

rám knew all of them. This omission on the part of the witnesses throws a doubt on their credibility. Then there are the discrepancies which Mr. Vishnu Ghanashám has pointed out to us as to the identity of the prisoners, the place where the stolen money was handed over, and other matters which should also be taken into consideration. No doubt, it may be contended, that if these witnesses were tutored ones, care would have been taken to see that they should tell the same story. But care is not always taken, or effectually taken, in such cases, and discrepancies are not less infirmative of testimony, because a greater sagacity on the part of the witnesses would have avoided them. In the face of those which occur in this case, it would not be safe to convict the prisoners, and we accordingly direct that the convictions and sentences be reversed.

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Conviction and sentence reversed.

[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 363 of 1872.

August 17.

VÁSUDEV MORESHVAR GUNPOLE.....*Appellant.*

BAMA BABAJI DANGE.....*Respondent.*

Registration Act XX. of 1866-Consideration-Optional registration.

The consideration mentioned in a deed of sale by the parties thereto must be regarded as showing the value of the interest conveyed for the purposes of registration under Act XX. of 1866. *Rohinee Debia v. Shib Chander Chatterjee* (15 Calc. W. R. Civ. Bul. 558) followed.

THIS was a special appeal from the decision of H. J. Parsons, Assistant Judge at Ratnágiri, affirming the decree of Gopál Amrit, Subordinate Judge at Chaplun.

The plaintiff, Vásudev Moreshtar, brought this suit to recover possession of a shop with the ground underneath it, and based his claim to the property on a deed of sale executed to him by one Govind Pándurang Sett, under date the 24th November 1869. The deed recited that the property in dispute had been mortgaged to the said Govind Pándurang for Rs. 118-12-0, and that the mortgagee sold his rights

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therein to the plaintiff for Rs. 80. The Subordinate Judge threw out the claim, on the ground that the plaintiff failed to prove it. In appeal, Mr. Parsons upheld that decree on the following preliminary ground:—

“I raise of my own motion the following preliminary issue;

“Must the deed of sale be registered ?

“I think that the deed must be registered. The deed of sale, dated November 24th, 1839, purports to convey the rights obtained under the mortgage-deed from Sett to the appellant; the value of the mortgage-deed is Rs. 118 12-0. The deed of sale, therefore, assigns to the appellant a right, title, and interest of the value of upwards of Rs. 100 in immoveable property, since it assigns this mortgage-deed. It is true that the stamp of the deed is only of the value of one rupee, but the Act of 1866 does not contain the same provision as does Act XVI. of 1864 in its 14th section, and the Calcutta High Court have ruled that this section even is only applicable when there is in the deed no declaration of value *Isham Chandra v. Sajan Bibi (a)*. In this deed there is a declaration that the mortgage-deed for Rs. 118-12 0 is conveyed to the appellant. There being then created by this deed an assignment of an interest of the value of more than Rs. 100 in immoveable property, registration is compulsory; and since the deed has not been registered, it can not be received in evidence, and as the fact of sale cannot be proved except by its production the appellant cannot prove his title at all. I must, therefore, on this ground hold that the appellant has not proved his title. I confirm the decree with costs.”

The special appeal was argued before WESTROPP, C.J., and KEMBALL, J., on the 17th August 1874.

Vishnu Ghanasham for the appellant:—As the consideration expressly stated in the deed of sale did not exceed Rs. 100, the registration of that document was not compulsory under Act XX. of 1866, section 17. It is such expressly

(a) 7 Beng. L. R. 14 Per Mookerji, J. p. 15.

stated consideration that determines whether a writing does or does not require registration: *Rohinee Debia v. Shib Chunder Chaterjee* (b).

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Ganesh Hari Patvardhan for the respondent.

PER CURIAM :—The Court concurs in the decision in *Rohinee Debia v. Shib Chunder Chaterjee* and is accordingly of opinion that the consideration in the deed of sale, viz., Rs. 80, fixed by the parties thereto, must be regarded as showing the value for the purposes of registration under Act XX. of 1866, which was that applicable to the deed of sale dated 24th November 1869. The registration of that deed, therefore, was optional. This Court reverses the decree of the Assistant Judge, and remands this cause for retrial by him on the merits. Costs throughout to follow the result of the new trial.

Decree reversed and Case remanded.

[APPELLATE CIVIL JURISDICTION.]

Application for Extraordinary Jurisdiction.

August

No. 52 of 1874.

GAMBHIRMAL and BANACHANDAppellants.
 CHEJMAL JODHIMAL and othersOpponents,

Appeal—Code of Civil Procedure, Secs. 209 and 364—Act XXIII. of 1861, Sec. 11—Extraordinary Jurisdiction—Decree—Stay of execution.

No appeal lies against an order, under the last clause of Section 209 of the Code of Civil Procedure, saying the execution of a decree. The High Court, however, in the exercise of its extraordinary jurisdiction, will examine the judicial property of such an order.

Where a Subordinate Judge, in consequence of a fresh suit by the plaintiff, stayed the execution of a decree which was passed in the defendant's favour for costs, the High Court, in exercise of its extraordinary jurisdiction, reversed the stay order.

THIS was an application for the exercise of the High Court's extraordinary jurisdiction,

One Gambhirmal obtained a decree against Chejmal and others, which was reversed in appeal, and a decree was

(d) 15 Cal. W. R. Civ. Rul. 558.