

above, cannot be allowed to set up a defence which Karam Khan could not have pleaded. In this connection we would refer to the ruling in *Jaggewar Dutt v. Bhuban Mohan Mitra* (1) in which Mookerjee, J., held "that the ordinary rule is that the plaintiff mortgagee cannot be allowed so to frame his suit as to draw into controversy the title of a third party, who is in no way connected with the mortgage and who has set up a title paramount to that of the mortgagor and mortgagee." Much to the same effect is the ruling in *Mon Mohini Ghose v. Parvati Nath Ghose* (2). The same principle was followed in *Khairati v. Banni Begam* (3). We think that in this case the plaintiff was entitled to a decree for sale of the entire property. We allow the appeal, and, setting aside the decrees of the Courts below in so far as they dismissed the plaintiff's claim in respect of a three-fifths share of the property mortgaged, decree the plaintiff's claim against the entire property mortgaged. The appellant will get his costs from the respondents.

*Appeal decreed.*

## FULL BENCH.

*Before Sir John Stanley, Knight, Chief Justice, Mr. Justice Banerji and Mr. Justice Richards.*

SADAR-UD-DIN AHMAD AND OTHERS (PLAINTIFFS) v. CHAJJU AND OTHERS (DEFENDANTS).\*

*Mortgage—Compromise in course of mutation proceedings purporting to vary the terms of a registered deed.*

*Held* that a compromise entered into between the parties to mutation proceedings before a Court of Revenue which purported to modify the conditions of a pre-existing mortgage, upon the basis of which mutation was sought, could not be allowed to take effect in opposition to the distinct terms of the registered instrument of mortgage. *Nur Ali v. Imaman* (4) distinguished. *Raghubans Mani Singh v. Mahabir Singh* (5) and *Pranal Anni v. Lakhshmi Anni* (6) referred to by Banerji and Richards, J J.

ONE Chajju executed a mortgage of certain property in favour of Husain Bakhsh and Nathu to secure a principal sum of

\* Second Appeal No. 1332 of 1907, from a decree of Soti Raghubans Lal, Additional Judge of Meerut, dated the 12th of July 1907 reversing a decree of Rama Das, Munsif of Muzaffarnagar, dated the 14th of March 1907.

(1) (1906) I. L. R., 33 Cal., 425.

(4) Weekly Notes, 1884, p. 40.

(2) (1905) I. L. R., 32 Cal., 746.

(5) (1905) I. L. R., 28 All., 78.

(3) Weekly Notes, 1908, p. 100.

(6) (1899) I. L. R., 22 Mad., 508.

1908

JOYI PRASAD  
v.  
AZIZ KHAN

1908  
November 9.

1908

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DIN AHMAD  
v.  
CHAJJU.

Rs. 1,000, the mortgage being expressed to be made for a term of 25 years. In the mortgage there was a provision to the effect that on payment of the amount due in the month of *Jeth* after the expiry of the term of 25 years the mortgage might be redeemed. The mortgagors refused to register the mortgage, and thereupon an application was made by the mortgagees for compulsory registration, and compulsory registration was effected. Subsequently the mortgagees applied for mutation of names in the mutation department. To this, not merely Chajju, but another person named Abdulla objected. Abdulla was no party to the mortgage, but claimed to be entitled to a share in the mortgaged property, and hence he objected to mutation of names so far at least as regarded his share. The dispute was compromised, the terms of the compromise being that the whole of the property should be recorded as subject to the mortgage and that the names of the mortgagees should be entered as mortgagees in respect of it and the names of Chajju and Abdulla as mortgagors. It further provided that the mortgagors should have power in any *Jeth* to pay the mortgage debt and have the mortgage redeemed. The mortgagors sought redemption in pursuance of the terms of this compromise within the period of 25 years, and this was refused. They then filed the present suit for redemption. The defence to the suit was that it was premature, having been brought within the term of 25 years. The first Court (Munsif of Muzaffarnagar) gave a decree for redemption, but upon appeal the lower appellate Court (Additional Judge of Meerut) reversed the decree of the Court of first instance on the ground that the terms of the compromise in the Revenue Court varied the terms of the mortgage, and the agreement not having been registered was not admissible in evidence and could not be treated as giving the mortgagor a power to redeem contrary to the express provision of the mortgage deed. From that decision the plaintiffs appealed to the High Court.

Mr. *Abdul Raof*, for the appellants, contended that the compromise was binding on the parties. The objection to mutation was withdrawn only upon the ground that the mortgage could be redeemed within 25 years. The Revenue Court had power

to go into the question of title, and it gave effect to the compromise. It was not necessary to register a compromise put in before a court in a judicial proceeding. He referred to *Nur Ali v. Imaman* (1), *Raghubans Muni Singh v. Mahabir Singh* (2) and *Pranal Anni v. Lakshmi Anni* (3).

Babu *Jogindro Nath Chaudhri* (with whom Pandit *Moti Lal Nehru*), for the respondents, contended that under the terms of the original deed the mortgage could not be redeemed before the expiry of 25 years. The compromise purporting to remove that restriction should have been registered. As it was the compromise could not be admitted in evidence for the purpose of varying the terms of the mortgage. This compromise was an "instrument" (*Wharton's Law Lexicon* referred to) being a petition embodying the terms of an agreement. Its registration was compulsory under the Indian Registration Act 1877. Mutation proceedings could not be called judicial proceedings. A judicial proceeding was one in which contested questions of right, title, or liability were determined. In this case the Revenue Court simply effected mutation of names according to the compromise. It had no power to give effect to any of the conditions of the compromise affecting right, title, interest or liability. In other words, the Revenue Court as such could not take judicial notice of the several terms of the compromise: it could only order mutation of names.

