

maintain this suit to recover them, and that to that extent it ought to be dismissed.

I have said what appears to me sufficient to dispose off this case. I have taken a somewhat different view from the Subordinate Judge, because I think that is a simpler mode of arriving at a conclusion, but I do not wish it to be thereby inferred that I differ from the view taken by the Subordinate Judge. Upon the points of law on which he dismissed the suit, I express no opinion. The regular appeal is dismissed with costs.

KEMP, J.—I concur in this judgment.

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KAMINATH
KOOWAR
v.
BANKUBHAI &
CHOWDHRY.

Before Mr. Justice Kemp and Mr. Justice Markby.

SHIB PRASAD DAS (PLAINTIFF) v. ARNA PUANA DAYI
(DEFENDANT.)*

1869

Sept. 24.

Act XX. of 1866, ss. 17 and 49—Registration—Unregistered Deed of sale—Admissibility in Evidence as a Receipt.

An unregistered deed of sale, so far as it is a receipt or acknowledgement of money paid or an acknowledgement for old debts, is admissible in evidence notwithstanding section 29, Act XX. of 1866.

A portion of an unregistered document requiring registration is admissible in evidence when such portion does not relate to immoveable property.

Baboo *Rajendra Missry* for appellant.

Mr. *R. T. Allan* and Baboo *Banshidhar Sen* for respondent.

The facts are fully stated in the judgment delivered by

MARKBY, J.—It seems to me in this case that the Courts below were wrong. The suit was brought to recover the sum of rupees 2,650, upon the ground that the defendants had executed a bill of sale to the plaintiff, of certain immoveable property in consideration of that sum, and that after having executed the bill of sale they refused to register the deed, sold the property to some one else, and allowed the deed in favor of the second purchaser to be registered, and that thereby the plaintiff in this case

* Special Appeal, No. 1131 of 1869, from a decree of the Judge of Midnapore, dated the 25th February 1869, affirming a decree of the Subordinate Judge of that District, dated the 18th December 1868.

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lost all the benefit of his purchase. That was a perfectly good cause of action, and so the Subordinate Judge thought and gave a decree on it as to 925 rupees which was actually paid in cash by the plaintiff to the defendant, as the plaintiff proved by witnesses who saw the money paid; but as to the balance of 1,725 rupees, both Courts thought that the plaintiff must fail, because that 1,725 rupees was not put forward as an actual payment in cash, but was a set-off against various debts which the defendant owed to the plaintiff at the time of the sale, and the mode by which the plaintiff proposed to prove that set-off was by putting in the unregistered kabala which both Courts considered could not be received in evidence for any purpose whatever under the provisions of section 49, Act XX. of 1866.

It has however been held upon this section in *Nilmadab Sing Das v. Fatteh Chand Sahu* (1) that a deed of conditional sale which requires registration under section 17 may, notwithstanding that it has not been registered and notwithstanding the provisions of section 49, be used in evidence to prove by it an agreement to repay the money borrowed on a particular day, and I understand a decision to the same effect has been come to by the Full Bench within the last few days. These decisions proceed upon the principle that such a document, although contained in one piece of paper may be looked upon as containing two distinct things, a promise to repay the money and an undertaking that certain lands shall be held as security for the repayment. I think on the authority of those decisions that the document in this case may be looked upon precisely in the same way as really containing two distinct things, first an acknowledgment of the receipt of the money, and secondly, a conveyance of the property sold. Now it is only as an acknowledgment of the receipt of the money that the deed is sought to be used in this case; the deed contains a distinct recital that the consideration was 2,650 rupees; that 925 rupees was paid in cash, and that the remainder should be set-off against these several debts, each of which is specified in the deed. The part of the deed is wholly distinct from the part which conveys

(1) 3 B. L. R., A. C., 310.

the property to the plaintiff, and that is the only part which the plaintiff seeks to have read in evidence ; and I think that upon the principle laid down in the decisions I have mentioned above, to that extent the plaintiff had a right to have the document read ; namely, simply as an acknowledgement of the receipt of the money ; but inasmuch as the first Court returned the document when the plaintiff's pleader proposed to file it, rejecting it as inadmissible in evidence, the plaintiff has not had an opportunity of giving his evidence in support of the genuineness of the deed.

I think therefore that the case must go back to the first Court to try that question. If that Court finds the deed to be a genuine document, then upon these recitals and the other facts which have been proved, it is satisfactorily shewn that the consideration failed, and the plaintiff will be entitled to a verdict for the 1,725 rupees.

KEMP, J.—I concur.

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