

1905
June 20.

Before Mr. Justice Banerji and Mr. Justice Richards.
RAGHUBANS MANI SINGH AND OTHERS (PLAINTIFFS) v. MAHABIR SINGH
AND OTHERS (DEFENDANTS).*

*Act No. III of 1877 (Indian Registration Act, section 17—Registration—
Compromise of suit embodied in a decree.*

In a suit for possession of certain plots of land reference was made as part of the evidence in the case, to a compromise in a previous suit relating to other lands, but which dealt also with the lands in suit and had been incorporated into the decree of the Court in the previous suit. *Hold* that such compromise did not require registration and was admissible in evidence. *Bindesri Naik v. Ganga Saran Sahu* (1) and *Pranal Anni v. Lakshmi Anni* (2) referred to. *Birbadra Rath v. Kalpatara Panda* (3) considered.

THE plaintiffs in the case claimed possession of a certain plot of land. The main portion of the evidence tendered in support of their claim was a compromise in a previous suit between the same parties, dated the 27th of April 1890. The suit in the course of which this compromise was arrived at related to land other than the subject of the present suit, but the compromise dealt with this also. The compromise was laid before the Court, which passed a decree in the following terms:—"It is decreed and ordered that according to the deed of compromise marked A the appeal be dismissed." The Court of first instance decreed the plaintiffs' claim as against some of the defendants and dismissed it in respect of others. On appeal by the plaintiffs the lower appellate Court (District Judge of Ghazipur) dismissed the appeal on the finding that the compromise in question required registration and had not been registered. The plaintiffs appealed to the High Court.

Mr. A. H. C. Hamilton and Munshi Gobind Prasad, for the appellants.

Mr. Abdul Majid, for the respondents.

BANERJI and RICHARDS, JJ.—This was a suit for possession of a certain plot of land. It appears that there was previous litigation between the parties, the subject-matter of which was certain other lands. In that suit a compromise was come to on the 27th of April 1890, under which it was arranged that certain

* Second Appeal No. 245 of 1903 from a decree of L. Marshall, Esq., District Judge of Ghazipur, dated the 17th of August 1903, confirming a decree of Babu Brij Bihari Lal, Munsif of Ballia, dated the 23rd of May 1903.

(1) (1897) I. L. R., 20 All, 171.

(2) (1899) I. L. R., 22 Mad., 508.

(3) I Calcutta Law Journal, 388.

lands were to belong to the parties separately as their separate property while other lands were to remain joint property. The compromise dealt with lands that were the subject-matter of that suit and also with lands which are the subject-matter of the present suit, but not of the previous litigation. The particular plot now in question admittedly forms part of the property which, according to the terms of the compromise, was to remain the joint property of the parties. As soon as the compromise was entered into it was brought before the Judge, and he disposed of the suit by making a decree incorporating the entire compromise. The decree commences with the following words:—"It is decreed and ordered that according to the deed of compromise marked A the appeal be dismissed." The short point argued before us is whether or not this compromise can be given in evidence in the present suit, being an unregistered document affecting immoveable property of the value of upwards of Rs. 100. It is admitted that if it can be received in evidence it is binding upon the parties to the present litigation and regulates their rights in respect of the plot of land now in dispute. Unless the document can be regarded as a judicial proceeding, it requires registration and cannot be admitted in evidence. In the case of *Bindesri Naik v. Ganga Saran Sahu* (1) their Lordships of the Privy Council observed that "the provisions of section 17 of the Act do not apply to proper judicial proceedings, whether consisting of pleadings filed by the parties or of orders made by the Court." The same point was considered by their Lordships in the case of *Pranal Anni v. Lakshmi Anni* (2). In that case, as in the present, there had been previous litigation, and a compromise had been entered into affecting lands the subject-matter of the previous litigation and also lands the subject-matter of the litigation under consideration by their Lordships. Their Lordships held that the compromise not being registered was inadmissible; but their judgment was founded expressly on the fact that the parties to the compromise had by separate deeds separately dealt with the property the subject-matter of the suit and the property not the subject-matter of the suit. Their Lordships considered that

1906

 RAGHUBANS
 MANI
 SINGH
 v.
 MAHABIE
 SINGH.

