

ORIGINAL CIVIL.

Before Sir Richard Garth, Kt., Chief Justice, and Mr. Justice Markby.

MATTONGENEY DOSSEE (PLAINTIFF) *v.* RAMNARAIN SADKHAN
(DEFENDANT).*

1878

June 7 & 17.

*Registration—Act VIII of 1871, ss. 17, 49—Evidence—Inadmissibility
of Document.*

A sued in the Small Cause Court on the covenant of a mortgage-deed for a money-decree. The deed being unregistered, was held inadmissible in evidence. *Held*, on reference to the High Court, that the unregistered mortgage deed, being in its terms indivisible and disclosing one transaction only which it would be imperative on the plaintiff to prove for the purpose of making out his case, was, under s. 49 of Act VIII of 1871, inadmissible in evidence to prove a fact for which registration was unnecessary.

REFERENCE made to the High Court by the Second Judge of the Calcutta Court of Small Causes under s. 55 of Act IX of 1850.

The plaintiff sued to recover the sum of Rs. 203 due on the following document:

TO SREEMUTTY MATTONGENEY DOSSEE.

“ I, Ramnarain Sadkhan, do write this land-mortgage deed to the effect as follows:—That I now possess by right of purchase five annas six-and-a-half gaudas of land (here follow the boundaries of the property), and having need of money, I borrow the sum of Rs. 100 from you on mortgage thereof, with interest at the rate of Rs. 24 per cent. per annum, which interest I shall pay monthly. In default of paying interest monthly, I shall have to pay compound interest at the rate of one auna for interest-money, and shall repay the whole amount within the 23rd day of Choitro of the year. In default of my paying the debt within the term aforesaid, you shall have to get the mortgaged property sold, by instituting legal proceedings. Should the sale thereof not cover the whole amount, you shall have to realize the balance by having my other landed properties disposed of. On the above conditions I do hereby execute this mortgage deed, having mort-

* Reference No. 1 of 1878 from the Calcutta Court of Small Causes.

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gaged the above piece of land together with the title-deeds thereof. Dated the 23rd Assin 1281 (8th October 1874)."

The document not being registered, the defendant objected to its being received as evidence of the transaction in respect of which the money was claimed.

The learned Judge was of opinion that the objection was a good one, for the reason that the alleged lending by the plaintiff, and borrowing by the defendant, of a sum of money on mortgage of immoveable property, was payment by the lender, and receipt by the borrower, of a consideration on account of the creation, declaration, and assignment of a right, title, or interest, of the value of Rs. 100, in the property comprised in the mortgage-deed; that such lending and borrowing, payment and receipt, was in itself a transaction affecting the property comprised in the document, and that therefore the document not being registered, could not be received as evidence of the transaction—i. e., the borrowing and lending, payment and receipt, and therefore gave judgment for the defendant, but, at the request of the plaintiff, made such judgment contingent on the opinion of the High Court, as to whether or not the document ought to have been received as evidence of the alleged lending and borrowing between the parties.

Mr. *Bonnerjee* for the plaintiff.—This document ought to have been admitted in evidence, not for the purpose of affecting the immoveable property mentioned in it, but for the purpose of showing that the money had been lent by the plaintiff to the defendant, and that the defendant had promised to repay it. The plaintiff only asked for a money-decree, because the Small Cause Court cannot deal with immoveable property. Section 49 of Act VIII of 1871, by which this action is governed, is far less stringent than s. 49 of the Registration Act of 1866, and yet unregistered documents have been admitted under the latter section for purposes other than those affecting immoveable property; see *Woodoy Chand Juna v. Nitye Mundul* (1), where a suit was brought upon a bond which gave the lender power to recover the amount of his loan by the sale of certain lands. The bond was unregistered, but it was admitted

(1) 9 W. R., 111.

