APPELLATE CIVIL.

Before Guha and M. C. Ghose JJ.

RAMCHANDRA SAU

v.

KAILASHCHANDRA PATRA.*

1930

June 23.

Admissibility—Unregistered solenâmâ *for the discharge of mortgage deed, if admissible in evidence—Oral evidence of discharge or satisfaction, if excluded—Admission in the pleading, if cures want of registration—Indian Evidence Act (I of 1872), s. 58.*

A *solenâmâ* for the discharge or satisfaction of a registered mortgage deed, not being a contract for varying the terms of the mortgage security, is admissible in evidence without registration.

There is nothing in law to exclude oral evidence of the discharge or release of a mortgage deed, when the plea is that it was made partly by payment of money or partly by release of the debt.

If an agreement of discharge or satisfaction be admitted in the pleadings and hence no question of proof by oral or documentary evidence arises by virtue of section 58 of the Indian Evidence Act, such compromise cannot be said to be inadmissible for want of registration.

Mohim Chandra Dey v. *Ramdayal Dutta* (1) and *Sakinabai* v. *Shrinibai* (2) followed.

Mallappa v. *Matum Nagu Chetty* (3), *Jagannath* v. *Shankar* (4) and *Durga Prasad Singh* v. *Rajendra Narayan Bagchi* (5) distinguished.

Acts of parties giving effect to a *solenâmâ* cures any defect in registration.

Mahomed Musa v. *Aghore Kumar Ganguli* (6) referred to.

SECOND APPEAL by the plaintiff.

The material facts are set out in the judgment of the Court.

Saratchandra Basu (with him *Santoshkumar Pal* and *Sukumar Hazra*), for the appellant, discussed the terms of the *solenâmâ* and the mortgage deed and the receipt, Exhibit A. The *solenâmâ* should not have been admitted in evidence at

*Appeal from Appellate Decree, No. 2139 of 1928, against the decree of T. Blandford Jameson, District Judge of Midnapur, dated July 5, 1928, affirming the decree of Saradakumar Sen Gupta, Subordinate Judge of Midnapur, dated Dec. 20, 1926.

(1) (1925) 30 C. W. N. 371.
(2) (1919) L. R. 47 I. A. 88.
(3) (1918) I. L. R. 42 Mad. 41.
(4) (1919) I. L. R. 44 Bom. 55.
(5) (1913) I. L. R. 41 Calc. 493; L. R. 40 I. A. 223.
(6) (1914) I. L. R. 42 Calc. 801; L. R. 42 I. A. 1.

all. The term, specially the second part, had the effect of varying the mortgage deed which was a registered document. The *solenâmâ*, therefore, should have been registered. The court also wrongly admitted oral evidence of the compromise. That evidence should not have been admitted as the effect of the same was to subtract from the original agreement. Cited: *Durga Prasad Singh* v. *Rajendra Narayan Bagchi* (1), *Mallappa* v. *Matum Nagu Chetty* (2) and *Jagannath* v. *Shankar* (3) and other cases. The court of appeal below omitted to consider some very important questions and approached the case from a wrong point of view.

Amarendranath Basu (with him *Manmathanath Das Gupta* and *Apurbacharan Mukherji*), for the respondents, dealt with the facts. In this case the *solenâmâ* was not an agreement for varying the mortgage deed at all. Its terms, taken with the payment of money, evidenced by the receipt, show that it discharged the mortgage debt altogether. That was also the finding of the courts below. Further the compromise is admitted in the plaint and the question of admissibility does not arise. The *solenâmâ* was given effect to by the parties. The price of the land was paid as the appellant refused to take it. Cited *Mohim Chandra Dey* v. *Ramdayal Dutta* (4) and *Sakinabai* v. *Shrinibai* (5). The cases cited by the appellant were distinguishable.

GUHA J. This appeal is directed against a decision and decree passed by the learned District Judge of Midnapur, affirming the decision and decree passed by the Subordinate Judge, 3rd Court of that district, in a suit for enforcement of a mortgage security. The plaintiff's case may be shortly stated: the defendants Nos. 1 and 2 and the father of defendant No. 3 had borrowed eight hundred *maunds* of paddy, on the security of properties mentioned in the plaint, that they had agreed to pay sixteen hundred *maunds* of paddy in 14 instalments, in 14 years from

(1) (1913) I. L. R. 41 Calc. 493; L. R. 40 I. A. 223.
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(4) (1925) 30 C. W. N. 371.
(5) (1919) L. R. 47 I. A. 88.

