

IN THE HIGH COURT OF LAHORE

Decided On: 14.04.1928

Appellants: **Muhammad Din and Ors.**
Vs.
Respondent: **Nur Ahmad and Ors.**

JUDGMENT

Bhide, J.

1. This was a pre-emption suit with respect to the mortgage of a house which the plaintiffs alleged to be in reality a sale. The Courts below have found the transaction to be a sale and have granted a decree. The defendants have filed a second appeal. A preliminary objection is raised on behalf of the respondents that the finding of the Courts below that the transaction in question was a sale and not a mortgage is one of fact and cannot be challenged in second appeal. The learned Counsel for the appellants, on the other hand, contends that the question is one of law and cites *Tikaya Ram v. Dharam Chand* [1895] 45 P.R. 1895. A different view has been, however, taken in subsequent rulings, see, *inter alia*, *Ahmad Khan v. Alam Khan* [1916] 120 P.L.R. 1916 and *Sunder Das v. Dhanpat Rai* [1907] 16 P.R. 1907. The question involved in the present case is not simply of the proper construction of a document but of inference to be drawn from the deed and from other evidence as to the intention of the parties to the transfer. It is true that the oral evidence has not been relied on but the learned District Judge has taken into consideration the past conduct of the parties relating to the transaction, the market price of the house, etc., in arriving at his conclusion that the transaction was a sale. It was contended further that the learned District Judge should have found that the parties intended at the time when they entered into the transaction that the property should be sold. This point has, however, not been overlooked by the learned District Judge who has referred in this connexion to *Bishen Singh v. Paro* [1905] 19 P.R. 1905. The finding of the learned District Judge though not explicit in this respect is,

in my opinion, tantamount to saying that the parties did intend to enter into a transaction of sale and not of a mortgage. I accordingly hold that the finding is one of fact and cannot be challenged in second appeal.

2. I dismiss the appeal with costs.

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