

reverse the decree of the Appellate Court, and to order the appeal to it to be dismissed with costs. The respondent, Sham Lal Pal, will pay the costs of this appeal.

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SARODA
PROSUNNO
PAL
v.
SHAM LAL
PAL.

Appeal allowed.

Solicitors for the appellant: Messrs. *Wrentmore & Swinhoe.*

C. B.

FULL BENCH.

Before Sir W. Comer Petheram, Knight, Chief Justice, Mr. Justice Prinsep, Mr. Justice Trevelyan, Mr. Justice Ghose, and Mr. Justice Ameer Ali.

MAKHAN LAL PAL (PLAINTIFF) v. BUNKU BEHARI GHOSE
AND ANOTHER (DEFENDANTS).*

1892.
August 1.

Transfer of Property Act (IV of 1882) s. 54, para. 3—Transfer of Property Act Amendment Act (VII of 1885), s. 3.—Immoveable property of value less than one hundred rupees, transfer of—Suit by purchaser for possession when vendor is out of possession.

The transfer by sale of tangible immoveable property of a value less than one hundred rupees can be effected only by one of the two modes mentioned in section 54, paragraph 3 of the Transfer of Property Act, viz., by a registered instrument or by delivery of possession.

Khatu Bibi v. Madhuram Barsick (1) overruled.

THIS case was referred to a Full Bench by PRINSEP and BANERJEE, JJ. The facts sufficiently appear from the following order of reference:—

“The plaintiff sues to recover certain land in the possession of defendant No. 1. It has been found that defendant No. 1 conveyed to defendant No. 2 by an unregistered instrument; that defendant No. 2 conveyed to the plaintiff by a registered instrument, and that defendant No. 1 has, notwithstanding this transaction, remained in possession.

* Appeal from Appellate Decree No. 842 of 1891, against the decree of F. W. Badcock, Esq., District Judge of Burdwan, dated the 17th March 1891, affirming the decree of Babu Monmoth Nath Chatterji, First Munsiff of Katwa, dated the 6th February 1890.

(1) I. L. R., 16 Calc., 622.

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"The District Judge has dismissed the suit, holding that the conveyance to the defendant No. 2, notwithstanding that it was for immoveable property of less than Rs. 100 in value, being unregistered and not accompanied by delivery of possession, is invalid.

"This is opposed to the case of *Khatu Bibi v. Madhuram Barsick* (1), and as we have doubt as to the correctness of the law there laid down, we refer to a Full Bench the following questions:—

"(i) Can the transfer by sale of tangible immoveable property of a value less than one hundred rupees be effected only by one of the two modes mentioned in section 54, paragraph 3 of the Transfer of Property Act, *viz.*, by a registered instrument or by delivery of possession? and

"(ii) Does a conveyance of such property, not by registered document or by delivery of possession, confer any title on the vendee so as to entitle him to transfer it to a third person?"

Baboo *Karuna Sindhu Mukerji* appeared for the appellant.

Baboo *Saroda Churn Mitter* appeared for the respondents.

Baboo *Karuna Sindhu Mukerji*—Section 54, paragraph 3, of the Transfer of Property Act, is not exhaustive or imperative, [*Khatu Bibi v. Madhuram Barsick* (1)]; and the omission of the word 'only' which occurs in the preceding paragraph is significant. The remarks of GARTH, C. J., in *Narain Chunder Chuckerbutty v. Daturam Roy* (2) are *obiter*. The amending Act (III of 1885) provided that this section should be read as supplemental to the Indian Registration Act (III of 1877). [Sections 59, 107, and 123 of the Transfer of Property Act, and sections 48, 49, and 50 of the Registration Act were also referred to.] The plaintiff can enforce the contract of sale, using the unregistered deed as evidence, *Monomothonath Day v. Sree Nath Ghose* (3); *Luchmeeput Singh Doogur v. Mirza Khyrat Ali* (4). A reasonable construction should be placed on the Act, and the defendant should not be allowed to avail himself of the non-registration of the document.

(1) I. L. R., 16 Cal., 622.

(3) 20 W. R., 107.

(2) I. L. R., 8 Cal., 597 (612).

(4) 12 W. R. (F. B.), 11

Babu Saroda Churn Mitter—I submit the view of the sections taken by GARTH, C. J., in *Narain Chunder Chuckerbutty v. Dataram Roy* (1) is the correct one, and the case of *Khatu Bibi v. Madhuram Barsick* (2) should be overruled.

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The opinion of the Full Bench (PETTIERAM, C. J., PRINSEP, TREVELYAN, GHOSE, AND AMEER ALI, JJ.) was delivered by—

PRINSEP, J.—This reference to a Full Bench has been made by me, sitting with Mr. Justice Banerjee, because we had reason to doubt the correctness of the opinion expressed in *Khatu Bibi v. Madhuram Barsick* (2), decided by Mr. Justice Trevelyan and myself. The first question referred, and this is the only question which it is necessary for us to answer, having regard to the opinion at which we have arrived, is:—Can the transfer by sale of tangible immoveable property of a value less than Rs. 100 be effected only by one of the two modes mentioned in section 54, paragraph 3 of the Transfer of Property Act, *i.e.*, either by a registered instrument or by delivery of possession, and in no other way?