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the year 1322 to 1336 B.S., that, in default of payment of 4 successive instalments, plaintiff instituted a suit for recovery of 1,600 *maunds* of paddy. The defendants in that suit, as instituted by the plaintiff previously, contested the suit, and the suit was decreed for Rs. 1,150 as price of paddy for four instalments. In that suit, claim for 10 instalments was found to be premature; that for non-payment of the amount decreed in that suit, plaintiff executed the decree and put the mortgaged property to sale; that on the date of sale, *i.e.*, on the 14th of March, 1922, a *solenâmâ* was entered into, after payment of decretal amount, to the effect that for the amount due on the 10 subsequent instalments, the defendant would execute a *kabâlâ*, within one week, of 2 *bighâs* and 15 *cottâs* of land, for a consideration of Rs. 400. It was further stated in the plaint that there was an agreement between the parties that, in default of the stipulations contained in the *solenâmâ*, the plaintiff would be at liberty to sue for the 10 subsequent instalments. It was averred also, that within one week the defendants had not executed any *kabâlâ* of the land, and the plaintiff was, therefore, compelled to bring the present suit for recovery of price of paddy, with compound interest for the 10 subsequent instalments. The defendants resisted the plaintiff's suit, and the main contention advanced on behalf of the defendants was this, that Rs. 400 had been paid to the plaintiff as was due in respect of 10 instalments after making deductions, as fixed by the *solenâmâ*, in full satisfaction of the claim, as the plaintiff would not take the *kabâlâ* of the land mentioned in the *solenâmâ*, as the land had been previously mortgaged. The defendants based their case, so far as the payment of Rs. 400 was concerned, on a receipt Exhibit A in the case for Rs. 400 paid to the plaintiff, on the 27th March, 1922, and it was said, in the written statement, that the amount was given as the price of the lands mentioned in the *solenâmâ*, and the receipt is stated to have been written by the appellant himself. On this state of the pleadings, the material issue

raised in the suit was issue No. 3 : "Has the bond been "satisfied in the manner alleged in the written state- "ment?" The court of first instance, having gone into the materials before it with great care and attention, came to the conclusion that, so far as the *solenâmâ* was concerned, it was a contract for the satisfaction of a mortgage, in a particular way, namely, that of a payment of Rs. 400, in respect of the 10 instalments that were due at the time when the *solenâmâ* was executed between the parties, and as finding of fact arrived at by the trial court it came to the conclusion that there was not the least doubt that the receipt was genuine, and the plaintiff had accepted the amount of Rs. 400 in satisfaction of his claim. It was further held by the court of first instance that the endorsement on the back of the *solenâma* was genuine. In this view of the matter, the plaintiff's suit was dismissed by the trial court. The plaintiff appealed, and the learned District Judge has affirmed the findings arrived at by the trial court and the decision given by that court. The learned District Judge has, on a very careful review of the evidence before him given by the parties in the suit, come to the conclusion that he felt that there was no justification for rejecting the receipt, Exhibit A, as forged. He has also come to the conclusion that the *solenâmâ* had been duly entered into, as between the parties, that the appellant had refused to accept the lands mentioned in the *solenâmâ*, and that the defendants, therefore, had to raise the amount of Rs. 400, and pay in cash. The learned District Judge concludes his judgment by saying that it must be held that the receipt should be accepted as genuine, and that the mortgage deed must be held to have been satisfied by the payment of Rs. 400 as evidenced by the receipt, Exhibit A. As mentioned already, the learned District Judge has affirmed the decision and decree passed by the trial court.

As against the decision and decree passed by the learned District Judge in the court of appeal below, the present appeal has been taken and great ability and

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skill have been shown by the learned advocate, appearing for the appellant, for displacing the clear and definite findings of fact arrived at by the court of appeal below. To our mind, the findings arrived at by the court below cannot be displaced, and they are conclusive, so far as the questions of fact involved in the case are concerned.

It has, in the next place, been urged that the *solenâmâ* was not an extinguishment of the contract of mortgage. The mortgage security according to the learned advocate for the appellant was not extinguished or discharged by the *solenâmâ* or the receipt for Rs. 400 granted in pursuance of the *solenâmâ* by the plaintiff to the defendants. So far as these two documents are concerned, which have been placed before us, by the learned advocate for the appellant, we have no manner of doubt in expressing the opinion that the *solenâmâ*, taken along with the receipt, which had been proved on evidence and which had been accepted by the lower courts to be a genuine document, did extinguish the mortgage security and operated as discharge of the amount due under the mortgage on which the present suit is based.

