

The auction-purchaser appealed to the High Court from the order of the lower appellate Court, contending that the registration of the bond was compulsory, inasmuch as when it was executed it was probable that it would create an interest in the property comprised in it of the value of Rs. 100.

Pandit *Ajudhia Nath* and Babu *Oprokash Chandar*, for the appellant.

The respondent did not appear.

The judgment of the Court was delivered by

TURNER, J.—We see no reason to depart from the view of the law we have long held in this Court. The bond was for a sum of Rs. 83-8-0 payable on demand with interest. It did not certainly secure Rs. 100, and therefore its registration was optional. The appeal is dismissed.

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*Before Mr. Justice Turner and Mr. Justice Spankie.*

INAYAT KHAN (PLAINTIFF) v. RAHMAT BIBI (DEFENDANT).\*

*Suit for rent of the nature cognizable in a Small Cause Court—Determination of Title—Res judicata.*

The incidental determination of an issue of title in a suit for rent of the nature cognizable in a Court of Small Causes does not finally estop the parties to such suit from raising the same issue in a suit brought to try the title (1).

THE facts of this case were as follows: In 1872 one Digambari sued Rahmat Bibi in the Court of the Munsif of Mirzapur for Rs. 7-5-0, being the “*parjote*” or ground-rent of a house situated in Wellesley Ganj, in the city of Mirzapur, belonging to and occupied by Rahmat Bibi. Rahmat Bibi, who had acquired the house by purchase, set up as a defence to this suit, amongst other things, that the plaintiff was not entitled to the rent claimed, the land being rent-free, and “*abadi*” land in the city of Mirzapur not being liable to the payment of ground-rent. The Munsif gave

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\* Application, No. 8 of 1878, for a review of the judgment in Second Appeal, No. 895 of 1877, decided the 6th December, 1877.

(1) See also *Raghu Ram Biswas v. Lall Pattuck v. Ram Kalee*, 18 W. R.; *Ram Chandra Dobej*, B. L. R., Sup. Vol. 104. 34; S. C., W. R. Sp. 127; and *Sunkur*

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the plaintiff a decree, finding that ground-rent had been paid to the plaintiff for the land. The District Judge, on the 24th December, 1872, on appeal by the defendant, dismissed the suit, his reasons for so doing as stated in his judgment being as follows: "The respondent (Digambari) does not allege that it is the custom to claim "*parjote*" rent, nor does she show any paper or document by which she could claim such a rent: she is not a zemindar, and there is nothing on record to show that she or her ancestors ever possessed the right to claim such a rent." The plaintiff appealed to the High Court against the decree of the District Judge, but her appeal was rejected by the High Court on the ground that the suit was of the nature cognizable in a Court of Small Causes, and therefore no special appeal would lie. In August 1876 the present suit was instituted in the Court of the Munsif of Mirzapur by the representative of Digambari against Rahmat Bibi, in which he claimed to establish his right to receive ground-rent in respect of the same house at a certain rate, and also claimed arrears of such rent at that rate. Both the Munsif, and the District Judge, on appeal to him by the defendant, gave the plaintiff a decree, both officers holding that the question whether the plaintiff was entitled to ground-rent in respect of the house was not *res judicata*, with reference to the decision of the District Judge dated the 24th December, 1872.

On appeal by the defendant to the High Court it was contended by her that that question was *res judicata*, with reference to that decision. The High Court (TURNER, J., and SPANKIE, J.), on the 6th December, 1877, allowed the defendant's contention, and dismissed the plaintiff's suit.

The plaintiff applied for a review of the judgment of the High Court on the ground that a question of right could not be determined finally in a suit of the nature cognizable in a Court of Small Causes.

Munshi *Kashi Prasad* and Lala *Lalta Prasad*, for the petitioner, respondent.

Munshis *Hanuman Prasad* and *Sukh Ram*, for the opposite party, appellants.

The High Court (TURNER, J. and SPANKIE, J.) delivered the following judgment in review of its former judgment:

TURNER, J.—The respondent's pleader, in support of his application for a review of judgment, has adduced a precedent of this Bench (1), which, it must be admitted, is in his favour. On reconsideration of the point raised, we are of opinion that the application for review should be granted. The former suit between the parties was a suit for rent cognizable by a Court of Small Causes, and the special appeal presented against the decree of the lower appellate Court in that suit was rejected on the ground that the suit was of that character. In a suit for rent instituted in a Small Cause Court the question of title would only be determined incidentally. It appears to us that it would be inequitable to rule that no special appeal lies in a suit of such a nature when instituted in a Civil Court, and nevertheless to hold that the decision of the issue of title in the trial of such a suit should finally estop the parties from raising the same issue in a suit brought to try the title. For these reasons, and following the precedent quoted, we allow the review of judgment, and inasmuch as no other point arises in the special appeal than the point already argued at the hearing of the application, we proceed to dispose of the appeal.

The only objection taken to the decrees of the Courts below proceeding on the contention that the issue respecting title was finally determined in the former proceedings, and that the parties are concluded by the former finding on that issue, we overrule the objection and dismiss the appeal with costs, including the costs of the application for review.

*Appeal dismissed.*

*Before Mr. Justice Pearson and Mr. Justice Turner.*

ZAHUR (DEFENDANT) v. NUR ALI (PLAINTIFF).\*

*Muhammādan Law—Pre-emption.*

Where a dwelling-house was sold as a house to be inhabited as it stood with the same right of occupation as the vendor had enjoyed, but without the ownership of the site, held that a right of pre-emption under Muhammādan law attached to such house.

THE facts of this case, so far as they are material for the purposes of this report, were as follows: The plaintiff claimed to en-

(1) Unreported

\* Second Appeal, No. 875 of 1878, from a decree of Maulvi Sultan Hasan, Subordinate Judge of Gorakhpur, dated the 14th May, 1878, reversing a decree of Maulvi Asmat Ali Khan, Munsif of the City of Gorakhpur, dated the 23rd February, 1878.

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