

1937

PANDIT
SIDH NATH
v.
HAR
NARAIN

“absolutely entitled” to the property. We may also mention here what Sir D. F. Mulla says in regard to lessees in his note under section 51 of the Transfer of Property Act. He says—

“A lessee cannot appeal to this section even if he is a permanent lessee.”

Ziaul Hasan
and
Madeley, JJ.

He then refers to the case of 1930 Mad., 298 referred to above and says—

“There is a Madras case which holds that a perpetual lessee is entitled to the benefit of this section, but, it is submitted that the judgment confuses the rule in this section with the doctrine of equitable estoppel.”

But even if it be granted that a permanent lessee is entitled to claim the benefit of section 51 of the Transfer of Property Act, it seems to us that the present defendant-respondent cannot claim to have “believed in good faith” that he was absolutely entitled to the land in question. He was taking a permanent lease from the mother-guardian of a minor, whose powers were no better than those of the *shebait* of a temple, and over whom both the lower courts have found that he exercised undue influence. The rent reserved was ridiculously inadequate. The terms of the lease were wholly one sided and gave no right to the lessor except to sue for arrears of rent. Above all the lease conferred no benefit whatever on the lessor. In all these circumstances the defendant in our opinion can never be allowed to plead that he believed “in good faith” that he was absolutely entitled to the land. He cannot therefore claim compensation under section 51 of the Transfer of Property Act.

The appeal is allowed with costs, the decree of the learned Judge of this Court is set aside and that of the learned Civil Judge decreeing the plaintiff's suit unconditionally, restored.

Appeal allowed

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge

MUSAMMAT MANGALA (PLAINTIFF-APPELLANT) v.

MAHADEO PRASAD (DEFENDANT-RESPONDENT)*

1937
July, 22,

Registration Act (XVI of 1908), section 58(1)(c) and 69(2)—Sub-Registrar's endorsement about payment of money, evidentiary value of—No evidence that endorsement incorrect or of money being afterwards returned—Presumption that endorsement was correct—Onus to rebut endorsement.

Under section 58(1)(c) of the Indian Registration Act it is the duty of the Sub-Registrar to make an endorsement of any payment of money made in his presence and the onus to rebut the endorsement lies on the person challenging it.

Where there is an endorsement by the Sub-Registrar on the back of a mortgage-deed that a certain sum of money was paid in his presence and there is no evidence to prove either that the endorsement was incorrect and no payment was actually made or to show that the money which was paid before the Sub-Registrar was afterwards returned, then it must be taken that the sum mentioned in the endorsement was paid to the mortgagor and that consideration to that extent did pass. *Ali Khan Bahadur v. Indar Prasad* (1), relied on.

Mr. Shiva Narain Bajpai, for Mr. N. Banerji, for the appellant.

Mr. P. D. Rastogi, for the respondent.

SRIVASTAVA, C.J.:—This is a second appeal by the plaintiff against an appellate decree of the learned Civil Judge of Malihabad at Lucknow, reversing the decree of the learned Munsif South in that district. It arises out of a suit based on a deed of mortgage dated the 13th of April, 1932, executed by one Patan *alias* Matau Ram in favour of Musammat Mangla, plaintiff. The defendant Mahadeo Prasad who is the respondent in this Court had purchased the mortgaged property at an auction sale. He resisted the suit on the ground that

*Second Civil Appeal no. 360 of 1935, against the decree of Pandit Brij Kishun Topa, Civil Judge of Malihabad at Lucknow, dated the 16th of August, 1935, setting aside the decree of Pandit Hari Shanker Chaturvedi, Munsif, South Lucknow, dated the 6th of February, 1935.

(1) (1896) I.L.R., 23 Cal., 950.

1937

MUSAMMAT
MANGALA
vs.
MAHADEO
PRASAD

Srivastava,
C.J.

the mortgage was a fictitious document which had been executed with a view to defraud the creditors. He also denied the execution, completion and consideration of the mortgaged-deed. The learned Munsif held that the mortgage-deed in suit was good and valid to the extent of Rs.100 only and that the rest of the consideration amounting to Rs.300 was fictitious. He accordingly decreed the plaintiff's claim for Rs.100 with interest thereon. On appeal the learned Civil Judge disagreeing with the learned Munsif held that the payment of even Rs.100 was not proved and that the mortgage-deed was altogether fictitious and entirely without consideration. In view of this finding he did not decide the other questions which were raised by the defendant about the mortgage-deed in suit not being proved according to law and about interest, etc. As a result of his finding about the mortgage in suit being altogether without consideration the learned Civil Judge dismissed the suit *in toto*.

The learned counsel for the plaintiff-appellant has challenged the correctness of the lower appellate court's finding about the payment of Rs.100 not being proved. The lower appellate court is right in saying that the oral evidence of the witnesses examined by the plaintiff does not prove the payment of this amount. But apart from the oral evidence we have the endorsement of the Sub-Registrar at the back of the instrument about the sum of Rs.100 having been paid to the mortgagor in his presence. Referring to this endorsement the learned Civil Judge observed that it is not at all difficult to pay the money before the Sub-Registrar and take back the money outside the registration office particularly when the parties to the transaction happen to be father and daughter. The fact of the mortgagee being the daughter of the mortgagor does raise some suspicion about the genuineness of the transaction but it is well settled that suspicion cannot be substituted for evidence. Under section 58(1)(c) of the Indian Registration Act it

is the duty of the Sub-Registrar to make an endorsement of any payment of money made in his presence in reference to the execution of a document. Section 60, clause (2) further provides that the endorsement of the Sub-Registrar shall be admissible in evidence for the purpose of proving that the facts mentioned in such endorsements occurred as therein mentioned. In such circumstances the onus lay on the defendant to rebut the endorsement. There was no evidence given on his behalf to prove either that the endorsement was incorrect and no payment was actually made or to show that the money which was paid before the Sub-Registrar was afterwards returned. In the absence of such evidence it must be taken that the sum of Rs.100 was paid to the mortgagor and that consideration to that extent did pass. In *Ali Khan Bahadur v. Indar Prasad* (1), referring to a registered deed in which a declaration had been made by the borrower that he had received the amount their Lordships of the Judicial Committee remarked as follows:

“It is valueless if it can be gone behind in every case by an assertion that that which was stated at the time before the Registrar was untrue. The onus in this case appears clearly to lie on the defendant.”

I am therefore unable to accept the view of the learned Civil Judge that the payment of Rs.100 was not proved. As the learned Civil Judge disposed of the appeal on a preliminary ground without going into the other questions which were raised in the appeal the case must go back to the lower court for deciding the questions which were left undecided. I accordingly allow the appeal, set aside the decree of the lower court and send the case back to the Civil Judge Malihabad for the appeal being re-admitted at its original number and disposed of on all the points. Costs in the appeal will abide the result

Appeal allowed.

(1) (1896) I.L.R., 23 Cal., 950.

1937

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