In the case of *Khatu Bibi v. Madhuram Barsick* (2) it was held that a transfer by sale of tangible immoveable property of a value less than Rs. 100 could be effected by an unregistered instrument not accompanied by delivery of possession. The judgment proceeded on the terms of paragraph 3, section 54, of the Transfer of Property Act, which, it was held, was not exhaustive, and did not alter the previously existing law expressed in sections 17 and 49 of the Registration Act, under which transfers of property of such value could be effected by unregistered instruments, registration not being compulsory. Some weight was also given to what has now turned out to be a misapprehension of the law in consequence of the enactment of Act III of 1885. That Act consists of only a few sections, section 3 of which is alone applicable to the matter now before us, and that section, read by itself, conveys no definite meaning, and, even when applied to the Transfer of Property Act, is expressed in terms which are not easily intelligible. That

(1) I. L. R., 8 Calc., 597 (612).

(2) I. L. R., 16 Calc., 622.

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provision of the law, it may be observed, was not cited to the referring Bench in the course of the argument by the pleaders in the case, and was overlooked by Mr. Justice Banerjee and myself.

We endeavoured to reconcile the terms of the Transfer of Property Act and the Registration Act, and were of opinion that the mode suggested by us afforded the only possible means of reconciliation.

Having had the question re-argued and having regard to the terms of the Act of 1885, we do not think there is any conflict between the two Acts. The intention of the Act of 1885, no doubt, was to clear away a difficulty which had arisen and which was referred to in the course of the decision of the Full Bench in *Narain Chunder Chuckerbutty v. Dataram Roy* (1).

It declares that section 54 of the Transfer Property Act shall be read as supplemental to the Registration Act (III of 1877). Its effect therefore is to make section 54, paragraph 3, absolute, in so far as it prescribes that a transfer of ownership by sale of tangible immovable properties of a value less than Rs. 100 can be made only by a registered instrument or by delivery of the property, and that, if made otherwise, as in the case now before us, by an unregistered instrument unaccompanied by possession, the transfer or sale is inoperative and so it confers no title on the vendee.

The plaintiff, in the case before us, states that defendant No. 1, as the proprietor of some land of a value less than Rs. 100, sold it by an unregistered instrument to defendant No. 2 without delivery of possession, and that he purchased from defendant No. 2 by a registered instrument. He now sues to recover possession from defendant No. 1, the vendor of his vendor, who, notwithstanding that he has sold by an unregistered instrument and obtained the purchase-money, still holds possession. The plaintiff's title to sue, therefore, depends upon that of his vendor; and his vendor having, under the law as above expressed, an invalid title, would be unable to enforce that title in a suit for ejectment. The case is, no doubt, one of some hardship, because defendant No. 1, who has obtained the value of the land sold, is thus able to obstruct

(1) I. L. R., 8 Cal., 597.

the possession of his vendee. We think, however, that the plaintiff has placed himself in such a position that the Court can afford him no relief in this suit, as it is now before us in second appeal. In his petition of appeal he merely contends that his conveyance is a valid instrument, and that on it he is entitled to be put in possession. The case, moreover, was tried in both the Lower Courts on issues directed solely to this purpose. It is impossible at this stage of the case to change the nature of the suit. The answer to the first question put must, therefore, be in the affirmative. It is unnecessary to answer the second question. The appeal must be dismissed with costs.

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A. A. C.

APPELLATE CRIMINAL.

Before Mr. Justice O'Kinealy and Mr. Justice Amcer Ali.

JUKNI *alias* PARBATI v. QUEEN-EMPRESS.*

Bigamy—Sagai or nikka marriage—Relinquishment of wife—Penal Code, s. 494.

1892
June 7.

A conviction under section 494 of the Indian Penal Code cannot be supported where there is evidence to show that, by the custom of the caste, *sagai* or *nikka* marriage was admissible and that the husband had relinquished his wife.

In re Mussamat Chamia (1) followed.

In this case the appellant, Jukni *alias* Parbati, was charged with the offence of having married again during the lifetime of her husband, under section 494 of the Penal Code.

The case for the prosecution was that Jukni was the duly married wife of one Matilal Saha, that she lived with him for several years, and that in February 1892 she went through a form of marriage with one Dukhu Saha while her marriage with Matilal was subsisting.

* Criminal Appeal No. 457 of 1892, against the order passed by H. Beveridge, Esq., Sessions Judge of Murshidabad, dated the 10th of May 1892.

(1) 7 C. L. R., 354.