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was rejected on the 11th June, 1880, in consequence of the failure of the appellants to pay additional court-fees declared by the High Court to be leviable.

The District Judge was of opinion that the decree-holder was entitled to claim that limitation for execution of the decree should run from the 11th June, 1880, the date of the order of the High Court rejecting the appeal. The Court referred to the case of *Ajudhia Pershad v. Ganqa Pershad* (1) in which it was held that an order rejecting a plaint as insufficiently stamped was a "decree," and was of opinion that, for the same reasons, an order rejecting a memorandum of appeal for deficient payment of court-fee should be held to be a "decree" of the appellate Court. It accordingly held that the application for execution was within the period of limitation prescribed by Act XV of 1877, sch. ii, No. 179 (2).

The judgment-debtors appealed from this decision to the High Court.

Munshi *Sukh Ram* for the appellants.

Babu *Jogindro Nath Chaudhri* for the respondent.

BRODHURST and TYRRELL, JJ.—The order made in this case by the Judge of this Court, exercising jurisdiction in respect of the registering of appeals which are challenged on the ground of deficient payment of the court-fees required by law, is equivalent to a decree, and therefore the decree-holder has rightly been held to be within time in making his present application, which is not more than three years from the date of that order.

The appeal is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Brodhurst and Mr. Justice Tyrrell.

BAIJNATH (PLAINTIFF) v. LACHMAN DAS AND ANOTHER (DEFENDANTS)*.

Registered and unregistered documents—Mortgagee under registered deed not entitled to priority over holder of subsequent decree on prior unregistered deed—Act III of 1877 (Registration Act), s. 50.

The mortgagee under an unregistered hypothecation bond, of which the registration was optional, obtained a decree thereon, and, in execution of such decree, attached the hypothecated property.

* Second Appeal No. 1356 of 1884, from a decree of J. C. Leupolt, Esq., District Judge of Moradabad, dated the 20th June, 1884, modifying a decree of Babu Banwari Lal, Munsif of Bilari, dated the 14th December, 1883.

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Held, with reference to the terms of s. 50 of the Registration Act (III of 1877) that the bond, having merged in the decree, was entitled to take effect against a registered bond relating to the same property, and which was executed subsequently to the unregistered bond, but prior to the decree. *Kanhaiya Lal v. Bansidhar* (1) and *Shahi Kam v. Shib Lal* (2) distinguished.

THE facts of this case were as follows:—Two persons named Bansidhar and Shankar Das, by an unregistered bond dated the 27th December, 1878, hypothecated a house of value less than Rs. 100 to Bhagwan Das and Lachman Das, who, on the 21st July, 1882, obtained a decree upon the bond, and subsequently attached the hypothecated property in execution of the decree. Bansidhar, by a registered bond dated the 27th January, 1880, hypothecated the same house to one Baijnath. The latter brought a suit on his bond against the decree-holders and Shankar Das, heir of Bansidhar, to recover the sum of Rs. 145, principal and interest, and to have it declared that his deed, being registered, was entitled to preference over the unregistered deed of Bhagwan Das and Lachman Das, and alleging that the decree of the 21st July, 1882, had been fraudulently and collusively obtained by the defendants. The Court of first instance found that the decree was not fraudulent or collusive, and decreed the claim, observing as follows:—“As the bond in favour of the plaintiff was executed on the 27th January, 1880, and was registered, it took precedence of the bond dated the 27th December, 1878, as regards the hypothecated house, and the latter became inoperative against the property; and hence the decree passed on the 21st July, 1882, in favour of the defendants, on the basis of that ineffectual bond, can have no preference over the plaintiff's bond. Had the decree been passed before the 27th January, 1880, *i.e.*, before the execution of the bond in favour of the plaintiff, the plaintiff's registered bond would have had no preference over the decree. But the decree was passed when the bond in favour of the defendant had become ineffectual by reason of the plaintiff's registered bond, and when the debt due to the plaintiff had become preferable.” In support of this view, the Court referred to the case of *Madar v. Subbarayalu* (3).

The defendant appealed to the District Judge of Moradabad, who reversed the Munsif's decision. The Court observed:—“The

(1) Weekly Notes, 1882, p. 15. (2) Weekly Notes, 1884, p. 136.

(3) L. L. R., 6 Mud. 88.

