

1876

IN THE MAT-  
TER OF THE  
PETITION OF  
BISH NATH.

entering on these questions, I think we go beyond the powers given by the Act, which confines the inquiry to the question of the right to have the document registered, dependent on due execution and fulfilment of the requirements of the law. Documents of this character are not uncommon, and our refusal to allow the appeal, and order registration of such documents, may have prejudicial effects. I would admit the appeal, and order the Registrar to register the document.

*Petition refused.*

## APPELLATE CIVIL.

1876

December 16.

(*Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.*)

ILAHI BAKSH AND OTHERS (DEFENDANTS), *v.* IMAM BAKSH AND OTHERS  
(PLAINTIFFS).\*

*Act VIII of 1859, ss. 7, 97—Omission of part of Claim—Withdrawal of Suit—Institution of Fresh Suit, including part of Claim omitted.*

Where the plaintiffs in a suit were permitted to withdraw from the same, with a view to bringing a fresh suit which should include a portion which had been omitted of the claim arising out of the cause of action, and such fresh suit was brought, the additional portion of the claim in that suit was not barred by s. 7 of Act VIII of 1859.

The plaintiffs in the present suit brought a suit on the 1st September, 1875, to be maintained in possession as theretofore of a plot of land, alleging as their cause of action that the defendants had on the 2nd June, 1875, prohibited them from watering the trees thereon. On the 8th November the plaintiffs applied for permission to withdraw from the suit, with liberty to bring a fresh suit. This application did not contain the grounds upon which the plaintiffs applied for such permission. The Court of first instance granted such permission without recording any reason for granting the same, on payment of certain costs. On the 18th December the plaintiffs brought the present suit in which they claimed on the same cause of action to be maintained in possession of three plots of land. The Court of first instance gave them a decree, which was affirmed on appeal by the defendants.

\*Special Appeal, No. 1012 of 1876, against a decree of Shankar Dás, Subordinate Judge of Saharanpur, dated the 7th July, 1876, affirming a decree of Ahmad Hasan, Munsif of Deoband, dated the 9th May, 1876.

On special appeal by the defendants to the High Court it was contended that the claim to the additional plots of land was barred by s. 7, Act VIII of 1859.

Lala *Lalta Parshad* and Babu *Baroda Parshad*, for the appellants.

Pandit *Ajudhia Nath* and Pandit *Nand Lal*, for the respondents.

The judgment of the High Court, so far as it related to this contention, was as follows :

As to the first plea, it would seem that the reason for which the former suit was withdrawn was that a fresh suit might be brought which should include a portion which had been omitted before of the claim arising out of the cause of action, and the permission to bring the new suit must be reckoned to be permission to supply the former omission. This being so, we are of opinion that the additional portion of the claim in this suit is not barred by s. 7, Act VIII of 1859. A similar view was taken in special appeal case No. 180 of 1876, decided by a Bench of this Court on the 28th April last (1).

---

## PRIVY COUNCIL.

---

PRESENT :

*Sir James W. Colvile, Sir Barnes Peacock, and Sir Robert P. Collier.*

**NARAIN SINGH AND OTHERS (PLAINTIFFS) v. SHIMBHOO SINGH AND OTHERS (DEFENDANTS).**

On appeal from the High Court of Judicature, North-Western Provinces.

*First and Second Mortgages—Dispossession of Second Mortgagee—Cause of Action—Limitation—Interest.*

*Z*, being indebted to *A*, executed in his favour a written mortgage of certain lands, in which it was agreed that if the debt was not repaid within a fixed time *A* should be put into possession of the lands. Subsequently *Z* executed in favour of

(1) In that case the application for permission to withdraw the former suit was based on the ground that a portion of the claim arising out of the cause of action had by mistake been omitted to be included in the plaint with which that suit had been commenced, and on that ground permission for the withdrawal of the suit, and to bring a fresh suit, was accorded. Under these cir-

cumstances the Court (Pearson and Spankie, J.J.) was of opinion that it would not be fair or reasonable to hold that the aforesaid portion of the claim could not be entertained in the fresh suit, although it might be true that the defect in the former plaint might have been amended without recourse to the provisions of s. 97 of Act VIII of 1859.

1876

---

ILARI BAKSH  
AND OTHERS  
v.  
IMAM BAKSH  
AND OTHERS.

---

1876  
Nov. 3 & 4.

---