

1877

LACHMIAN RAY
v.
AKBAR KHAN.

It should also have been specifically determined on what castes or classes of tenants custom imposes a cess claimed if the existence of the custom is proved. Again, a custom to be good must be definite, the size of the pot of sugar and the basket of cow-dung is left uncertain, as are also the times of rendering these alleged dues.

That the claims may be more thoroughly tried, we set aside the decrees of both Courts, and direct the Court of first instance after framing specific issues to re-try the suit. The costs incurred hitherto will abide and follow the result.

Decree reversed and cause remanded.

1877
June 7.

APPELLATE CIVIL.

(Before Mr. Justice Pearson and Mr. Justice Turner.)

DALIP SINGH (PLAINTIFF) v. DURGA PRASAD (DEFENDANT).*

Act I of 1872 (Evidence Act), s. 91, (e)—Act VIII of 1871 (Registration Act), ss. 17, 49—Receipt for sums paid in part of Mortgage-debt—Inadmissibility of Unregistered Receipt—Parol evidence admissible.

A receipt for sums paid in part liquidation of a bond hypothecating immoveable property must be registered under the provisions of s. 17 of Act VIII of 1871 to render it admissible as evidence under s. 49 of the said Act. Under illustration (e), s. 91 of Act I of 1872, such payments may nevertheless be proved by parol evidence, which is not excluded owing to the inadmissibility of the documentary evidence.

THE plaintiff sued the defendant to recover a sum of money alleged to be due on a bond hypothecating immoveable property by sale of the said property. The defendant produced a receipt for a portion of the amount alleged to have been signed by the plaintiff, and claimed credit to that extent. The plaintiff denied the genuineness of the receipt, and pleaded that under ss. 17 and 49 of Act VIII of 1871 the receipt being unregistered was inadmissible as evidence.

* Special Appeal, No. 231 of 1877, from a decree of Maulvi Wajih-ul-la Khan, Subordinate Judge of Moradabad, dated the 18th May, 1877, modifying a decree of Rai Kanhya Lal, Munsif of the Environs of Moradabad, dated the 14th December, 1875.

The Munsif found that the receipt was genuine, and held that registration of it was not compulsory; the Munsif therefore allowed the set-off claimed by the defendant and decreed the plaintiff's suit for the balance.

On appeal by the plaintiff against the portion of the claim disallowed by the Munsif, the Subordinate Judge ruled that, under s. 17 of Act VIII of 1871, registration of the receipt was compulsory, and, under s. 49 of the said Act, that the receipt being unregistered was inadmissible as evidence. The Subordinate Judge further ruled that the parol evidence of payment of the money to plaintiff adduced by defendant was also inadmissible under the circumstances, and the Subordinate Judge, reversing the Munsif's decision, decreed the suit in full.

In special appeal before the High Court the defendant contended that registration of the receipt was not necessary under the Registration Act, and that even if the receipt were inadmissible as evidence of payment without being registered, the fact of payment could nevertheless be proved by parol evidence.

Munshis *Hanuman Prasad* and *Sukh Ram*, for appellant.

Mr. *Conlan* and Pandit *Bishambhar Nath*, for respondent.

The order of the Court remanding the case for decision on the parol evidence was delivered by

PEARSON, J.—We are compelled to concur in the ruling of the lower appellate Court that the receipt for Rs. 477 should have been registered, and, not having been registered, is inadmissible as evidence of the payment. But the lower appellate Court's further ruling that the oral evidence of the payment adduced by the defendant is inadmissible and opposed to illustration (e), s. 91 of the Indian Evidence Act. We, therefore, direct the lower appellate Court, under s. 351 of Act VIII of 1859, to find upon the oral evidence whether the alleged payment is proved to have been made, and to submit its finding when the parties may take objections within a week.

The Subordinate Judge having returned a finding against the defendant on the parol evidence, the Court passed the following final judgment.

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JUDGMENT:—No objection being taken to the finding of the lower appellate Court on the point referred to it, we accept that finding and dismiss the appeal with costs.

Appeal dismissed.

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June 14.

FULL BENCH.

(Before Sir Robert Stuart, Kt., Chief Justice, Mr. Justice Pearson, Mr. Justice Turner, and Mr. Justice Spankie.)

NANKU AND ANOTHER (DEFENDANTS) v. THE BOARD OF REVENUE FOR THE N.-W. P., IN THE CAPACITY OF THE COURT OF WARDS, FOR THE MINOR RAJA OF KANTIT (PLAINTIFF).*

Suits cognizable by Courts of Small Causes—Act XXIII of 1861, s. 27—Zamindari dues and cesses not coming within the classes of such suits—Joinder of causes of action between same parties.

The plaintiff claimed from the defendants, as joint decree-holders, a fourth share of the proceeds realised by auction-sale through the Court of the Munsif of certain houses, situate on land subject to a village-custom whereby a proprietary due of the above amount was recognised and payable to the zamindar of the said land. The Division Bench of the High Court having referred to the Full Bench the question whether claims for such zamindari dues or cesses were in the nature of suits cognizable by a Court of Small Causes, held by the Full Bench that the claim as brought does not fall within any of the classes of suits cognizable by the Courts of Small Causes: *aliter* if the due is payable in virtue of a contract

Held by the Division Bench that the claim is not bad for misjoinder, as the due was payable out of the sale-proceeds taken out of Court by the decree-holders.

THE Board of Revenue, North-Western Provinces, representing the Court of Wards as Manager of the estate of the Raja of Kantit (a minor), sued in 1875 to recover from the defendants a sum of Rs. 115-8-0, a fourth share of the sale-proceeds of certain houses belonging to one Jokhu Misr situate on the estate of the said Raja of Kantit, which the defendants, as decree-holders against the said Jokhu Misr, had attached and sold by auction in 1873, through the Court of the Munsif of Mirzapur, and of which the defendants had realised the sale-proceeds. The suit was based on an alleged village custom obtaining in the Kantit estate by which the Raja

* Special Appeal, No. 1452 of 1876, from a decree of J. W. Sherer, Esq., C.S.I., Judge of Mirzapur, dated the 16th September, 1876, affirming a decree of Munshi Madho Lal, Munsif of Mirzapur, dated the 15th May, 1876.