

APPELLATE CIVIL.

Before Mr. Justice Davies and Mr. Justice Boddam.

MUTHAYYA (PLAINTIFF), APPELLANT,

1901.
March 5.

v.

VENKATARATNAM AND ANOTHER (DEFENDANTS), RESPONDENTS.*

Registration Act—Act III of 1877, s. 17—Withdrawal petition setting out terms of compromise filed in Court but not registered—Subsequent suit for land referred to in the compromise—Necessity for registration.

In 1893, plaintiff sued defendants for possession of certain immoveable property. The parties then entered into a compromise by the terms of which defendants were to give plaintiff a portion of the property sued for. They then filed a petition in Court setting out the agreement at which they had arrived and asking that the suit might be withdrawn. The Court thereupon ordered the suit to be struck off the file, and made an order as to costs. The agreement was never registered. Plaintiff, relying on the agreement, now sued to have it established and to recover possession of the property to which he was entitled under it:

Held, that the agreement should have been registered and that the suit brought on it must fail.

Suit for a declaration of validity of an agreement which had been entered into by plaintiff and defendant in a former suit, for the recovery of immoveable property referred to in that agreement. Plaintiff had, in 1893, brought a suit against first defendant and others for the possession of certain property. In 1895, plaintiff and first defendant filed a petition under section 373 of the Code of Civil Procedure, setting out an agreement to which they had come and requesting that the suit might be "taken off the file without being heard." The Munsif passed the following order:—"Suit struck off the file." He also ordered plaintiff and first defendant to pay the costs of second defendant in that suit. The agreement was not registered. It provided, *inter alia*, that first defendant should give plaintiff only a portion of the property sued for; that plaintiff should relinquish the rest of his claim; that each party should bear his own costs, but that if the Court should give

* Second Appeal No. 39 1900 against the decree of J. H. Munro, Acting District Judge of Gódvári, in Appeal No. 253 of 1899, reversing the decree of O. Sivaramakrishnamma, District Munsif of Narsapur, in Original Suit No. 351 of 1898.

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costs to the defendants, plaintiff and first defendant should bear the costs of second defendant in equal shares, and first defendant should bear the costs of the other defendants. Plaintiff now sued to establish the agreement and to recover the property. The District Munsif decreed in his favour, whereupon defendants appealed to the District Judge, who said :—" It is contended that the suit agreement not being registered, is invalid and that plaintiff cannot therefore acquire any interest in the property referred to therein. The suit is based entirely on the agreement, and if it is invalid, the suit must fail. The agreement purports to create rights in immoveable property to the value of over Rs. 100 admittedly and ought to be registered unless for some special reason registration is unnecessary. The respondent's pleader relies upon the observation in *Bindesri Naik v. Ganga Saran Sahu*(1), that the provisions of the Registration Act do not apply to proper judicial proceedings, whether consisting of pleadings filed by the parties or of orders made by the Court. These remarks do not apply to this agreement. It is a withdrawal application upon which the Court ordered the suit to be struck off. The Court was not asked to give effect, nor did it pass any order giving effect to the terms on which, in the application, the parties said they had arranged their dispute. It was open to the parties instead of withdrawing the suit to ask for a decree in the terms of the compromise. They did not choose to do this, and if they intended the agreement to create rights in immoveable property, they should have had it registered. The fact found by the lower Court that the parties have acted upon it and transferred the property thereunder, even if true, does not affect the question." He allowed the appeal and dismissed the suit.

Plaintiff preferred this second appeal.

V. Krishnasami Ayyar, for appellant, contended that registration was not necessary as the petition which had been presented to the Court formed part of the pleadings in the case, for which, according to *Bindesri Naik v. Ganga Saran Sahu*(1) registration was not necessary under section 17 of the Registration Act. It was not necessary that it should be incorporated in the judicial proceedings in the sense that the Court should include it in its order on the petition. Judicial proceedings include pleadings ~~filed by parties~~ as well as orders passed by the Court.

Sundara Ayyar and *K. Subrahmanya Sastri*, for respondents, distinguished *Bindesri Naik v. Ganga Saran Sahu*(1) and referred to *Pranal Anni v. Lakshmi Anni*(2) where the Privy Council defined a judicial proceeding and held that unless the order of the Court was pronounced in terms of the agreement, it did not constitute a judicial proceeding and required registration if title was sought to be derived under it. They contended that the Court had not acted on the terms of the petition in the present case, and that there was no prayer for withdrawal in it.

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JUDGMENT.—We think the decree of the District Judge is right. The document on which the plaintiff relies was really a petition for withdrawal and was stamped only as such.

If it is to be relied upon as proof of his case by the plaintiff, it requires to be registered under section 17 of the Registration Act. The second appeal is dismissed with costs.

APPELLATE CIVIL.

Before Sir Arnold White, Chief Justice, and Mr. Justice Bhashyam Ayyangar.

SABHAPATHI CHETTI AND OTHERS (CLAIMANTS Nos. 1 TO 6),
APPELLANTS,

v.

NARAYANASAMI CHETTI (PLAINTIFF), RESPONDENT.*

1901.
April 19.
September
9, 10.

Civil Procedure Code—Act XIV of 1882, ss. 278, 279, 288—Claim petition—“Some interest” in property attached—Order dismissing claim by mortgagees—Letters Patent, art. 15—“Judgment”—Appeal.

An order passed by a Judge sitting on the Original Side of the High Court dismissing a claim preferred under sections 278 and 282 of the Code of Civil Procedure by the mortgagees of immoveable property which has been attached in execution of a decree, is subject to appeal.

Article 15 of the Letters Patent is not restricted by sections 588 and 591 of the Code of Civil Procedure.

Four persons lent money on mortgage, the deed, with the consent of all, being prepared in favour of one of them alone. It however specified the amount

(1) 20 All., 171.

(2) I.L.R., 22 Mad., 508.

* Original Side Appeal No. 33 of 1900 against the decree of Mr. Justice Shephard, on Claim Petition in Civil Suit No. 58 of 1900.