

1914
 KULADA
 PROSAD
 DEGHORIA
 v.
 KALI DAS
 NAIK.

The result is that the decree of the District Judge is affirmed and this appeal dismissed with costs.

G. S.

Appeal dismissed.

APPELLATE CIVIL.

Before Holmwood and Chapman JJ.

KAILASH CHANDRA NATH

v.

SHEIKH CHHENU.*

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 July 14.

Receipt—Registration—Waiver—Evidence—Registration Act (III of 1877), s. 17(a)—Mortgage-bond—Receipt showing simple interest charged—Evidence Act (I of 1872), s. 92.

A receipt, which purports to show that simple and not compound interest was to be charged (though the mortgage-bond contained provision for the payment of compound interest), is admissible in evidence. Such a receipt operates as a full acquittance for the money paid and requires no registration.

Jivan Ali Beg v. Basa Mal (1) followed.

SECOND APPEAL by Kailash Chandra Nath and another, the plaintiffs.

This appeal arises out of a suit for sale on a registered mortgage-bond. The plaintiffs claimed Rs. 1,346 and 14 annas, inclusive of compound interest, the principal amount advanced being Rs. 300 only. The defence was that the provision for payment of compound interest was fraudulently inserted in the

* Appeal from Appellate Decree, No. 1740 of 1912, against the decree of J. A. Dawson, District Judge of Tippera, dated April 11, 1912, affirming the decree of Shyama Charan Chakravarti, Munsif of Brahman baria, dated May 8, 1911.

mortgage-bond, that upon the fraud coming to the knowledge of the defendants they ceased to pay interest: whereupon, the plaintiff Gagan and the father of the plaintiff Kailash received arrears of interest waiving their right to compound interest and gave defendants a receipt for the same. The plaintiffs, thereby, were not entitled to compound interest which they claimed and it was further urged that a sum of Rs. 430, paid as interest on the loan, was not credited to them.

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Upon this pleading the following issues were raised:—

(i) Was compound interest payable in view of the subsequent agreement to pay only simple interest?

(ii) Was the plea of payment true?

The learned Munsif passed a modified decree allowing simple interest and ordering a set-off of Rs. 430.

The plaintiffs, thereupon, appealed to the District Judge of Tippera, who dismissed the appeal with costs.

The plaintiffs appealed to the High Court.

Mr. Casperz (with him *Babu Dwarka Nath Chakravarti* and *Babu Birendra Chandra Das*), for the appellant. Both courts have relied on an unregistered receipt for their finding that compound interest was not chargeable though the stipulation as to compound interest is clear and explicit in the registered mortgage.

The receipt, varying a registered mortgage-bond, required registration and is, therefore, inadmissible in evidence for the purpose of proving that simple and not compound interest was to be charged.

The receipt says, "I release you from the liability to pay compound interest as written in the said mortgage-bond. This is clearly inadmissible under

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section 91 of the Evidence Act, since a registered document can only be cancelled or varied by a registered document. Here the unregistered document, namely, the receipt is a modification of the mortgage.

Babu Sasadhar Roy, for the respondent. The receipt does not require registration. There is no release of any properties mortgaged from the lien created by the bond in favour of the plaintiff. It is really a settlement of accounts and the mortgagee may give up or waive his right (if he chose to do so) to compound interest. A receipt requires no registration. The mortgagee might receive the entire mortgage amount including interest and give a valid discharge by an unregistered receipt. Proviso 4 of section 92 of the Evidence Act clearly allows evidence of a subsequent oral agreement to modify an existing contract.

A receipt for payment of money due under a mortgage, when the receipt does not purport to extinguish the mortgage, does not require registration: see section 17 cl. (n) of the Registration Act. Even if the stipulation to give up compound interest is invalid, it is not open to the plaintiffs to ask for a decree for compound interest for the period anterior to the date of the receipt. The receipt must mean that the plaintiffs gave up compound interest which, they could undoubtedly do, without a registered document.

Mr. Casperz, in reply. The interest or any part of the interest is also mortgage-money and cannot, therefore, be given up without a registered document.

HOLMWOOD AND CHAPMAN JJ. In this second appeal two questions have been raised, *first*, that the receipt (Ex. A) not being registered could not be admitted in evidence, being a document which purported to affect the terms of the mortgage; and,

secondly, assuming that it could be looked at, the release really means that there is a release of four years for which payment has been made and not a waiver in future.

As regards the first point, we think the matter is concluded by the decision of the Full Bench in *Jiwan Ali Beg v. Basa Mal* (1), which has now been enacted into law by clause (n) of section 17 of the Registration Act. We therefore think that registration was not necessary and that the receipt operates as a full acquittance for the money already paid.

As regards the question of waiver, the words contained in the document are a clear waiver. They say "be it known that I release you from the liability to pay compound interest as written in the said mortgage bond;" and we can find nothing in the law or in any authority which would require such waiver to be registered; although under the terms of section 92 of the Evidence Act it undoubtedly must be in writing. In the present case this question is rather an academical one, as the difference in the decree would be a matter of about 8 annas. We, therefore, do not think it necessary to disturb in any way the decree of the lower Appellate Court, and the appeal must therefore be dismissed with costs.

S. K. B.

Appeal dismissed.

(1) (1886) L. L. R. 9 All. 108.

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