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MANA.

In our opinion the plaintiffs were entitled to the decree for partition which they obtained from the first Court, but the partition will not affect the rights of the zamindar, nor will it have the effect of apportioning the rent as between these parties and him. He will be still entitled to the same rights in respect of this occupancy-holding as if no partition had been decreed. The partition will merely affect the rights of the parties to this suit *inter se*.

We allow this appeal with costs in this Court and in the Court below, and restore and affirm the decree of the first Court.

*Appeal decreed.*

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April 21.

*Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Blennerhassett.*

SRI RAM AND OTHERS (DEFENDANTS) v. KESRI MAL (PLAINTIFF)\*  
*Act No. III of 1877 (Indian Registration Act), section 17, clause (n)—Mortgage—Receipt purporting to extinguish mortgage—Receipt only covering interest of one co-mortgagee—Registration.*

The provisions of section 17 cl. (n) of Act No. III of 1877 do not apply to a receipt which purports to extinguish not the entire mortgage but only the rights under the mortgage of one of two joint mortgagees.

THIS was a suit for sale on a mortgage.

One Afzal Husain had borrowed Rs. 1,000 from Sri Ram and Ramji Lal jointly under a registered mortgage deed, the shares of the mortgagees in the loan being  $\frac{1}{3}$  and  $\frac{2}{3}$  respectively. Afzal Husain sold the mortgaged property to Sri Ram and certain other persons. Subsequently Ramji Lal assigned his rights and interests in the mortgage to Kesri Mal, the present plaintiff. Kesri Mal, not having received the amount due to him, sued to recover the same by sale of the mortgaged property. He made Afzal Husain, the original mortgagor, Sri Ram and his co-vendees, and Ramji Lal parties to the suit.

Afzal Husain pleaded that the assignment of the mortgage had been made with the knowledge of Ramji Lal. The defendants vendees pleaded that they had paid off Ramji Lal, and tendered

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Second Appeal No. 175 of 1894, from a decree of E. O. E. Legatt, Esq., Additional District Judge of Saharanpur, dated the 21st December 1893, reversing a decree of Rai Sanwal Singh, Additional Subordinate Judge of Saharanpur, dated the 8th September 1892.

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in evidence a receipt given by him for his share in the mortgage. Ramji Lal admitted the assignment to the plaintiff and the receipt of consideration for the assignment, but alleged that his share had never been paid off by the assignees of Afzal Husain.

The Court of first instance (Additional Subordinate Judge of Saharanpur) found that the receipt produced by the defendants assignees was a genuine and valid receipt, and that it was admissible in evidence, and accordingly dismissed the plaintiff's suit.

The plaintiff appealed. The lower appellate Court (Additional Judge of Saharanpur), finding that the receipt in question was not admissible in evidence, and that there was no oral evidence sufficient to establish the fact of payment to Ramji Lal, decreed the plaintiff's claim.

The defendants thereupon appealed to the High Court.

Mr. *T. Conlan* for the appellants.

Pandit *Sundar Lal* for the respondent.

EDGE, C. J. and BLENNERHASSETT, J.—This was a suit for sale brought by the assignee of a mortgage. The mortgagees were Sri Ram and Ramji Mal. The defendants-mortgagors pleaded payment. In order to prove payment of part of the mortgage money they produced a receipt which purported to be a receipt of Ramji Mal for his share of the mortgage money. It was objected that the receipt should have been registered under section 17 of Act No. III of 1877. The mortgage was for over Rs. 100. The Subordinate Judge held that clause (n) of section 17 applied, and that the receipt was exempt from registration. The District Judge in appeal held that the receipt purported to extinguish the mortgage, and consequently was not within the protection of clause (n). There being no other evidence of payment of this particular sum, he decreed the plaintiff's suit.

What the receipt purports is this. It purports to be a receipt in full for Ramji Mal's two-thirds share of the mortgage money. It shows that there was another person interested in the mortgage and another share unaccounted for by the receipt. That receipt standing alone, and without any evidence except evidence that it

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was the receipt of Ramji Mal, would not have supported a plea that the mortgage had been discharged by payment. It would have supported a plea, if it was a genuine receipt, as to which we express no opinion, that Ramji Mal's interest in the mortgage had been extinguished by payment. Clause (n) does not say—“when the receipt does not purport to extinguish the mortgage, or the interest of any mortgagee in the mortgage.” The words are—“when the receipt does not purport to extinguish the mortgage.” For the purposes of clause (n) extraneous evidence cannot be looked at: the receipt coming within clause (n) was admissible in evidence without registration.

We set aside the decree of the lower Appellate Court, and remand this case under section 562 of the Code of Civil Procedure to that Court to be disposed of on the merits. The costs of this appeal will abide the result.

*Appeal decreed.*

### FULL BENCH.

*Before Sir John Edge, Kt., Chief Justice, Mr. Justice Know, Mr. Justice Blair, Mr. Justice Banerji, Mr. Justice Aikman and Mr. Justice Blennerhassett.*

AJUDHIA RAI AND ANOTHER (DEFENDANTS) v. PARMESHAR RAI AND OTHERS (PLAINTIFFS).

*Jurisdiction—Civil and Revenue Courts—Suit for a decree for maintenance of possession as tenants at fixed rates—Act No. XII of 1881 (North-Western Provinces Rent Act), section 95 (a) —Act No. XIX of 1873 (North-Western Provinces Land Revenue Act), section 241.*

The plaintiffs sued in a Civil Court alleging that they were tenants at fixed rates of a cultivatory holding and that at the settlement the settlement officer had entered the defendants in the village papers as the tenants at fixed rates and the plaintiffs merely as mortgagees, and they asked for a decree for maintenance of possession “invalidating the proceeding of filling up the columns at the recent settlement.”

*Held* by the Full Bench (BANERJI, J. *dubitante*) that the suit so framed was not within the cognizance of a Civil Court.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the majority of the Court.

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*April 23.*