(1) (1897) I. L. R., 20 All., 171.

(2) (1899) I. L. R., 22 Mad., 508.

1905.

RAGHUBANS
MANI
SINGH
v.
MAHABIE
SINGH.

the Court had only dealt with and recognized the compromise so far as it affected the lands actually in dispute at the time, and that the parties had deliberately left the compromise so far as it affected the other lands to stand on the separate unregistered agreement. At page 514 of the judgment of their Lordships the following passage occurs:—"The *rasinamah* in so far as it was submitted to and was acted upon judicially by the learned Judge, was in itself a step of judicial procedure not requiring registration; and any order pronounced in terms of it constituted *res judicata* binding upon both the parties to this appeal, who gave their consent to it. If the parties after agreeing to settle the suit of 1885 on the footing that they were each to take a half share of the lands involved in that suit and also a half share of the lands now in dispute had informed the learned Judge that these were the terms of the compromise and had invited him, by reason of such compromise, to dispose of the conclusions of the suit of 1885, their Lordships see no reason to doubt that the order of the learned Judge if it had referred to or narrated these terms of compromise would have been judicial evidence available to the appellant, that the respondents had agreed to transfer to her the moiety of land now in dispute." Now, the compromise of April 1890 as a whole was submitted to the learned Judge, he was invited to dispose of the suit on its basis, and he in fact made a decree in which the compromise is referred to as an exhibit and is set forth at length. The case therefore falls entirely within the clear and emphatic words of the judgment just referred to. Our attention has been called to a recent case—*Birbhadra Rath v. Kalpatara Panda* (1) which appears in some respects to be inconsistent with the opinion of their Lordships of the Privy Council in the case last referred to and with our decision in the present case. It is there suggested that if the parties are permitted by compromise to deal with property not the subject-matter of the litigation they might evade the provisions of the Court Fees Act, and the Court might by accepting the compromise in the same case, exceed its jurisdiction. It appears to us that the answer to this objection is that the decree of the Court will be enforceable as a

decree only so far as it relates to the subject-matter of the suit. It is impossible to ignore the strong opinion expressed by their Lordships in the case of *Pranal Anni v. Lakshmi Anni* (1). We therefore hold that under the circumstances of the present case the compromise of the 27th of April 1890 did not require registration and was admissible in evidence and should have been admitted by the lower appellate Court. It is unnecessary to go into the question of stamps, which has been decided by the lower Court in favour of the appellant. As the lower appellate Court decided the case on a preliminary point, and its decision is in our opinion erroneous, we allow the appeal, set aside the decree of the lower appellate Court, and remand the case to that Court under section 562 of the Code of Civil Procedure for trial on the merits. The appellants will have their costs of this appeal; other costs will follow the event.

Appeal decreed and cause remanded.

1905

RAGHUBANS
MANI
SINGH
v.
MAHABIR
SINGH.

*Before Sir John Stanley Knight, Chief Justice, and Mr. Justice
Sir William Burkill.*

LOK NATH (PLAINTIFF) v. AMIR SINGH AND OTHERS (DEFENDANTS).*
*Civil Procedure Code, sections 491 and 588—Attachment before judgment—
Compensation for unnecessary attachment—Appeal.*

1905
June 22.

Held that no appeal will lie from an order under section 491 of the Code of Civil Procedure granting compensation to a person against whom an attachment has been obtained upon insufficient grounds. *Narasinga Bhakshi v. Govinda Bhakshi* (2) followed.

THE plaintiff in this case sued upon a bond to recover a principal sum of Rs. 800 and interest thereon. Before judgment he applied to the Court, under section 483 of the Code of Civil Procedure, for security from the defendants to satisfy the decree, and in default for attachment of the defendants' property. The plaintiff obtained an order for security, but no security was given, and in consequence some of the defendants' property was attached. The defendants did not resist the claim, but

* Second Appeal No. 1081 of 1903, from a decree of Maulvi Aziz-ul-rahman, Subordinate Judge of Mainpuri, dated the 4th of August 1903, modifying a decree of Maulvi Muhammad Hussain, Munsif of Etawah, dated the 5th of March 1903.