

CALCUTTA HIGH COURT

Udit Narain Chowdhury

Vs

Mathura Prasad

(Sharfuddin and Coxe, JJ.)

17.03.1915

JUDGMENT

Sharfuddin, J.

1. This is an appeal against the judgment and decree of the District Judge of Darbhanga, dated the 1st September 1910.
2. The learned District Judge decreed the suit of the plaintiff and hence the present appeal by the defendants. In order to understand the grounds urged against the judgment of the lower Court, it is necessary to refer to certain facts antecedent to the institution of the present suit.
3. The suit is to recover a sum of Rs, 10,243-6-0, principal and interest on a registered mortgage bond dated the 27th February 1902 executed by the defendant No. 1, Udit Narain Choudhury, as head and manager of a Hindu joint family of which the other defendants are members.
4. The plaintiff's mother, Musammat Moharani Bibi, inherited the property of her father, Brij Bhukhan Lal. While she was in possession of the property, she sold a share in Mouza Mohammadpore Bowari in 1884 to Nena Choudhury, father of Udit Narain. All the time the members of Nena's family were joint, but in 1899 there was a partition and the property in Mohammadpore Bowari fell to the share of Nena, who had originally purchased it as the manager of a joint family including himself and his brother and their issue.
5. Moharani Bibi died in 1890 and Ram Anngrah Persatl, generally known as Polai Lal Mahta, became guardian of the plaintiff who at the time was a minor. In 1901 the plaintiff filed a suit for setting aside the Iwbala executed by his mother, Moharani Bibi, in favour of Nena Choudhury during his minority, on the ground that the sale was made without legal necessity and the property was conveyed for an inadequate price. At that time the plaintiff filed seven other suits of a similar nature to cancel alienations of property made by his mother in favour of other persons.

6. On the 27th February 1902 a petition of compromise with the permission of the Court was filed in the suit, in which it was stated that Udit Narain was to be allowed to retain the property which his father had bought from Moharani Bibi in consideration of a payment of Rs. 14,000. It was stated in the petition that Rs. 6,000 of this sum had been paid in cash and that Udit Narain on his own behalf and as manager of the joint family, consisting of himself and the other defendants in that case and in this, had executed a mortgage-bond for the balance, i.e., Rs. 8,000. This bond of Rs. 8,000 is dated the 27th February 1902, and is the bond in suit.

7. Udit Narain alleges that this bond was a sham transaction and it was never intended to be enforced. He gives a most absurd explanation why and with what object he subjected himself to a liability of Rs. 8,000. I do not think it is at all necessary to refer to his story, as the suit should have been decided on another ground.

8. One of the issues raised is this: "Whether the share of Mouza Kolooha Jairampore, Chakba Nai, does not belong to the defendants; if so, whether the bond in suit is invalid and inoperative for being registered in the Mozafferpore registration office.

9. It appears that in the bond for Rs. 8,000 executed by Udit Narain two properties were mortgaged, namely, Mohammadpore in the Darbhanga District and one Jeotri of Kolooha in the Mozafferpore District. The question is whether this small share of Kolooha belonged to Udit, and if it did not belong to him, whether the registration of the bond in the Mozafferpore District was invalid, and whether if invalid, the bond is enforceable.

10. On behalf of the plaintiff it is urged that this share in Kolooha was purchased by Udit from one Usman (P.W. No. 1).

11. This witness says: "I sold a share of one kowri in Kolooha, a kobala was executed, but it was not registered. The price was Rs. 30. I do not remember who witnessed the execution. It was executed two or three days before the execution of the bond in suit. I do not remember if Polai was present. I sold the property at the request of Udit Narain, who wanted to register it in Mozafferpore in order to complete the transaction quickly and had no property in the district. He said if there was delay in registration the compromise might fall through.

12. It is apparent from the above statement that as Udit had no property in the District of Mozafferpore and as he was anxious to see that the bond was quickly registered, he asked Usman to sell to him a small share in Kolooha.

13. Under Section 54 of the Transfer of Property Act the sale of immovable property of value less than Rs. 100 may be made either by a registered instrument or by delivery of the property.

14. The value of 1 Kowri in Kolooha is said to be only Rs. 50 and the sale-deed admittedly was

not registered and hence in order to effect a proper and binding sale, possession of the share should have been delivered to Udit. There is admittedly no evidence that any delivery ever took place. The sale, therefore, was not complete when the bond executed by Udit was registered. That being the case, he had no property in the District of Mozafferpore when the bond was presented for registration in the Mozafferpore registration office and hence the Registrar of that office had no jurisdiction to register that bond, and that bond, therefore, did not create any liability against Udit Narain. It was so held by their Lordships of the Judicial Committee in the case of *Harendra Lal Boy v. Hari Dasi Dobi*¹ The facts of this reported case are these. A property not belonging to a lady, alleged to be situated within the original jurisdiction of this High Court, was entered in the schedule of the mortgaged properties attached to a mortgage-deed for the purpose of securing registration in the Calcutta registry office. Their Lordships held "that the entry of such a property was a fictitious entry and represented no property that the mortgagor possessed or intended to form part of his security. Such an entry intentionally made use of by the parties for the purpose of obtaining registration in a district where no property actually charged and intended to be charged in fact existed, was a fraud on the Registration Law and no registration obtained by means thereof was valid." It appears that the High Court had passed a decree on the strength of the mortgage and their Lordships-held that "the High Court had no jurisdiction to make the decree, and the deed not having been registered in accordance with the Registration Act the mortgagee had no title to maintain the suit.

15. As to the provisions of Section 54 of the Transfer of Property Act, it was held in the case of *Makhan Lal Pal v. Bunku Behari Ghose*² that the transfer by the sale of tangible immovable property of value less than Rs. 100 can be effected only by one of the two modes mentioned in Section 54, Clause 3, of the Transfer of Property Act, viz., by a registered instrument or by delivery of possession.

16. On the legal aspect of the transaction the appellant is bound to succeed, but we have no doubt that the defence set up by the appellant was a most dishonest defence. His story of the sham transaction in order to oblige Polai is a story which cannot be believed. In the above circumstances, the suit is dismissed and the appeal decreed.

17. Coxe, J.--I agree. The circumstances of the case leave no doubt that the parties never intended that the share of Kolooha should really be sold to Udit Narain or mortgaged to Polai Lal. The so-called sale was a mere device to evade the Registration Act.

Cases Referred.

123 Ind. Cas. 637 : 41 C. 972 (P.C.) : 27 M. L. J. 80 : (1914) M.W. N. 462 : 16 M.L.T. 6 : 18 C.W.N. 817 : 19 C.L.J. 484 : 16 Bom. L.R. 400 : 12 A.L.J. 774 : 1 L.W. 1050
219 C.623 (F.B)