It has, in the next place, been contended and strenuously urged before us that the *solenâmâ* was not admissible in evidence as it was not a registered document. The learned District Judge in the court of appeal below has not dealt with this part of the case. Presumably, the matter of admissibility of this document, which has been admitted in the plaint by the plaintiff, was not debated or discussed before the learned District Judge. However, as the matter has been argued before us, we think it necessary to deal with the question raised in Second Appeal. We are in entire agreement with the learned Subordinate Judge in holding that, so far as the *solenâmâ* was concerned, it is a contract for satisfaction of the mortgage in a particular way. It is not a document which was entered into by the parties for the purpose of varying the terms of the mortgage security; and as a contract for discharge or satisfaction of the

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mortgage deed, no registration was necessary. Furthermore, as has been pointed out by the trial court, the plaintiff himself has relied upon it, and he cannot be heard to say that it was a document which was not admissible in evidence at all. On pure question of law argued by the learned advocate for the appellant, as to the effect of non-registration of this *solenâmâ*, we may only state this that, so far as this Court is concerned, it has been held that there is nothing in law to exclude even oral evidence of the discharge or release of a mortgage deed, when the plea is that it was made partly by payment of money or partly by release of the debt, as in the present case. If authority is needed for a proposition like this that authority is to be found in the judgment of Mr. Justice B. B. Ghose in the case of *Mohim Chandra Dey* v. *Ramdayal Dutta* (1). We may also state that, in our opinion, the case cited by the learned advocate for the appellant on this part of the case, namely, the decision of the Madras High Court in the case of *Mallappa* v. *Matum Nagu Chetty* (2), and the decision of the Bombay High Court, in the case of *Jagannath* v. *Shankar* (3), do not support the appellant's case in any way. The cases have been read to us, and so far as we are able to make out, there are observations contained in the judgments of both the Madras and the Bombay High Courts, which go to support the defendants in the present case. In the Madras case (2), there is the proposition laid down by the learned Judges, that an agreement like the one that we have to deal with in the present case cannot be said to be inadmissible in evidence, if such agreement has been admittted in the pleadings and no question of proof by oral or documentary evidence arises, as proof of the same, say the learned Judges of the Madras High Court, is dispensed with, in consequence of the admission under section 58 of the Indian Evidence Act. It may further be pointed out that, at the very opening, the learned advocate for the appellant placed

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some reliance upon the decision of the Judicial Committee of the Privy Council in the case of *Durga Prasad Singh* v. *Rajendra Narayan Bagchi* (1), where their Lordships of the Judicial Committee ruled that the terms of a registered instrument, which was the foundation of the claim in that particular case, could not be varied by extraneous evidence. That case has no bearing upon the facts of the present case. Here, the contract has not been varied, as we have mentioned already, by the *solenâmâ*. It was the discharge of the debt, so far as the mortgage security is concerned, that was evidenced by the *solenâmâ*. It may also be mentioned that, if there is an arrangement between the parties by an agreement like the one which is before us in the present case, embodied in the compromise, stipulating that the mortgage deed was to be discharged by payment of Rs. 400, it did not require registration for the purpose of using it in evidence. See the case of *Sakinabai* v. *Shrinibai* (2). It may also be mentioned in this connection, that if the compromise was defective in any way for want of registration, the parties had in fact arranged their rights in the terms of the compromise. There was the payment of Rs. 400, according to the terms of the *solenâmâ*; and the acts of parties had been, therefore, such as to supply the defect of registration, if there was any defect, so far as the *solenâmâ* was concerned. See the case of *Mahomed Musa* v. *Aghore Kumar Ganguli* (3).

In this view of the case, regard being had to the definite and conclusive findings of fact arrived at by the courts below, we have no hesitation in holding that this appeal must be dismissed, and we direct accordingly. The respondents who have appeared in this appeal will be entitled to their costs.

M. C. Ghose J. I agree.

Appeal dismissed.

A. C. R. C.

(1) (1913) I. L. R. 41 Calc. 493; L. R. 40 I. A. 223.

(2) (1919) L. R. 47 I. A. 88.

(3) (1914) I. L. R. 42 Calc. 801; L. R. 42 I. A 1.