

(1900) 08 CAL CK 0022
In the Calcutta High Court

Rahiman

APPELLANT

Vs

Elahi Baksh

RESPONDENT

Date of Decision : 24-08-1900

Acts Referred:

Evidence Act, 1872 — Section 92

Citation : (1901) ILR (Cal) 70

Hon'ble Judges : Stevens, J; Rampini, J

Bench : Division Bench

Judgement

Rampini, J.—We are of opinion that under the provisions of Section 92 of the Evidence Act no oral evidence is admissible to show that these deeds of sale are not deeds of sale but deeds of gift.

2. The Subordinate Judge, whose judgment on this point is affirmed by the District Judge, has relied on certain cases in which it has been held that ostensible deeds of sale may be shown, by evidence of the circumstances of their execution and the conduct of the parties, to be really deeds of mortgage. Such cases, no doubt, from an apparent" exception to the general rule embodied in Section 92 of the Evidence Act, but the object of making this exception apparently was to prevent the commission of fraud by one of the parties to the contract. But we are not aware of any ruling, nor has any been cited to us, in which it had been; ruled that oral evidence is admissible to prove that a deed of sale is really a deed of gift, and that not between the parties to the deed but between third parties Section

3. In some of the cases cited by the Subordinate Judge, viz. Shewab Singh v. Asgur Ali (1866) 6 W.R. 267 Walee Mahomed v. Kumar Ali (1867) 7 W.R. 428 and Lala Himmat Sahai v. Llewellyn I.L.R (1885) . 11 Cal. 486 it has been held that oral evidence of the non-payment of the consideration may be given. But these are cases between vendor and vendee, and are, moreover, in accordance with the provisions of proviso (1) to Section 92 which is to the effect that any fact may be proved that would invalidate any document, such as fraud, intimidation,

and so forth. Now the object of the defendant in producing the oral evidence objected to, was not to invalidate the deeds but to validate them, and yet at the same time to vary and contradict their termSection For these reasons we consider the oral evidence admitted by the lower Courts is inadmissible. We accordingly set aside the decree of the District Judge and remand the case to him for a fresh decision after excluding the oral evidence adduced by the defendant to show that the deeds of sale were deeds of gift.

4. Costs to abide the result.