

## APPELLATE CIVIL.

Before Mr. Justice R. C. Mitter and Mr. Justice Maclean.

1878  
Sept. 3.

OGHRA SINGH (PLAINTIFF) v. ABLAKHI KOOER AND ANOTHER  
(DEFENDANTS).\*

*Registration Acts (VIII of 1871), s. 50, and (III of 1877), s. 50—Priority of Registered over Unregistered Documents—General Clauses Act (I of 1868), s. 6.*

A registered deed of sale, the registration of which was compulsory, does not take effect against a prior unregistered deed of sale of the same property, the registration of which was optional.

By s. 6 of the General Clauses Act, a suit is to be governed by the Registration Law in force at the institution of the suit, and not by that which may be in force when it comes on for hearing.

In this suit the plaintiff sought to recover possession of a thatched house on the strength of a bill-of-sale, dated the 27th of January 1876, executed by Mussamut Ablakhi Kooer, for Rs. 95. The bill-of-sale was unregistered.

It appeared that the principal defendant, Rama Singh, was not originally made a defendant in the case, but was subsequently brought on the record as a party defendant. His defence was, that Mussamut Ablakhi Kooer, on the 28th of February 1876, sold the same property for Rs. 200 to him. This bill-of-sale was a registered document. These two kobalas were executed when the Registration Law in force was Act VIII of 1871. The only question raised between the parties, which is material to this report, was, whether the defendant's kobala, being a registered document, was not entitled to priority as against the plaintiff's kobala, which was an unregistered document.

\* Appeal from Appellate Decree, No. 1877, against the decree of J. F. Browne, Esq., Officiating Judge of Zilla Patna, dated the 27th of August 1877, affirming the decree of Baboo Nepal Chunder Bose, Third Sudder Munsif of that District, dated the 18th of August 1876.

The Munsif dismissed the plaintiff's claim. On the question of priority under s. 50 of Act VIII of 1871, he was of opinion that the defendant's kobala was entitled to priority as against the plaintiff's bill-of-sale.

1878  
 OGHRA SINGH  
 v.  
 ABLAKHI  
 KOER.

The District Judge upheld that decision simply upon the last ground, agreeing with the Munsif in thinking that, under s. 50, the plaintiff's suit must be dismissed, because the defendant's kobala, being a registered document, must take priority over the plaintiff's document, which is an unregistered bill-of-sale.

Mr. *R. E. Twidale* for the appellant.

Mr. *Sandel* and Baboo *Hem Chunder Banerjee* for the respondent.

The judgment of the Court was delivered by

MITTER, J.—The only point that has been raised before us is that s. 50 has no application to this case, because that section refers only to documents the registration of which is optional.

We think that this contention is valid. Section 50 is as follows:—"Every document of the kinds mentioned in cls. 1 and 2 of s. 18 shall, if duly registered, take effect as regards the property comprised therein against every unregistered document relating to the same property." Now, in this case, in order to apply s. 50, it must be made out that the defendant's document is one of the kinds mentioned in cls. 1 and 2 of s. 18: but it is quite clear that the document does not come within those clauses, because the property in suit was sold to the defendant for Rs. 200. That being so, it is quite clear that s. 50 has no application. This view of the section in question has been taken by this Court in the case of *Ryasutulla v. Doorga Churn Pal* (1). That decision has been recently followed by Mr. Justice Ainslie and Mr. Justice Lawford in Special Appeal No. 809 of 1877, decided on the 14th September 1877. It is

(1) 15 B. L. R., 294; S. C., 24 W. R., 121.

1878  
 OGHRA SINGH  
 v.  
 ABLAKHI  
 KOORR.

true, as pointed out by Mr. Justice Macpherson in the case of *Ryasuttulla v. Doorga Churn Paul* (1) just referred to, that the result of this construction of the law is somewhat anomalous; but in a case like this, where the rights of the parties are intended to be taken away by a penal legislation of the kind referred to in s. 50, the language of the law must be construed very strictly against any derogation of right.

We are, therefore, of opinion that s. 50 of Act VIII of 1871 has no application to this case.

It has been contended on behalf of the respondent that the matter before us should be governed by s. 50 of the present Registration Act.

We find that the suit was instituted on the 1st March 1876, and the present Registration Act came into operation on the 1st of April 1877. We, therefore, think that, under s. 6 of the General Clauses Act (I of 1868), the proceedings in this case having been commenced before the present Registration Act came into operation, must be governed by the Act of 1871. We are, therefore, of opinion that this contention is of no force.

The judgment of the lower Appellate Court must be set aside, and the case remanded to that Court to be tried upon the remaining question raised between the parties.

Costs will abide the result.

*Appeal allowed.*

(1) 15 B. L. R., 294; S. C., 24 W. R., 121.