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Prasad the Court had heard the parties, framed issues after taking evidence, and proceeded to judgment. In the cases before Mahmood, J., the plaintiff was non-suited on the preliminary ground of misjoinder. The radical principle of the cases is insisted on in the Privy Council ruling in *Watson v. The Collector of Rajshahye* (1) and in conformity with their Lordships' views expressed in that case, as well as with the plain provisions of the present Civil Procedure Code on this question, it was held in *Ganesh v. Kalka Prasad* (2), as we have held in this appeal to-day, that the decree in the former suit, which was allowed to become final, bars the second suit.

Appeal allowed.

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

RAMSIDH PANDE (PLAINTIFF) v. BALGOBIND AND OTHERS (DEFENDANTS).^a

Charge—Suit for money charged upon immoveable property—Instrument purporting in general terms to charge all the property of obligor—Maxim "certum est quod certum reddi potest"—Act IV of 1882 (Transfer of Property Act), ss. 98, 100—Act XV of 1877 (Limitation Act), sch. ii, No. 132.

The obligor of a bond acknowledged therein that he had borrowed Rs. 153 from the obligee at the rate of Re. 1-8 per cent. per mensem, and promised to pay the principal with interest at the agreed rate upon a date named. The bond continued thus:—"To secure this money, I pledge voluntarily and willingly my wealth and property in favour of the said banker. Whatever property, etc., belonging to me be found by the said banker, that all should be available to the said banker. If, without discharging the debt due to this banker, I should sell, mortgage, or dispose of the property to another banker, such transfer shall be void. For this reason, I have of my free will and consent executed this hypothecation-bond, that it may be of use when needed." The amount secured by the bond became due on the 6th May, 1879. The bond was registered under the Registration Act as a document affecting immoveable property, and the obligor was a party to such registration. On the 9th May, 1885, the obligee sued the heir of the obligor to recover the principal and interest due upon the bond by enforcement of lien upon and sale of immoveable property belonging to the defendant.

Held that the bond showed that the intention of the parties was to create a charge upon all the property of the obligor for the payment to the plaintiff of the principal monies borrowed, together with interest at the agreed rate. *See Julla Mulla v. Nusir Mistri* (3) referred to.

^a Second Appeal No. 188 of 1886, from a decree of G. J. Nicholls, Esq., District Judge of Ghazipur, dated the 13th November, 1885, reversing a decree of the District Judge of Ballia, dated the 2nd July, 1885.

(1) 12 Moo. I. A. 160. (2) I. L. R., 5 All 505.

(3) I. L. R., 7 C. 105.

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Held also that the words used in the bond as indicating the property which was intended to be subject to the charge were sufficiently specific and certain to include, and were intended to include, all the property of the obligor; that, this being so, the maxim "*certum est quod certum reddi potest*" applied; that the bond created a charge upon the immoveable property of the obligor in respect of the principal and interest in question; that such principal and interest were monies charged upon immoveable property within the meaning of sch. ii, No. 132 of the Limitation Act (XV of 1877); and that, so far as the claim was to enforce payment of such principal and interest by recourse to the immoveable property of the obligor, the suit was brought within time. *Ram Din v. Kalka Prasad* (1), *Gauri Shankar v. Surju* (2), and *Tadman v. D'Epineuil* (3) referred to.

THE facts of this case are stated in the judgment of the Court.

Mr. J. E. Howard, for the appellant.

Mr. G. T. Spankie, for the respondents.

EDGE, C. J., and TYRBELL, J.—This is an action which was brought in the Court of the Munsif of Ballia on the 9th May, 1885, to recover Rs. 340-9, principal and interest, by enforcement of lien against and sale of a house described in the plaint, and hypothecation of other property belonging to the defendant. The plaintiff alleged that he had lent Rs. 153-12, at interest at the rate of Rs. 1-8 per centum per mensem, to one Amari Koeri, deceased, who was the father of the defendant, and that Amari Koeri, in consideration of the loan, had executed in his, the plaintiff's, favour the bond sued upon, which, as translated, is as follows:—"On 6th badi Sawan, 1935 Sambat, an auspicious day, I, Amari Koeri, son of Pahlu Koeri, deceased, inhabitant of Ahehora, pargana Kharid, zila Ghazipur, borrowed of Ramsiddh Pande, banker, resident of Ahehora, tappa Mahatpal, pargana Kharid, in the district of Ghazipur, the total sum of Rs. 153-12, consisting of a balance due by me to the said banker, amounting to Rs. 133-12, and Rs. 20 cash, taken and appropriated by me, of the '*lath shahi*' coin, which is current, at interest Re. 1-8 per mensem. The amount, together with interest, calculated at the said rate, will be paid on 15th Baisakh Sudi, 1286 year, positively and without any objection. To secure this money, I pledge voluntarily and willingly my wealth and property in favour of the said banker. Whatever property, &c., belonging to me be found by the said banker, all should be available to the said banker. If, without discharging the debt due

(1) I. L. R., 7 All. 502.

