

1878

AFI-UD-DIN
v.
LOCHAN
SINGH.

the appeal, and reversing the decree of the lower Court restore that of the Court of first instance with costs.

The respondents are of course at liberty in a suit properly instituted to try the question of title and to apply for the ejection of the appellants.

1878
December 19.

Before Mr. Justice Turner and Mr. Justice Oldfield.

KARAN SINGH (DEFENDANT) v. RAM LAL (PLAINTIFF).^o

Act VIII of 1871 (Registration Act), ss. 17, cl. (2), 49—Registration—Mortgage.

A bond for the payment of Rs. 83-8-0 on demand together with interest thereon at the rate of two per cent. per mensem, which charges immoveable property with such payment, does not, though the amount due on it may in time exceed Rs. 100, purport to create an interest of the value of Rs. 100 within the meaning of the Registration Act, and its registration is therefore optional (1).

THIS was a suit for Rs. 116-6-0, being the principal money and interest payable thereon due on a bond dated the 3rd August, 1876. This bond, which was not registered, secured the payment on demand of Rs. 83-8-0 together with interest on that sum at the rate of Rs. 2 per cent. per mensem, and charged certain immoveable property with such payment. The plaintiff asked for a decree for the sale of the property, making the auction-purchaser of it a defendant in the suit. The plaint in the suit stated that payment of the sum due on the bond was demanded on the 31st December, 1877. The Court of first instance held that, inasmuch as on that date the sum due on the bond exceeded Rs. 100, the bond operated to create an interest in immoveable property of the value of upwards of Rs. 100, and its registration was therefore compulsory, and being unregistered it could not affect the property comprised in it. It consequently refused to give the plaintiff a decree for the sale of the property. On appeal by the plaintiff the lower appellate Court held that the registration of the bond was not compulsory and remanded the suit for a re-trial.

^o Second Appeal, No. 69 of 1878, from an order of Maulvi Farid-ud-din Ahmad, Subordinate Judge of Aligarh, dated the 15th June, 1878, reversing decree of Munsifi Mohan Lal, Munsifi of Aligarh, dated the 20th April, 1878.

(1) See also *Narasayya Chetti v. Guruvappa Chetti*, I. L. R., 1 Mad. 378.

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.

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

* 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 Dobeey*, B. L. R., Sup. Vol. 104. 34; S. C., W. R. Sp. 127; and *Sunkur*

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KARAN SINGH
v.
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1879
January 24.