

Before Mr. Justice Prinsep and Mr. Justice Wilson.

TOPA BIBI (DEFENDANT) *v.* ASHANULLA SARDAR (PLAINTIFF).*

1889
March 15.

Registration Act (III of 1877), s. 77—Suit to compel registration of document not compulsorily registrable.

Under the Registration Act of 1877, a suit lies by a purchaser to compel registration of his kobala in a case in which the value of the property conveyed is under Rs. 100, and in which, therefore, the registration of the deed is not compulsory.

THIS was a suit brought under s. 77 of the Registration Act to compel registration of a kobala or deed of sale alleged to have been executed by the defendant in favour of the plaintiff. The defendant denied execution and the Registrar consequently refused to register the deed. The only question material to this report was, whether or not the suit would lie. The Munsiff came to the conclusion that the defendant had not executed the kobala, and therefore dismissed the suit. This decision, however, was reversed by the Judge, who gave the plaintiff a decree for the registration of the deed.

The defendant appealed to the High Court.

Baboo *Debendra Mohun Sen*, for the appellant, contended that the suit would not lie and cited an *Anonymous case* (1) and *Ahsuna v. Begum Kheerun Singh* (2).

Baboo *Mukunda Nath Roy*, for the respondent, contended that such a suit would lie, and referred to ss. 17, 18, 50 and 77 of the Registration Act, 1877, and para. 3 of s. 54 and cl. (d) of s. 55 of the Transfer of Property Act.

The judgment of the Court (PRINSEP and WILSON, JJ.) was delivered by—

WILSON, J.—The only question argued before us, and the only one properly open upon second appeal, is, whether a suit will lie on the part of a purchaser to compel registration of his kobala in a

* Appeal from Appellate Decree No. 517 of 1888, against the decree of J. R. Hallet, Esq., Judge of Rungpore, dated the 3rd of December 1887, reversing the decree of Baboo Gopal Chander Banerjee, Munsiff of Gaibandah, dated the 14th of February 1887.

(1) 6 Mad. H. C. Ap., 9.

(2) 10 W. B., 360.

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case in which the value of the property conveyed is under one hundred rupees, and registration is therefore not made compulsory by the Registration Act.

We think it clear that under the present Registration Act III of 1877 the suit lies. Section 17 of the Act says "that certain documents shall be registered." Section 16 says "that certain other documents may be registered." Section 32 says that "every document to be registered . . . whether such registration be compulsory or optional, shall be presented . . . by some person executing or claiming under the same." The effect seems to be that any person therein described may exercise the option given by s. 18. The following sections lay down rules as to whose presence is ordinarily necessary to justify registration. And ss. 36 to 39 provide for compelling the attendance of such persons as well as of witnesses. Part XII of the Act, dealing with the mode of refusal to register and its consequences, with appeals against such refusal, and in the last resort a suit in a Civil Court, is perfectly general in its terms.

Two cases were cited as authorities for a contrary view *Ahsuna Begum v. Kheerun Singh* (1) and an *Anonymous case* (2) from the Madras High Court Reports. As to those cases it is enough to say that the Judges had in them to deal with a different Act from that now before us, and especially different in this, that it did not expressly give a right of suit as the present Act does. Under the present Act we entertain no doubt that the suit lies. Any other conclusion would lead to very grave consequences; for since the passing of the Transfer of Property Act the omission to register documents of the kinds mentioned in s. 18 of the Registration Act may lead to much more serious results than before. The appeal is dismissed with costs.

Appeal dismissed.

(1) 10 W. R., 860.

(2) 6 Mad. H. C. Ap., 9.