in evidence for the purpose of showing the defendant's indebtedness. This case was followed in *Nilmadhab Sing Das v. Fattah Chand Sahu* (1). In *Shibprasad Das v. Anna Purna Dayi* (2) the question arose upon a bill of sale which one would imagine ought to be registered, and yet it was held that an unregistered bill of sale so far as it was a receipt or acknowledgment of money paid, or an acknowledgment of old debts, was admissible in evidence notwithstanding s. 49 of the Act of 1866. Again in *Lachmipat Sing Dugar v. Mirza Khairat Ali* (3), the Court said that a bond was admissible "simply for the purpose of enforcing against the obligor personally the payment of the money secured by it; but that without registration it is not admissible as evidence to prove that the obligee was entitled to the security of the bond." [GARTH, C. J.—But in the case you have cited, the document was divisible in its nature, consisting partly of a bond, and partly of a mortgage; the loan and pledge cannot be separated in the document before us.] Here the defendant agrees to pay the whole amount of the loan with interest, and in default of payment, gives the plaintiff power to sell the land, and should the proceeds of the land not be sufficient then to sell other property. I submit there is no substantial difference between this document and those in the cases cited. [MARKBY, J.—The intention of the parties was, that the money should be realized from the land in the first instance. If you get your judgment in the Small Cause Court, and then sue on the judgment in this Court, what would there be to prevent your executing your decree against other land of the defendant?] If the defendant put forward the bond, he would be met by the terms of s. 49. In *Jogeswar Dutt v. Nitai Chand Chuckerbutty* (4) your Lordship made a decree against the defendant's moveable property, although the terms of his mortgage were substantially the same as those of this bond. [MARKBY, J.—There I had the whole document before me.] The whole of the document in this case would be before the Court if it is admitted in evidence, although the plaintiff would get no relief as to the land. [GARTH, C. J.—I

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

(3) 4 B. L. R., F. B., 18.

(2) 3 B. L. R., A. C., 451.

(4) 4 B. L. R., App., 48.

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am not sure that the language of Act VIII of 1871 is less stringent than that of the Act of 1866. What is the meaning of the last clause "or be received in evidence of any transaction affecting such property" ?] The first clause of the section makes an unregistered document wholly valueless as regards immoveable property of the value of Rs. 100 or upwards, and the clear meaning of the last clause is that it shall not be admissible in evidence for the purpose of affecting immoveable property. [GARTH, C. J.—Is not yours a transaction affecting such property ?] So far as the bond charges the payment of the money on the property, it is ; so far as it evidences an agreement to repay, it is not. See also *Guduri Jagannadham v. Rapaka Ramanna* (1) and *Stri Seshathri Ayyengar v. Sankara Ayan* (2).

No one appeared on the other side.

The opinion of the High Court was delivered by

GARTH, C. J.—We think that the Judge is quite right in holding that the document in question is not admissible in evidence.

It has been argued by Mr. Bonuerjee on behalf of the appellant, that we are concluded here by the authority of the Full Bench case of *Lachmipat Sing Dugar v. Mirza Khairat Ali* (3), which was decided under the provisions of Act XX of 1866, s. 49.

The words of that section run as follows:—"No instrument required by s. 17 to be registered shall be received in evidence in any civil proceeding in any Court, or shall affect any property comprised therein, unless it shall have been registered in accordance with the provisions of this Act;" and it was held by the Full Bench, that where a document was divisible in its nature, and consisted partly of a bond for Rs. 2,000, and partly of a mortgage of certain property to secure payment of the money, the document was receivable in evidence without registration for the purpose of proving the bond-debt, though it was not so admissible for the purpose of enforcing the security.

(1) 7 Mad. H. C. Rep., 348.

(2) *Ibid*, 296.

(3) 4 B. L. R., F. B., 18.

The Court seems to have considered that the general words: "no document shall be received in any civil Court" ought not to be read in their widest sense, but only as rendering the document inadmissible in evidence for the purpose of affecting the mortgaged property.

The words of the present Act are different. Section 49 says, that "no document required by s. 17 to be registered shall (without being registered) be received as evidence of any transaction affecting any immovable property comprised therein."

Now, in this case, the document is not divisible. It discloses one transaction only; and that the transaction which the plaintiff must necessarily prove for the purpose of making out his case.

It may be doubtful indeed, whether, having regard to the terms of the loan, the defendant is personally liable for the money; and whether the *only remedy of the plaintiff is not against the mortgaged property. But whether this was so or not, the transaction was single and indivisible, and we think it is impossible to say, having regard to the words of s. 49, that the instrument was admissible in evidence for the purpose of proving that transaction.

Attorney for the plaintiff: Baboo *Troyluchonath Roy*.

Before Mr. Justice Pontifex.

IN THE GOODS OF HURRY DOSS BONERJEE AND SREEMUTTY
GUNGAMONY DABEE.

1878
June 17.

*Infant Hindu Widow — Guardian — Administration of Husband's Estate —
Maintenance — Special Citation — Caveat.*

Upon an application by the father of an infant Hindu widow for the grant of letters of administration to him as her guardian of the estate of her deceased husband and of the estate of the husband's mother, it appeared that the only property of the husband consisted of a sum of money ordered to be paid to him under a certain decree, upon his constituting himself the representative of the mother. This he had not done. It also appeared that there were no unliquidated debts due by the husband. The sum of money in question was in the hands of the Official Trustee.

Held, that letters of administration could not be granted to the father, but that the widow could apply when she came of age, and that until that time the Official Trustee could pay the income to her next friend for her maintenance.

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