

1880

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have been wholly illegal. It seems that he thought himself precluded from setting it aside *suo motu*, and no application had been made to him to set it aside. Shortly after he had confirmed the sale an application was made to him by the decree-holder to review his order confirming it, whereupon he set aside the sale as illegal, and so virtually reversed his former order. In reviewing his order and setting aside the sale as illegal, we cannot say that he acted *ultra vires* or that his action was otherwise illegal. This application is therefore disallowed and dismissed with costs.

Application dismissed.

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February 5.

APPELLATE CIVIL.

Before Mr. Justice Spankie and Mr. Justice Straight.

BANNO (DEFENDANT) v. PIR MUHAMMAD (PLAINTIFF).*

Bond—Mortgage—Registration—Act XX of 1866 (Registration Act), s. 17.

The immoveable property charged by a bond payable by instalments, dated the 17th December, 1866, was charged for both principal and interest and the first instalment was payable within three years from the date of the bond with the accumulated interest, and the amount then becoming due exceeded Rs. 100. *Held*, in a suit on the bond, that it was an instrument creating an interest in immoveable property of the value of Rs. 100 and upwards and under s. 17 of Act XX of 1866 required registration. *Rajputi Kuar v. Ramsukhi Kuar* (1) followed.

THIS was a suit for Rs. 199-13-9, being Rs. 50, the principal amount, and Rs. 149-13-9, the interest, due under a bond dated the 17th December, 1866. The plaintiff, to whom this bond had been assigned by the obligee, one Ali Bakhsh, claimed to recover the money in suit by the sale of the immoveable property hypothecated in the bond. Under the terms of the bond the defendant promised to pay the obligee Rs. 50 in manner following, that is to say, "Rs. 20 with interest at two rupees per cent. per mensem within three years, and Rs. 30 with interest at Rs. 3-2-0 per cent. per mensem within four years;" and he hypothecated certain

* Second Appeal, No. 964 of 1879, from a decree of Maulvi Sami-ul-lah Khan, Subordinate Judge of Moradabad, dated the 7th May, 1879, modifying a decree of Maulvi Ain-ud-din, City Munsif, dated the 6th February, 1879.

immoveable property as security for the payment of the "entire money secured by this bond, principal and interest." The defendant contended in defence to the suit that by s. 17 of Act XX of 1866 the bond required to be registered, and being unregistered it could not affect the property hypothecated therein. The Court of first instance allowed this contention and dismissed the suit. On appeal by the plaintiff the lower appellate Court held that under s. 17 of Act XX of 1866 registration of the bond was not necessary, and gave the plaintiff a decree for Rs. 191-13-9, directing that this amount should be recovered from the property hypothecated in the bond.

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The defendant appealed to the High Court.

Shaikh *Maula Bakhsh* and *Shah Asad Ali*, for the appellant.

Munshi *Hanuman Prasad* and *Mir Zahur Husain*, for the respondent.

The judgment of the Court (SPANKIE, J., and STRAIGHT, J.) was delivered by

STRAIGHT, J.—It seems to us that this appeal should prevail. By the bond of 17th December, 1866, the property was charged for both principal and interest. The first instalment was payable in three years from the date of the bond with the accumulated interest, and the amount then becoming due would exceed Rs. 100. It was therefore an instrument creating an interest in immoveable property of the value of Rs. 100 and upwards, and under s. 17 of Act XX of 1866 required registration. The present case is analogous to one decided by Pearson, J. and Oldfield, J., in *Rajpati Singh v. Ramsukhi Kuar* (1), and the view we now hold is in accordance with the current of decisions in this Court (2), to which our attention was called in the course of the hearing. The appeal is decreed with costs, the judgment of the lower appellate Court reversed and the decree of the Munsif restored.

Appeal allowed.

(1) I. L. R., 2 All. 40.
(2) See *Ahmad Bakhsh v. Gobindi*,
I. L. R., 2 All. 216; *Karan Singh v.*

Ram Lal, I. L. R., 2 All. 96; and *Darshan Singh v. Hanwantu*, I. L. R., 1 All. 274.