

1868

**SHEIKH
PARABOI
SAHANI
v.
SHEIKH
MOHAMED
MOSSIN.**

this case the Judge has found, as a fact, that the vendor is still in possession. It is not very clear whether that possession has been altogether uncontested, and it may be that the Judge has somewhat misconstrued the decision of the Magistrate, under section 318 of the Code of Criminal Procedure, but the broad fact of possession has been found to be against the plaintiff. There is some difficulty in coming to a conclusion as to whether the consideration was an adequate one or not, and the Judge has not come to a very clear finding on that point. The fact of the title deeds being in the hands of the vendor is not conclusive evidence, but, taken with the fact that he is in possession, it is not without weight, for, so far as our experience serves us, we have found that mortgagees in this country do insist on taking the title-deeds before they part with their money, when lending on the security of landed property. On the whole we think that justice has been done in this case, that the Judge was right to look beyond the mere fact of the absence of registration, and to consider, as he has done, the acts and the conduct of the parties. We have no doubt that the ikrarnama was executed, and that the intentions of the parties were represented in that instrument.

This special appeal will be dismissed with costs.

Before Sir Barnes Peacock, Kt., Chief Justice, and Mr. Justice Mitter.

GAUR MOHAN DAS v. RAMRUP MAZOOMDAR.*

*Assignee of a Bond—Summary Application—Registration Act
(XX. of 1866), s. 53.*

A summary application, under section 53 of Act XX of 1866 by the assignee of a bond, cannot be entertained.

See also
M. B. L. R. 420

THE following case was submitted by the Judge of the Small Cause Court of Jessore, for the opinion of the High Court.

“This is an application to this Court under section 53 of Act XX. of 1866, by the Assignee of the bond or obligation filed with the application, to enforce the agreement recorded therein by the Registering Officer, under section 52, and the question

Reference from the Court of Small Causes at Jessore.

arises, Can the obligor be called on summarily under the section cited, at the instance of the assignee?

“It appears to be considered a rule of practice that an assignor must be a party to a suit by the assignee. See Macpherson’s Civil Procedure, page 131, and *In the matter of the petition of Bhanjan Mandal* (1). I have, therefore, referred the applicant to a regular suit, as it would be necessary to make the assignor a party defendant, but his pleader has asked that the assignor be made a party under section 73 of Act VIII. of 1859.”

“It appears to me that the provisions of Act VIII. of 1859 will not apply to an application made under section 53 of Act XX. of 1866, except as to enforcement of decrees passed under that section, and that none but the obligee can apply to enforce the agreement recorded under section 52, and that I ought to refuse to make the assignor a party defendant, as this would take more the form of a regular suit, and it would be necessary to summon the assignor, which I could not do, under the ruling in *Krishna Kishore Ghose v. Brajanath Mozoomdar* (2). I must, therefore, refuse to call upon the obligor summarily, and the applicant must be referred to a regular suit, making the necessary parties defendants.”

The opinion of the Court was delivered by

PEACOCK, C. J.—The Judge of the Small Cause Court is correct in holding that a summary application under section 53, Act XX. of 1866, cannot be entertained at the suit of the assignee of the obligee.

Before Sir Burnes Peacock, Kt., Chief Justice, and Mr Justice Mitter.

ELAM PARAMANICK *v* SOJAITULLAH SHEIKH *

Award—Act XI. of 1865, s. 6—Act VIII. of 1859, s. 327.

When a matter has been referred to arbitration without the intervention of any Court, a Small Cause Court, in the Mofussil, has jurisdiction to entertain an application under section 327 of Act VIII. of 1859, to file the award, provided it relates to a debt not exceeding the amount cognizable by such Court, and that the defendant resides within its jurisdiction.

* Reference from the Court of Small Causes at Koosht a.

(1) 4 S. D. R., 94.

(2) 7 W. R., S. C. C. Rulings, 11

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