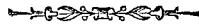


CASES
DECIDED IN THE
APPELLATE CIVIL JURISDICTION
OF THE
HIGH COURT OF BOMBAY.



Referred Case.

1870.
Jan. 18.

SANGA'PPA' bin NINGA'PPA'.....*Plaintiff.*

BASA'PPA' bin PARA'PPA' and another...*Defendants.*

Registration—Bond—Interest in Land—Distinct Promise to pay—Act XX. of 1866, Secs. 17 and 48.

Where a bond or other instrument, creating an interest in land, also contains a distinct promise to pay the money due under it, such bond or instrument is evidence in a suit brought to recover the money only.

CASE referred for the decision of the High Court by J. R. Naylar, Senior Assistant Judge of Kalládgi, under Sec. 28 of Act XXIII. of 1861.

“This is a suit to recover 246 rupees, being the amount of principal and interest due on a bond. The bond is as follows:—

‘We have borrowed from you 200 rupees for a necessary purpose. The time for repaying is the harvest season of this year. For this money we mortgage a field and a pair of bullocks. We mortgage these both for the above sum of money. At the above date we will sell the crops of the field, and the bullocks, and pay the above money. After doing this, whatever money remains still due we will pay interest on at the rate of four pies per rupee per month. Dated the 12th of Bhádrapad of the Shak year 1789.’

“The First Class Subordinate Judge held that the registration of this bond was compulsory, under cl. 2 of Sec. 17 of Act XX. of 1866, and, as it was not registered, he held it inadmissible in evidence.

1870.

SANGAPPA
NINGAPPAv.
BASAPPA
PARAPPA
et al.

“In appeal it is urged that the land is pledged as a mere collateral security, and that the suit has been brought as upon a mere money bond, and that therefore the bond may be admitted in evidence for the purposes of this suit, as was decided by the Calcutta High Court in the case of *Woodoy Chand Jana v. Nitye Mundul (a)*, followed by the case of *Gopal Perhsad v. Mussamut Nuzzerance (b)*.

“The question for the decision of the High Court is whether the land is to be considered as pledged merely as a collateral security, and if so whether on this ground registration was not compulsory.

“I am of opinion that registration was compulsory. I cannot see that the question of compulsory or optional registration, in any way, depends upon the nature of the suit that may be brought upon such bond. There is a later decision of the Calcutta High Court, in which another division of the Court seems to have dissented from the old rulings, and held that an instrument which creates a lien upon property in favour of a person who has lent money creates an interest in land in favour of the lender of the money, and therefore such an instrument is not admissible in evidence unless registered: *Kala Chand Mundul v. Gopal Chunder (c)*. The present bond creates a charge upon land to the extent of 200 rupees and upwards, and registration, therefore, was compulsory; and, not being registered, such a bond cannot, under Sec. 49 of the Registration Act, be admitted in evidence or given effect to.”

The case was this day considered by COUCH, C.J., and MELVILL, J.

PER CURIAM:—The Court is of opinion that in this suit, which is only brought to recover the principal and interest due on the bond, the bond, which contains a promise to pay the money as well as a mortgage, is admissible in evidence without having been registered under Act XX. of 1866: see *Luchmeeput Singh v. Mirza Khyrat Ali (d)*, and *Vellaya Padyachy v. Moorthy Padyachy (e)*.

(a) 9 Calc. W. Rep., Civ. R. 111. (b) 10 Ibid. 252. (c) 12 Ibid. 163.

(d) 12 Calc. W. Rep., F. B. R. 11. (e) 4 Mad. H. C. Rep. 174.