

1878  
August 16.

APPELLATE CIVIL.

*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

RAJPATI SINGH (PLAINTIFF) v. RAM SUKHI KUAR (DEFENDANT). \*

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

The value of the interest created by a mortgage of immoveable property is estimated, for the purposes of the Registration Act of 1871, not by the amount of the principal money thereby secured, but by the amount of such money and the interest payable thereon.

Consequently, a bond dated the 9th August, 1873, which charged certain immoveable property with the payment on the 31st May, 1874, of Rs. 98, and interest thereon at the rate of one per cent. per mensem, should have been registered. *Darshan Singh v. Hanwanta* (1) followed. *Nanabin Lakshman v. Anant Babaji* (2) differed from (3).

THIS was a suit to recover Rs. 98, the principal money due on a bond dated the 9th August, 1873, which charged certain immoveable property with the payment on the 31st May, 1874, of such money together with interest thereon at the rate of one per cent. per mensem, the suit being instituted on the 26th May, 1877. The defendant set up as a defence to the suit that 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. The Court of first instance held that, as the plaintiff only claimed to enforce his lien on the property in respect of a sum under Rs. 100, the fact of the bond not being registered did not bar his claim under it. On appeal by the defendant the lower appellate Court held that the bond could not affect the immoveable property comprised in it, inasmuch as it created an interest in the property of the value of upwards of Rs. 100, and was nevertheless unregistered.

The plaintiff appealed to the High Court contending that the claim was maintainable, notwithstanding that the bond was not registered, inasmuch as he sought to enforce a lien on the property comprised in the bond to the extent of Rs. 98 only.

\* Second Appeal, No. 509 of 1878, from a decree of Hakim Rahat Ali, Subordinate Judge of Gházipur, dated the 7th March, 1878, reversing a decree of Mirza Kamr-ud-din Husain, Munsif of Ballia, dated the 1st August, 1877.

(1) I. L. R. 1 All. 274.  
(2) I. L. R. 2 Bom. 353.

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

Munshi *Sukh Ram* and *Lala Lalta Prasad*, for the appellant.

*Babu Barodha Prasad*, for the respondent.

The judgment of the Court was delivered by

PEARSON J.—The bond in suit, in reference to the ruling of this Court in *Darshan Singh v. Hanwanta* (1) and other similar rulings in similar cases, undoubtedly required to be registered, and under s. 49 of Act VIII of 1871, cannot affect the property therein comprised being immoveable property. We disallow the pleas in appeal, and dismiss the appeal with costs.

*Appeal dismissed.*

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

GAURI DAT AND OTHERS (DEFENDANTS) *v.* GUR SAHAI (PLAINTIFF) AND RUKMIN KUAR AND ANOTHER (DEFENDANTS).\*

*Hindu Law—Alienation—Reversioner—Fraud.*

*S* was entitled, under the Mitakshara law, to succeed, on the death of *M*, her mother, to the real estate of *N*, her father. Certain persons disputed *S*'s right of succession and claimed that they were entitled to succeed to *N*'s estate on *M*'s death, and complained that *M* was wasting the estate. The differences between such persons and *M* and *N* were referred by them to arbitration, and an award was made and filed in Court which, among other things, partitioned the estate between *S* and such persons. *G*, who claimed the right to succeed to the estate on *S*'s death, sued for the cancellation of the award on the ground that it was fraudulent and affected his reversionary interests. *Held*, relying on *Dowar v. Boonda* (1), that the suit was maintainable notwithstanding that *G* was not the next reversioner.

THIS was a suit for the cancellation of an award made on a reference to arbitration. The facts of the case were as follows: One Tek Chand, deceased, had by his first wife three sons, Dario Singh, Nand Lal, and Sidh Gopal, and by his second wife one son, Sheo Prasad. On the death of Tek Chand the four brothers separated, and a partition of the family estate took place. Dario Singh died leaving two sons, who died leaving each a son, the son

\* First Appeal, No. 124 of 1877, from a decree of Babu Ram Kali Chaudhri, Subordinate Judge of Cawnpore, dated the 3rd September, 1877

(1) I. L. R. 1 All. 274.