
(1934) 03 CAL CK 0022
In the Calcutta High Court

Saburannessa

APPELLANT

Vs

Sabdu Sheikh and Others

RESPONDENT

Date of Decision : 20-03-1934

Acts Referred:

Transfer of Property Act, 1882 — Section 54

Citation : AIR 1934 Cal 693 : 152 Ind. Cas. 422

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

Bench : Full Bench

Judgement

Mitter, J.—This is an appeal u/s 15, Letters Patent, from a judgment of my learned brother Mukerji, J. The appeal is on behalf of the plaintiff. Her suit has been defeated on the ground that the deed on which she founded her claim not having been registered according to the provisions of Section 54, T. P. Act, no title passed to her. It appears from the plaintiff's own statement in the plaint, that her husband made a gift of Immovable property in exchange for the dower. The character of such a transaction has been regarded as a kind of sale in a decision of this Court to which reference has been made by Mukerji, J., viz., the case of Abbas Ali v. Karim Buksh (1909) 4 IC 466. This transaction is governed by Section 54, T. P. Act, and the consideration money being admittedly over one hundred it could only be made by a registered instrument.

2. It has been contended on behalf of the appellant that a dower is not really a consideration for the marriage and it is in the nature of a gift and, therefore the deed did not require registration. It appears clear from the statement which has been quoted that it is not a gift pure and simple, but a Hibabilewaz as understood by the Mahomedan law. It is in reality a sale, and has all the incidents of a contract of sale. The High Court of Calcutta has held that a transaction of this character is nothing but a sale; therefore where the property is Immovable and is of the value of rupees one hundred and upwards, it must be effected by a registered instrument as required by Section 54 T. P 1882, which relates to sales. Reference may be made in addition to the case above referred

to, Abbas Ali v. Karim Buksh (1909) 4 IC 466, to the decisions in the cases of Sarifnddin v. Mohiuddin 1927 Cal 808 and Fateh Ali v. Muhammad 1928 Lah 516 which support the view we take. In our opinion, the learned Judge has rightly held that the transaction requires registration.

3. It has further been contended that the matter being one relating to marriage under the Mahomedan law, should be governed by the personal law of the Mahomedans, and it is argued that the transaction, whatever its real character may have been, is saved from the operation of British Laws by the provisions contained in Section 37, Bengal, N.W.P. and Assam Civil Courts Act 12 of 1887. Mukerji, J., has rightly negatived this contention and we are in entire agreement with him. The marriage under the Mahomedan law is a civil contract and is like a contract of sale. Sale is a transfer of property for a price. In the contract of marriage the wife is the property and the dower is the price. There is, therefore, no substance in the second point raised. The result is that the appeal fails and is dismissed. There will be no order as to costs as the learned advocate who appeared before Mukerji, J., has intimated to us that he has no instructions to appear in this Letters Patent appeal.

McNair, J.

4. I agree.