UPPALAKANDI KUNHI KUTTI ALI HAJI v. KUNNAM MITHAL KOTTAPRATH ABDUL RAHIMAN.

Sankaran Nayar and *Ryru Nambiar* for respondent.

JUDGMENT.—The only question is whether the receipt required registration under clause (*n*) of section 17 of the Registration Act.

It may be doubted whether in view of the decision of this Court in *Venkatarama Naik* v. *Chinnathambu Reddi*(1) and *Venkayyar* v. *Subbayyar*(2) the money received in discharge of a mortgage can be deemed to be a consideration within the meaning of the clause. Since those decisions, however, the law has been amended, a clause is now added (clause *n*) which, as it might be argued, indicates that receipts given by a mortgagee purporting to extinguish the mortgage do require registration. In the present case, assuming that this is the effect of the amendment, we do not think that the language of the receipt indicates any intention to extinguish or limit the mortgagor's interest. The instrument, therefore, did not require registration. We must dismiss the appeal with costs.

The memorandum of objection is also dismissed with costs.

APPELLATE CIVIL.

Before Mr. Justice Shephard and Mr. Justice Subramania Ayyar.

1896. March 7.

KRISHNA PANDA AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

BALARAM PANDA (DEFENDANT), RESPONDENT.*

Suit for partition—Prior arbitration and award, effect of.

Disputes having arisen in a joint Hindu family, the parties submitted the question of partition to arbitrators, who passed an award thereon. Both parties objected to the award, and it was never carried into effect. On a suit for partition being filed:

Held, that such an award is equivalent to a final judgment and binding on the parties in the absence of positive evidence that both parties agreed that the former state of things should be restored and that therefore the present suit for partition could not be maintained.

APPEAL against the decree of J. P. Fiddian, District Judge of Ganjám, in original suit No. 2 of 1894.

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(1) 7 M.H.R., 1. (2) I.L.R., 3 Mad., 53. * Appeal No. 123 of 1895.

Suit for partition.—The facts were as follows :—

The grandfathers and fathers of the parties were members of a joint Hindu family until the year 1875, when disputes arose and a separation was effected. In the year 1882, plaintiffs' father and the defendant appointed three persons as arbitrators to divide the property, and the arbitrators passed an award to which neither party agreed, and it was never enforced. The property consisted of movables and immovables, portions of which were in the possession of both parties. The plaint raised various other questions not now material. The cause of action was alleged to have arisen in 1892, when the plaintiffs demanded partition. The defendant pleaded, *inter alia*, that the suit is barred by the submission to arbitration in 1882 and the award passed thereunder. The District Judge finding that the dispute was submitted to arbitration in 1882 and that an award was passed thereon, but that the plaintiffs objected to the award, and that no action has been taken under it, held with reference to Specific Relief Act, sections 21 and 30, and on the authority of *Palaniappa Chetti* v. *Rayappa Chetti*(1), *Rani Bhagoti* v. *Rani Chandan*(2) and *Muhammad Newaz Khan* v. *Alam Khan*(3) that the present suit for partition was barred by the submission to arbitration and dismissed it with costs.

Pattabhirama Ayyar for appellant cited *Tahal* v. *Bisheshar*(4).

Mr. *Parthasaradhi Ayyangar* for respondent.

JUDGMENT.—The effect of an award has been entirely misunderstood. An award duly passed in accordance with a submission of the parties is equivalent to a final judgment. To give effect to it, the subsequent consent or approval of neither party is required. After an award made for a partition of joint property neither party can sue for partition any more than he could if a decree in a suit for partition had been passed. In order that the parties should be remitted to their previous rights, it is not enough that the award was not enforced or that even both parties objected to it. There must be positive evidence that both parties agreed that the former state of things should be restored. There is no such evidence in this case. The appeal must, therefore, be dismissed with costs.

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(1) 4 M.H.C.R., 119.
(2) I.L.R., 11 Calc., 385.
(3) I.L.R., 18 Calc., 414.
(4) I.L.R., 8 All., 57.