(2) I. L. R., 3 All. 276.

(3) L. R., 20 Ch. D. 753.

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to this banker, I should sell, mortgage, or dispose of the property to another banker, such transfer shall be void. For this reason I have, of my free will and consent, executed this hypothecation bond, that it may be of use when needed. Dated 6th Sawan Badi 1285. Signed Bhuran Lal, inhabitant of Haripur of Chhata. Name of creditor—Ramsiddh Pande. Name of debtor—Amari Koeri. Amount—Rs. 153-12. Nature of document—Bond hypothecating house and other property, moveable and immoveable.”

The Munsif made a decree, with costs, against the defendants, holding them liable to the extent only of the assets of their father which have come to their hands.

From the decree of the Munsif the defendants appealed to the Judge of Gházipur. The first of the grounds stated in their memorandum of appeal was the following:—

“Seeing that there is no hypothecation in the bond, nor does the general context of the said bond create hypothecation, the said bond is deemed to be a simple one, and the claim is barred by limitation, for the amount entered in the bond became due on the 6th May, 1879. The lower Court paid no heed to it.”

The Judge of Gházipur, on the appeal, held that the wording of the bond was so vague as to make the bond inoperative as a document of hypothecation, and, apparently considering that six years was, under such circumstances, the period of limitation applicable to the case, and holding that the period of limitation had begun to run on the 6th May, 1879, decided that the suit was barred by limitation, and allowed the appeal with costs, setting aside the decree of the Munsif.

From this judgment of the Judge of Gházipur the plaintiff has brought this appeal.

The Judge of Gházipur did not deal with any of the other questions of law or fact arising in the appeal to him.

For the purposes of our judgment, we assume, but do not decide, that the statements as to facts of Mr. *Howard* who appeared for the plaintiff-appellant when the appeal came on for hearing before us, on the 11th instant, are correct. Mr. *Howard's* statements referred to, so far as they are material to our judgment, were that

the bond was proved to have been, and had in fact been executed by Amari Koeri, the defendant's father, who died before the suit, and that it had been registered in due time under the Indian Registration Act as a document affecting immoveable property in the district of Gházipur, and that Amari Koeri was a party to the bond being so registered.

Mr. *Howard*, on behalf of the plaintiff-appellant, contended that the bond in question created a claim upon, if it was not a mortgage of immoveable property, and consequently that art. 132 of the second schedule to the Indian Limitation Act (XV of 1877) applied, and the action was brought within the twelve years' period of limitation prescribed for the bringing of actions to enforce payment of money charged upon immoveable property, and in support of his contention referred to the case of *Bishen Dayal v. Udit Narain* (1) to s. 100 of the Transfer of Property Act (IV of 1882), and ss. 21 and 22 of the Registration Act.

On the other side, Mr. *Spankie*, for the respondents, contended that there was no specific immoveable property mentioned in the bond as the subject of the alleged hypothecation; that the wording of the bond was so vague as to render it inoperative as a mortgage of, or as creating a charge upon, immoveable property, and that art. 132 did not apply, and consequently that the action was not brought within time. Mr. *Spankie*, in support of his contention, referred to s. 58 of the Transfer of Property Act of 1882, to the cases of *Gauri Shankar v. Surju* (2) and *Najibulla Mulla v. Nusir Mistri* (3) to Macpherson's *Law of Mortgage*, pp. 137 and 138, 7th edition, and to s. 129 of the Succession Act.

In reply, Mr. *Howard* referred to the judgment of Oldfield, J., in the case of *Shib Lal v. Ganga Prasad* (4).

During the course of the arguments the case of *Ram Din v. Kalka Prasad* in the Privy Council (5) was also referred to.

On the conclusion of the arguments we took time to consider our judgment.

Having regard to the fact that the only question disposed of by the Judge of Gházipur was, as we read his judgment, the ques-

(1) I. L. R., 3 All. 486.

(2) I. L. R., 3 All. 276.

(3) I. L. R., 7 Calc. 196.

(4) I. L. R., 6 All. at p. 555.

(5) I. L. R., 7 All. 502.

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tion as to whether or not art. 132 of the second schedule to the Indian Limitation Act of 1877 applied to any part of the claim of the plaintiff, we shall confine our judgment to a consideration of that question. In the view which we take of the bond, it is not necessary to decide whether or not it was a mortgage of immoveable property within the meaning of s. 58 of the Transfer of Property Act of 1882, and we express no opinion on that point.

In our opinion, a Court, as a general rule, should, in construing a written document, so construe it as to give effect, if possible, to the intention of the parties, if such intention can be ascertained from an examination of the document. In this case, can the intention of the parties be ascertained by an examination of the bond in question? We think it can.

