
(1927) 11 CAL CK 0018
In the Calcutta High Court

Nahar Lal Shah and Another

APPELLANT

Vs

Baij Nath Shah and Others

RESPONDENT

Date of Decision : 14-11-1927

Acts Referred:

Registration Act, 1908 — Section 21

Citation : AIR 1928 Cal 385 : 113 Ind. Cas. 855

Hon'ble Judges : C.C. Ghose, J;Buckland, J

Bench : Full Bench

Judgement

C.C. Ghose, J.—This appeal must, be dismissed and for the following reasons. The appeal arises out of an action brought by the plaintiff firm for a declaration that a certain Indenture of Conveyance executed in their favour, on 8th December 1921, by the first five defendants gives them an absolute right of ownership in the entirety of premises No. 187, Durmahatta Street, free from, encumbrances, and for a further declaration that a certain mortgage executed on 25th June 1921, by the said defendants in favour of the firm of Nahar Lal Shah Parnesswar Doyal Shah, who hereinafter called defendant 6, is null and void and for an order for cancellation thereof and for delivery of the said mortgage-deed and of vacant possession of a certain go-down and stable in premises No. 187, Durmahatta Street, at present occupied by defendant 6. There is a further claim for mesne profits at the rate of Rs. 300 per month from the date of conveyance.

2. The first five defendants did not appear to contest the suit, but the suit was resisted by defendant 6 alone. Mr. Justice Chotzner, before whom the suit came on for trial, found, on the facts as disclosed in the evidence in this case, that the plaintiff was entitled to succeed and he accordingly made the declarations asked for. The plaintiff's case was that, if the one cotta of land as described in the mortgage-deed of 25th June 1921 was not in existence and could not be identified, the registration at Arrah of the deed which included the Calcutta property referred to above was invalid.

3. In the written statement which was filed the contentions put forward were:

first, that the mortgage of 25th June 1921 was not null and void; and secondly, that the plaintiff could not question the validity of the registration of the mortgage inasmuch as the properties which were the subject of the mortgage were, as a matter of fact, in existence and they had been sufficiently described for the purpose of registration. The plaintiff firm's contention on the other hand was, as indicated above, that there could not have been any registration whatsoever of the document of 25th June 1921, inasmuch as the property, namely, one cotta of land in village Bkona in the district of Arrah, referred to in the document, did not exist, and, even if it did exist, the description thereof was insufficient within the meaning of Section 21, Registration Act.

4. On appeal before us, the only point that has been urged by Mr. Langford James on behalf of the appellant is that the learned Judge was wrong in coming to the conclusion that the property, namely, the said one cotta of land described as above, did not exist, and further that the plaintiff firm could not possibly challenge the validity of registration of the document on the ground of non-description or insufficient description of the said property.

5. Now, it appears to me, on the evidence in this case, that what was sought to be mortgaged by the document of 25th June 1921 was : firstly, premises No. 187, Darmahatta Street, Calcutta, the boundaries whereof were set out in the document itself; and, in the second place, one cotta of land described in the document as follows:

In mouza, Ekona, parganah Arrah, district Shahabad, Touzi No. 11292, Khewat No. 2, Thana No. 77, Khata 132, Khasra No. 832, land one cotta kayemi,

whereof the boundaries were set out as follows:

North, Hirdeya Rai; south, Chhakan Rai; east Padam Rai, west Decki Rai.

6. Now, apart from the question of boundaries of this one cotta of land, there cannot be much doubt that what was sought to be mortgaged was a permanent occupancy right in one cotta of land within certain boundaries. That that was so is abundantly clear from the use of the word "kayemi." The word "kayemi" is never used, as far as I know, in describing zamindari interest in land by any person. The word is always used in connexion with the description of tenants' rights in land and, as stated above, it means a permanent occupancy holding. Therefore, what was sought to be mortgaged was merely the tenants' permanent interest in one cotta of land. It is further clear on the evidence in this case that the mortgagors had no tenants' interest in one cotta of land in mouza Ekona. This in itself would be sufficient to demonstrate the invalidity of the registration of the deed. Moreover, the description given of the said one cotta of land is inaccurate in every particular. The description of boundaries that is given in the document is really the description of the entire plot 332 consisting of no less than 21 cottas, and it is not and cannot be the description of any one cotta of land in the said plot. Therefore, apart from what can be deduced from the use of the word "kayemi," it is clear that the subject-matter of the mortgage has not

been identified at all for the purposes of registration within the meaning] of Section 21, Registration Act. What is the result then? The result is, as has been laid down in the section itself, and in a series of cases on that section, that there could not have been a valid registration of a document of this nature within the meaning of Section 21, Registration Act, If it has been registered, the fact of the registration, in the circumstances of this case, confers no validity whatsoever. Therefore, it follows that no rights whatsoever had accrued to the mortgagors by reason of the execution of the mortgage of 25th June 1921 and the invalid registration thereof. It follows, therefore, that the plaintiff firm are entitled to ask for the declarations which they have prayed for in their plaint. It was argued, however, that there was no difficulty whatsoever by reason of the insufficient description of the one cotta of land in the document of 25th June 1921, because the transaction in substance was a mortgage of a 1/21 share in the land comprised an plot 382 and that whatever uncertainty there was in the description could be removed or cured by reason of partition proceedings being instituted by the mortgagee after he had obtained the mortgage decree on the mortgage. To that the answer is first, that 1/21 share of interest in land comprised in plot 332 is not the subject-matter of the mortgage of 25th June 1921, and, therefore, no useful purpose can be served by founding an argument on facts which are not the facts in issue in this case. Secondly, the argument neglects altogether the considerations which flow from the use of the word "kayemi" to which reference has already been made. Therefore, the answer is twofold and they are as set out above; and these answers, it seems to me, are absolutely fatal to any contention that may be raised on behalf of the appellant. The result, therefore, is that there are no merits whatsoever in this appeal and it must be dismissed with costs.

Buckland, J.

7. I agree.