

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Burkhitt.
 TALEWAR SINGH AND OTHERS (PLAINTIFFS) v. BAHORI SINGH
 (DEFENDANT).*

1904
 March 11.

Suit for recovery of immovable property based upon a compromise—Compromise not itself a document of title—Limitation—Act No. XV of 1877, schedule II, article 113.

Certain Revenue Court suits were referred to arbitration and an award was made to the effect that the "plaintiff's claim in all the suits be dismissed with costs and that the defendant bear his own costs." The award, however, went on to declare that, according to the terms of a compromise arranged between the parties, the parties should transfer the one to the other different portions of the property which was in dispute. No steps were actually taken to complete the transfer thus recited as having been agreed to between the parties, but one of the parties brought a suit to recover the properties agreed to be transferred to him. *Hold* that the limitation applicable was that prescribed by section 113 of the second schedule to the Indian Limitation Act, 1877: the suit was not one for possession of immovable property to which article 144 would apply. *Sornavalli Ammal v. Muthayya Sastrigal* (1) and *Sheo Narain v. Beni Madho* (2) distinguished.

THE facts of this case are as follows:—

In 1894 Bahori Singh brought in the Revenue Court three suits for profits of mauza Mohni Mamurganj and a fourth for profits of mauza Athia against Ikram Singh. These suits were referred to arbitration. On the 24th of December, 1894, the arbitrator delivered an award in accordance with a compromise entered into by the parties. Under this compromise Ikram Singh agreed to deliver to Bahori Singh certain shares in certain villages, and further agreed that if any of these shares were found to be incumbered, Bahori Singh could recover the amount of the incumbrances from Ikram Singh, and the latter by way of collateral security agreed that his share in mauza Athia should be held liable for the amount due. Ikram Singh further agreed to transfer one-half of certain outstanding debts to Bahori Singh. Bahori Singh on his part agreed to convey to Ikram Singh certain immovable property and in addition to pay Rs. 1,000. It was agreed that effect should be given to this agreement by the end of January, 1895, and further that the three suits in respect of mauza Mohni Mamurganj

* Second Appeal No. 173 of 1902 From a decree of, H. D. Griffin, Esq., District Judge of Aligarh, dated the 5th December 1901, confirming a decree of Maulvi Mulla Bukhsh, Additional Subordinate Judge of Aligarh, dated the 29th March, 1901.

(1) (1900) I. L. R., 23 Mad., 593. (2) (1901) I. L. R., 23 All., 285;

1904

TALEWAR
SINGH
v.
BAHORI
SINGH.

should be dismissed, and that in respect of mauza Athia should be decreed. This decree was to become null and void if the parties fulfilled their mutual contracts as detailed above. Nothing was done towards the carrying out of this compromise by the end of January, 1895. The Revenue Court by a mistake dismissed all the suits for profits on the 6th of February, 1895. Bahori Singh had the mistake corrected by the Revenue Court on the 9th September, 1895. This order was set aside by the District Judge in appeal; but restored by the High Court on the 23rd of November, 1898. On Bahori Singh applying for execution of his decree, the representatives of Ikram Singh, who had meanwhile died, brought a suit for the enforcement of the award in his favour, for recovery of the property agreed to be conveyed, and of Rs. 1,000 with interest, and for a declaration that the decree of the Revenue Court and that of the High Court of the 23rd of November, 1898, had become null and void.

The Court of first instance (Additional Subordinate Judge of Aligarh) dismissed the suit, holding that it was barred by limitation under article 113 of the second schedule to the Indian Limitation Act, 1877, as well as on the merits. The plaintiffs appealed to the District Judge, who confirmed the decree of the Court of first instance. The plaintiffs thereupon appealed to the High Court.

Babu *Jogindro Nath Chaudhri* (for whom Babu *Sital Prasad Ghosh*) and Babu *Durga Charan Banerji*, for the appellants.

Pandit *Sundar Lal* and Munshi *Gulzari Lal*, for the respondents.

