

(1927) 05 CAL CK 0014
In the Calcutta High Court

Mt. Rahela Khatun and Others

APPELLANT

Vs

Amburennessa Choudhurani and Others

RESPONDENT

Date of Decision : 17-05-1927

Acts Referred:

Citation : AIR 1927 Cal 881

Hon'ble Judges : Page, J;Mitter, J

Bench : Full Bench

Judgement

Page, J.—This is an appeal from a decree of the learned District Judge of Noakhali. The plaintiff's suit, is to recover possession after dispossession of a 4-annas share in certain property. As regards 2-annas no question arises in this appeal. As regards the other 2-annas, this share of the property belonged to Rupjan, who from the genealogical table would seem to be the second wife of Kala Mian, the propositus. The plaintiff claims by a gift from her father Hosainuddi. Now, the plaintiffs suit being to recover possession after dispossession, she must prove her title to the property and also that she was in possession within 12 years before suit. She can have no better title in the circumstances of this case than her father Hosainuddi. Hosainuddi purchased the 2-annas share belonging to Rupjan at an auction-sale held in execution of a decree which Hosainuddi himself had obtained against Rupjan. With respect to this purchase the learned vakil on behalf of the appellant contended that Hosainuddi obtained no title to the property at the auction-sale because there did not appear in the records of the sale which took place in January 1878, any formal order confirming the sale or any sale certificate. As regards the sale certificate, it is well settled that it is no more than evidence of title. As regards the absence in the record of a formal order confirming the sale, it is clear that substance and in fact the Court did confirm the sale to Hosainuddi, and the learned District Judge had found that the sale was in substance confirmed. After a lapse of 50 years, during which no attempt has been made to invalidate the sale, and in the circumstances obtaining in this case I am not disposed to re-agitate the question as to whether the sale was confirmed by the Court or not, I

am satisfied that the finding of the learned District Judge upon this matter is correct and ought to be upheld.

2. Hosainuddi, having obtained possession of the 2-annas share of Rupjan in the manner stated, in 1881 made an oral gift of this 2-annas share to the plaintiff, his daughter. The learned vakil on behalf of the appellant in a skilful argument has contended that the oral gift to the plaintiff was not duly made in accordance with the rules of the Mahomedan law, because it is an essential ingredient in a gift by a Mahomedan that seisin should be effected. The learned District Judge has found as a fact that possession under the oral gift was given to the plaintiff; and although the form in which this possession was taken is not free from ambiguity owing to the fact that the plaintiff was the holder of a 2-annas share of the property with certain other persons who were co-sharers under ostensible possession of the property, I am not disposed in the circumstances of this case to disturb the finding of fact arrived at by the learned District Judge that in fact possession was given to and taken by the plaintiff under the deed of gift,

3. In 1898 Hosainuddi superadded to the oral gift a kobala in favour of the plaintiff. The learned District Judge has held that this kobala was in fact confirmatory of the oral gift and a mode in which the father attempted to make it clear that he had relinquished his interest in the property in favour of his daughter. It is enough to say that inasmuch as the oral gift, in my opinion, conformed to the rules laid down for a valid gift under Mahomedan law the kobala as a document of title was of no value and had no effect. But the learned vakil for the appellant has urged that the kobala, if it amounted to a deed of gift, required registration; but, in my opinion, it is enough to say that the kobala being for property of not more than Rs. 50 in value did not require registration.

4. It was further urged on behalf of the appellant that the suit was barred by limitation because the plaintiff was not proved to have been in possession within twelve years prior to action brought. The learned District Judge, however, has found as a fact that the plaintiff was in possession within 12 years prior to the filing of the suit and that is a finding which concludes this issue adversely to the appellants.

5. Upon all those considerations, in my opinion, the appeal fails and is dismissed with costs.

Mitter, J.

6. I agree.