this case the conveyance is in the ordinary form adopted in Bengali instrument of sale and the words to be relied upon correspond with the ordinary words occurring in the English conveyance admitting the receipt of the consideration money. Then, it is said that the intention should be gathered from the oral evidence. Oral evidence cannot be admitted to contradict the express terms of this registered document. It is suggested that this document is not an instrument of transfer at all. I do not agree with that. The finding of the want of consideration, although an important fact in this case, was not sufficient to make the learned District Judge, without proceeding to enquire whether the transaction was a real one or not, to leave the case hanging in the air. It has not been found whether this registered document of transfer was or was not a real transaction. All that the Judge has found is that Rs. 20 was not paid. That is obviously not sufficient. The case must, therefore, go back to the lower Appellate Court for the appeal to be re-heard. The plaintiffs-respondents have some grounds of complaint on the question of estoppel which was decided against them in the primary Court. They will be entitled at the re-hearing of the appeal to press that point or any other point open to them that they think fit to press in their interest. Costs will abide the result of the hearing before the learned Judge of the lower Appellate Court.

Richardson, J.

3. I agree.