

immediate payment of revenue due, and advantage was taken of this circumstance to induce him to execute the bond, charging compound interest at the high rate of Rs. 24 per cent per annum, notwithstanding that ample security was given by mortgage of landed property for the small sum advanced. Moreover, under the terms of the bond, the plaintiff had power to enforce the bond at any time by bringing to sale the mortgaged property. Instead of doing so, he has wilfully allowed the debt to remain unsatisfied, in order that compound interest at this high rate should accumulate.

The bargain seems to us a hard and unconscionable bargain, which, under all the circumstances, it would be unreasonable and inequitable for a court of justice to give full effect to.

That a power lies in the Court to refuse to give effect to such transactions is undoubted and rests on authority, and we may refer to the case of *Kamini Sundari Chaodhrani v. Kali Prosumno Ghose* (1) decided by the Privy Council, and the case therein cited of *Beynon v. Cook* (2). A similar principle was laid down in the decision of a Bench of this Court in *Lalli v. Ram Prasad* (3).

We modify the decree of the Courts below, and decree the principal sum of Rs. 99, with simple interest at Rs. 24 per cent. per annum up to the date of institution of the suit, with proportionate costs.

Decree modified.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Oldfield.

MOHIBULLAH (PLAINTIFF) v. IMAMI AND OTHERS (DEFENDANTS).*

Compromise of suit awarding the plaintiff more than amount claimed—Consent of parties—Execution of decree limited to amount claimed—Suit for larger amount awarded in compromise—Question for Court executing decree—Civil Procedure Code, s. 244.

By consent of the parties and the leave of the Court a suit may be amended to cover an increased claim, and there is nothing in the law which prevents the parties to a suit enlarging by consent or compromise the original claim, and getting or allowing a decree for a greater amount of money or land than that originally asked for.

* Second Appeal No. 158 of 1886, from a decree of Maulvi Zain-ul-abdin, Subordinate Judge of Moradabad, dated the 1st October, 1885, reversing a decree of Mirza Kamr-ud-din, Munsif of Sambhal, dated the 19th August, 1885.

(1) I. L. R. 12 Calc. 225. (2) L. R. 10 Ch. App. 389.

(3) I. L. R. 9 All. 74.

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The parties to a suit agreed upon a compromise the result of which was that the plaintiff obtained by the decree a greater quantity of land than he had originally claimed, and a decree was drawn up in accordance with the compromise. In the execution proceedings the defendant raised an objection that the plaintiff could not have execution for a greater quantity of land than he had claimed originally, and the Court executing the decree allowed the objection. No appeal from the Court's order was made, but the plaintiff brought a suit to recover possession of the larger amount of land mentioned in the compromise.

Held that the order of the Court executing the decree was erroneous in law and might properly be reconsidered upon an application for review; but that the present suit came within s. 214 of the Civil Procedure Code, and therefore could not be maintained.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the Court.

Babu Ratan Chand, for the appellant.

Pandit Sundar Lal, for the respondents.

EDGE, C. J.—This was an action brought to obtain possession of certain land which, under the terms of an agreement of compromise, the defendant had agreed should be decreed to the plaintiff in a previous action. In the previous action the result of the compromise was that the plaintiff obtained a greater quantity of land by the decree than he had originally claimed—*i. e.*, the parties had agreed, in order to put an end to the suit, that the plaintiff should obtain a greater quantity in a certain plot than he had originally claimed. It appears that the Munsif raised an objection to the drawing up of that decree, in accordance with the terms of the compromise, on the ground that the plaintiff was getting more than he claimed, and that the pleaders of the parties there and then admitted that the plaintiff was to have the decree which he was claiming. On that the decree, in accordance with the compromise, was properly drawn up by the Munsif. I know of no law which prevents the parties to an action enlarging by consent or compromise the original claim, and getting or allowing a decree for a greater amount of money or land than originally claimed. By consent of the parties and the leave of the Court an action may be amended to cover an increased claim. It was competent to the parties, with the consent of the Munsif, to have a decree prepared, as was done in this case. So far, they acted *bonâ fide*.

When the plaintiff proceeded to get execution under this decree, the defendant, to my mind most unfairly, raised an objection that the plaintiff could not have execution for a greater quantity of land in the particular plot than he had originally claimed. The Munsif being misled, in my judgment, as to the law, declined to make an order for the larger amount of land mentioned in the decree. Unfortunately the order was not appealed against, but the present suit was brought. It appears to me, so far as this suit is concerned, that it comes within s. 244 of the Civil Procedure Code, which prohibits a separate suit in a case of this kind. Therefore I am of opinion that the present suit cannot be maintained. I, however, throw out this suggestion, that the Munsif, having made an error in law, and having been misled into that error by an objection which had been improperly taken by the defendant, may properly, in an application for review, reconsider the order of the 9th April, 1885 and give the present plaintiff the benefit of the compromise, so that no injustice and hardship may occur.

The appeal is dismissed with costs.

OLDFIELD, J.—I concur.

Appeal dismissed.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Oldfield.

NAURANGI KUNWAR (APPLICANT) v. RAGHUBANSI KUNWAR
(OBJECTOR). *

Act XXVII of 1860, s. 6—Appeal to High Court—"Fresh certificate."

The fresh certificate contemplated by s. 6 of Act XXVII of 1860 means a certificate granted to a person other than the person to whom the first certificate was granted.

Where, therefore, a person to whom the District Court had granted a certificate under Act XXVII of 1860 appealed to the High Court and prayed for a fresh certificate, on the ground that the District Court should not have made the grant of certificate conditional upon her giving security to another person,—held that no appeal lay to the High Court in the case.

In this case Naurangi Kunwar, the widow of a deceased Hindu, applied to the District Judge of Azamgarh for the grant of a certificate under Act XXVII of 1860 for the collection of debts

* First Appeal No. 221 of 1886, from an order of J. M. C. Steinbelt, Esq., District Judge of Azamgarh, dated the 28th August, 1886.

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MOHIBULLAH
v.
IMANI.

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