STANLEY, C. J., and BURKITT, J.—We are of opinion that the decisions arrived at by both the lower Courts are perfectly correct so far as regards the question of limitation. The suit was brought by the plaintiffs to recover possession of immovable property, to which they allege they became entitled under an award, dated the 24th of December, 1894. It appears that four suits had been instituted in the Revenue Court to recover profits by one Bahori Singh against Ikram Singh, three in respect of one village and one in respect of another village.

1904

TALEWAR
SINGH
v.
BAHORI
SINGH.

These suits were referred to arbitration, and an award was passed by the arbitrator in the terms of a compromise entered into between the parties. The only matter with which the arbitrator had to deal was the decision of the rent suits, and the order passed by him is that the "plaintiffs' claim in all the suits be dismissed with costs and that the defendant bear his own costs." In the award, however, the arbitrator sets out the terms of the compromise entered into by the parties, and according to this compromise it was arranged that the parties should transfer, the one to the other, different portions of the property which was in dispute. Ikram Singh undertook that his name should be struck off in respect of a share in one village and that he would cause the share to be transferred to Bahori Singh, whilst Bahori Singh agreed that his name should be struck off and the name of Ikram Singh entered in respect of certain other property. It was also agreed that Bahori Singh should withdraw from possession of a dwelling house and inclosure and give the same to Ikram Singh and also should pay Rs. 1,000 in cash to Ikram Singh. It is contended on behalf of the appellants that this compromise, which is set forth in the award, but which forms no part of it, is not to be treated as a contract, but is to be treated as amounting to a declaration of the title of these parties to the property mentioned in it, which they mutually agreed to exchange; and it is contended that the suit was properly brought by the plaintiffs for possession of the property so agreed to be transferred to them, and that the article of limitation applicable to the suit is article 144. As an authority for this contention reliance is placed upon the case of *Sornavalli Ammal v. Muthayya Sastrigal* (1), in which it was held that the article applicable to the claim put forward in that suit for recovery of immovable property was article 144 and not article 113. In that case, however, as appears from the judgment, the title to the property was declared in the plaintiffs' favour by the award, and the award did not provide for the execution of any instrument between the parties or the performance of any condition precedent to the plaintiffs' enjoyment of the land. In other words,

(1) (1900) I. L. R., 23 Mad., 593.

1904.

TALEWAR
SINGH
v.
BAHORI
SINGH.

plaintiffs acquired under the award a complete title to the land on the date of the award and were entitled to possession of it from that date. It is apparent from what we have said that this case does not govern a case, such as that which is now before the Court, in which no title is declared by the award. There is merely a recital in the award of agreements entered into between the parties to do certain acts in reference to immovable properties. Reliance is also placed upon the case of *Sheo Narain v. Beni Madho* (1). In that case it was held that where an award had declared the rights of parties in immovable property, a suit based on the award was not a suit for the specific performance of a contract. In support of this ruling reliance was placed upon the case in the Madras High Court which we have cited. Our brothers Banerji and Aikman, who decided that case, observed that the only thing which the award in that case directed to be done was that an application should be made for mutation of names, and that that application had already been made and mutation effected. The title therefore was completed by mutation and there was nothing further to be done to complete the title. These cases obviously do not bear out the contention which has been laid before us by the learned vakil for the appellants. It appears to us that the agreement entered into by the parties for the compromise of their suits in this case was one which must necessarily be specifically enforced before a suit for possession of the properties under the compromise can be maintained. The article applicable to the suit is article 113 and not article 144. Up to the present time the title to the property in dispute is vested in the defendants. In order that the plaintiffs may establish title to that property, it is obviously necessary that they should enforce specific performance of the agreement entered into and obtain a regular conveyance which would convey the title to them. Having such a conveyance they would then be in a position to maintain a suit for possession. For these reasons the appeal fails and is dismissed with costs.

Appeal dismissed.

(1) (1901) I. L. R., 23 All., 285.