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defendant-appellant in appeal urges that the Judges of the High Court, Allahabad, whose rulings this Court is bound to follow, do not agree with the Madras High Court's rulings—see *Parshadi Lal v. Khushal Rai* (1). This is entirely opposed to the Madras ruling. Secondly, the respondents' unregistered deed is now merged in their decree, and by the wording of s. 50 of Act III of 1877, the plaintiff's registered deed cannot affect their decree. It seems to me that the High Court of these Provinces does not entirely agree in its view of s. 50 with the Madras High Court. In the precedent referred to, a decree on the basis of a registered bond was not given preference over a decree on the basis of an unregistered bond; much less then can a mere registered bond take preference over a decree on the basis of an unregistered bond. I find therefore in favour of the appellant, that the plaintiff's registered bond is not to have preference over the appellant's decree."

The plaintiff appealed to the High Court. It was contended on his behalf that the judgment of the lower appellate Court was wrong, inasmuch as it was founded on the ruling of the High Court in *Parshadi Lal v. Khushal Rai* (1), which was reconsidered in *Kanhaiya Lal v. Bansidhar* (2), and was no longer law.

Babu *Ratan Chand*, for the appellant.

Munshi *Hanuman Prasad*, for the respondents.

BRODHURST and TYRRELL, JJ.—The case of *Kanhaiya Lal v. Bansidhar* (2) differs in essential respects from the present case. In it the defendant held not only the registered document, but also a prior decree based on it. Again the case of *Shahi Ram v. Shib Lal* (3) is inapplicable, for in it the rival parties held contemporaneous decrees. In the case before us, the defendants had attached in execution the property in question under a good decree they had obtained on an unregistered bond; and the plaintiff brought this suit on a registered bond affecting the attached property, seeking for a decree on his registered bond, and a declaration that the defendant's decree should not operate against the property, because it was fraudulent and collusive. It has been found, and is admitted; that this decree was not false, collusive or otherwise bad, but it is contended that the plaintiff's registered

(1) Weekly Notes, 1882, p. 15. (2) Weekly Notes, 1884, p. 136.

(3) Weekly Notes, 1885, p. 63.

instrument must prevail under s. 50 of the Registration Act against that of the defendant. This would be so if that instrument had not at the time of the plaintiff's suit been merged in a decree. The words "not being a decree or order" in the section in question are conclusive against the plaintiff's claim to get the declaration he sought in his suit. The appeal is dismissed with costs.

Appeal dismissed.

Before Sir W. Comer Petheram, Kt., Chief Justice, and Mr. Justice Tyrrell.

SHIB SHANKAR LAL (PLAINTIFF) v. BANARSI DAS (DEFENDANT).*

Act XII of 1881 (N.-W. P. Rent Act), s. 93 (h)—"Recorded co-sharer."

Held that a co-sharer of a mahal whose share was recorded in "shamilat" with all the other pattidars, but was not specifically defined in the *khewat* in a fractional or separate form, was a "recorded co-sharer", within the meaning of s. 93 (h) of the N.-W. P. Rent Act (XII of 1881).

On the 12th July, 1882, the arbitrators appointed to divide a mahal among several co-sharers, awarded a one-fifth share to the plaintiff in this case, Shib Shankar Lal. He contested the award in the civil Courts, but it was eventually upheld. On the 1st December, 1883, he was recorded in the *khewat* as owner of a one-fifth share of the mahal. The present suit was brought by the plaintiff under s. 93 (h) of the N.-W. P. Rent Act (XII of 1881) in respect of profits which became due on the 1st July, 1883. Both the Court of first instance (Assistant Collector of Etawah) and the lower appellate Court (officiating District Judge of Mainpuri) dismissed the claim, on the ground that the plaintiff was not a "recorded sharer" of the mahal, within the meaning of s. 93 (h) of the Rent Act, at the time when the profits sued for became due, and he was therefore not competent to maintain the suit. The plaintiff appealed to the High Court. It was contended on his behalf that, at the time of the institution of the suit, he was a recorded co-sharer, within the meaning of the section, though his share had not been specifically defined.

Munshi *Hanuman Prasad*, for the appellant.

Babu *Ratan Chand*, for the respondent.

* Second Appeal No. 1398 of 1884, from a decree of H. G. Pearse, Esq., Offg. District Judge of Mainpuri, dated the 18th June, 1884, affirming a decree of E. Gray, Esq., Assistant Collector of Etawah, dated the 10th May, 1884.