
(1913) 07 AHC CK 0015
In the Allahabad High Court

Sri Ram

APPELLANT

Vs

Mumtaz Ahmad and Another and Bhawani Singh and Others

RESPONDENT

Date of Decision : 22-07-1913

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 34 Rule 5

Citation : (1913) ILR (All) 524

Hon'ble Judges : Tudball, J;Piggott, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

Tudball and Piggott, JJ.—This appeal arises out of execution proceedings. A final decree for sale was obtained under Order XXXIV, Rule 5, of the Code of Civil Procedure, in respect of certain property. The decree-holder assigned all his rights and interests under the decree to the present respondent by an unregistered deed. The assignee applied to be brought on the record in place of the decree-holder. Notice was issued to the judgment-debtors. After several attempts to serve them personally had failed, substituted service was allowed and an order under Order XXI, Rule 16, was passed in favour of the assignee. The assignee then applied for execution of the decree. Thereupon the judgment-debtors raised an objection that the deed of sale being unregistered, the assignee had no title and therefore could not execute the decree. The courts below, relying on the decisions in Abdul Majid v. Muhammad Faizullah ILR (1890) All. 89 and in Baij Nath Lohea, v. Binoyendra Nath Palit 6 C.W.N. 5 dismissed the objections. Hence the present appeal. On behalf of the appellants it is urged that the deed in question transferred to the assignee an interest in immovable property and therefore in view of Section 17(b) and Section 49, Clause (a), of the Registration Act, the assignee has no interest. Reliance was placed on Gopal Narayan v. Trimbak Sadashiv ILR (1876) 1 Bom. 267 and Mutsaddi Lal v. Muhammad Hanif (1912) 10 A.L.J. 167. Of those two, the former decision was passed in 1876 and the judgment gives no reason for the decision. In regard to the latter, it is not in point at all. That case related to the transfer of the rights of

the mortgagees under the mortgage-deed by means of an unregistered document. In our opinion, this appeal must fail. In the first place, the proper occasion for the appellants to take this objection was on the application of the assignee for an order under Order XXI, Rule 16. In the next place, in view of the decisions in ILR All. 89, ILR Cal 450 and 6 C.W.N 5 it seems to us that there is no force in this appeal. The latter case is on all fours with the case now before us. A decree not being immovable property, it has been held in the Calcutta cases noted above that the transfer of a decree does not operate to create an interest in immovable property and the deed of transfer is, therefore, not compulsorily registrable. In our opinion, the appeal must fail, and we dismiss it with costs.