Amari Koeri by his bond acknowledged that he had borrowed from the plaintiff Rs. 153-12 (consisting of Rs. 133-12, balance then due, and Rs. 20, cash then advanced) at interest at the rate of Rs. 1-8 per centum per mensem, and promised to pay to the plaintiff the principal, together with interest at the agreed rate, on a date named. If it was intended by the parties that the bond should operate as a simple money bond only, and should not create a charge upon the moveable or immoveable property of Amari Koeri, there was no necessity to say more. We find, however, that the bond as translated for us continues thus: "To secure this money I pledge voluntarily and willingly my wealth and property in favour of the said banker. Whatever property, &c., belonging to me be found by the said banker, that all should be available to the said banker. If, without discharging the debt due to this banker, I should sell, mortgage, or dispose of the property to another banker, such transfer shall be void. For this reason I have of my free will and consent executed this hypothecation-bond, that it may be of use when needed."

The bond is written in Hindi, is obviously a very inartificial document, and most probably was prepared by the parties themselves without the assistance of legal advice.

We are clearly of opinion that the bond shows that the intention of the parties was to create by it a charge upon all the property of Amari Koeri for the payment to the plaintiff of the principal monies borrowed, together with interest at the agreed rate. If we are

entitled, on this question of intention, to take into consideration the manner in which the bond was registered, as was done by Pontifex and Field, JJ., in the case of *Najibulla Mulla v. Nusir Mistri* (1), our conclusion as to what was the intention of the parties is still further confirmed.

The next question is, did the bond effect the object intended by Amari Koeri and the plaintiff? In considering this question, it is necessary to refer shortly to some of the authorities cited. The case of *Ram Din v. Kalika Prasad* (2) and that of *Gauri Shankar v. Surju* (3), so far as it is consistent with the judgment of their Lordships of the Privy Council in the case of *Ram Din v. Kalika Prasad* (2) above, referred to, apply so far only as the question of limitation may arise on the claim of the plaintiff, if any, to establish a personal liability against the defendants. The case of *Najibulla Mulla v. Nusir Mistri* (1), referred to above, was decided before the Transfer of Property Act of 1882 came into force, and consequently the learned Judges who decided that case had not before them s. 98 or s. 100 of the Transfer of Property Act of 1882, which relates to charges upon immoveable property not amounting to mortgages. They appear from their judgment to have treated the question before them as if it were simply one of a mortgage or no mortgage, and to have relied to some extent on the manner in which the bond in that case was registered. In the case before them the plaintiff relied upon the agreement against alienation contained in the bond upon which he sued. In the present case the plaintiff is entitled to rely, not only upon that portion of the bond which relates to the event of subsequent alienation, but also to the antecedent and subsequent words to be found in the bond, which in our judgment are much more certain and specific than the words which were before Pontifex and Field, JJ., in the case referred to.

It does not appear to us that the passages at pp. 137 and 138 of Macpherson's *Law of Mortgage* throw any light upon the effect which we must give to the bond in this case, as we are not here considering whether the bond was or was not a mortgage, or how the possession might be affected by the intervention of a purchaser for value without notice. There is nothing, so far as we see, in

(1) I. L. R., 7 Calc., at pp. 198 and 199. (2) I. L. R., 7 All. 502.

(3) I. L. R., 3 All. 276.

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any of the other cases which have been cited, inconsistent with the opinion which we have formed as to the effect of the bond in question. It is said that the bond cannot be treated as creating a charge upon the property which was of Amari Koeri, because it does not describe by metes and bounds or by name the immoveable property which it may have been intended to hypothecate. We are satisfied that the words used in the bond as indicating the property which was intended to be subject to the charge were sufficiently specific and certain to include, and were intended to include, all the property of Amari Koeri. This being our view as to the construction of the bond, the maxim "*certum est quod certum reddi potest*" applies, and we held that the bond did create a charge upon the immoveable property of Amari Koeri in respect of the principal and interest in question, that such principal and interest were monies charged upon immoveable property within the meaning of art. 132 of the Indian Limitation Act of 1877, and that, so far as the claim is to enforce payment of such principal and interest by recourse to the immoveable property which was of Amari Koeri, the action was brought within time. In confirmation of the opinion above expressed as to the effect of the bond, we may refer to the judgment of Mr. Justice Fry in the case of *Tadman v. D'Epineuil* (1).

This appeal is allowed. The case will go back to the Judge of Gházipur, to be disposed of by him according to law upon the other questions of law and upon the questions of fact involved in the appeal from the decree of the Munsif. Costs will be costs in the cause.

Appeal allowed.

Before Mr. Justice Oldfield and Mr. Justice Brodhurst.

1884
December 13.

THAKUR DAS AND ANOTHER (PLAINTIFFS) v. KISHORI LAL (DEFENDANT).^{*}
Civil Procedure Code, s. 549—Security for costs—Amount of security not fixed—Dismissal of appeal—Practice.

Section 549 of the Civil Procedure Code contemplates an order by which some ascertained amount of security is required.

^{*} Second Appeal No. 1936 of 1885, from a decree of C. W. P. Watts, Esq., District Judge of Saharanpur, dated the 20th August, 1885, confirming a decree of Maulvi Muhammad Maksud Ali Khan, Subordinate Judge of Saharanpur, dated the 16th June, 1885.