STANLEY, C. J.—The facts of this case are these. One Chajju executed a mortgage of certain property in favour of Husain Bakhsh and Nathu to secure a principal sum of Rs. 1,000, the mortgage being expressed to be made for a term of 25 years. In the mortgage there is a provision for redemption. The redemption clause provides that on payment of the amount due in the month of *Jeth* after the expiry of the term of 25 years the mortgage might be redeemed. The mortgagors refused to register the mortgage, and thereupon an application was made by the mortgagees for compulsory registration and compulsory registration was effected. Subsequently the mortgagees applied for mutation of names in the mutation department. To this, not

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(1) Weekly Notes, 1884, p. 40. (2) (1905) I. L. R., 28 All., 76.

(3) (1899) I. L. R., 22 Mad., 508.

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CHAJJU.

merely Chajju, but another person named Abdulla objected. Abdulla, it will be noted, was no party to the mortgage. He claimed to be entitled to a share in the mortgaged property, and hence he objected to mutation of names so far at least as regarded his share. The dispute was compromised, the terms of the compromise being that the whole of the property should be recorded as subject to the mortgage and that the names of the mortgagees should be entered as mortgagees in respect of it and the names of Chajju and Abdulla as mortgagors. It further provided that the mortgagors should have power in any *Jeth* to pay the mortgage debt and have the mortgage redeemed. The mortgagors sought redemption in pursuance of the terms of this compromise within the period of 25 years, and this was refused, and hence the suit for redemption out of which this appeal has arisen.

The defence to the suit was that it was premature having been brought within the term of 25 years.

The first Court gave a decree for redemption, but upon appeal the lower appellate Court reversed the decree of the Court of first instance on the ground that the terms of the compromise in the Revenue Court varied the terms of the mortgage and the agreement not having been registered was not admissible in evidence and could not be treated as giving the mortgagor a power to redeem contrary to the express provision of the mortgage deed. From that decision the present appeal has been preferred, and it was laid before a Bench of three Judges in view of the decision in the case of *Nur Ali v. Imaman* (1) the correctness of which the Court before whom the appeal came was disposed to doubt.

It appears to me that the decision of the learned Additional Judge is correct. The compromise entered into in the mutation proceedings could not in my opinion have the effect of modifying or altering in any way the terms of the registered mortgage. The Revenue Court was concerned with the entry of names only and had no concern with the conditions upon which the objectors withdrew their opposition to the granting of the application for mutation. The compromise was not in fact submitted to the

(1) *Weekly Notes*, 1884, p. 40.

Revenue Court further than as showing the withdrawal of opposition to the mutation of names. The language of the order of the Court shows this. The Revenue Court in view of the withdrawal of opposition simply ordered that mutation should have effect. The words are "the parties have compromised and mutation will take place accordingly." The case appears to me to be unlike that of *Nur Ali v. Imaman* (1). It would be fraught with danger to the security afforded to titles by the Registration Act if a compromise of parties in proceedings taken before a Revenue Officer for mutation of names could be regarded as having the effect which is contended for here of creating a charge and modifying the provisions of a registered document. I would therefore dismiss the appeal.

BANERJI, J.—I am of the same opinion. It is obvious from the terms of the mortgage of the 8th of August 1903 that it cannot be redeemed before the expiry of 25 years from the date of it. Those terms could not be varied except by a registered instrument. By the application presented in the mutation case the Revenue Court holding mutation proceedings was merely informed of an oral contract entered into by the parties. The application itself cannot be treated as creating a fresh mortgage. Can it be taken into consideration as evidencing an alteration in the terms of the original mortgage? I agree with the learned Chief Justice for the reasons stated by him that it cannot be admitted in evidence. I think the case of *Nur Ali v. Imaman Ali* (1) is distinguishable. We were pressed with the decision in *Raghubans Mani Singh v. Mahabir Singh* (2), to which I was a party. That was a case to which in our judgment the observations of their Lordships of the Privy Council in *Pranal Anni v. Lakhshmi Anni* (3), as contained in page 514 of the report, fully applied. In the present case the terms of the compromise were not referred to or narrated in the order of the Revenue Court, and indeed for purposes of mutation it was not necessary to refer to the terms of the mortgage or the conditions under which redemption could take place. This case therefore is not governed by the rulings to which I have referred. I also would dismiss the appeal.

(1) Weekly Notes, 1884, p. 40.

(2) (1905) I. L. R., 28 All. 78.

(3) (1899) I. L. R., 22 Mad., 608.

1903

SADAR-UD-  
DIN AHMAD  
v.  
CHAJJU.

1908

SADAR-UD-  
DIN  
AHMAD  
CHAJJU.

RICHARDS, J.—This was a suit for redemption of a mortgage, dated the 8th August 1903. The mortgage was a mortgage with possession, and it is quite clear that according to the terms of the deed the mortgage could not be redeemed until after the expiration of 25 years. It is contended on behalf of the plaintiff that the terms of the mortgage deed were subsequently varied by agreement between Chajju, the mortgagor, and Abdulla on the one side and the mortgagees on the other side, whereby it was arranged that Abdulla should be bound by the mortgage, but that the mortgage should be redeemable by payment of the mortgage debt in any year in the month of *Jeth*. The defendants objected that such an arrangement could only be proved by a duly registered document. No such document exists, but the plaintiffs contend that the petition to and the order of the Revenue Court referred to by the Chief Justice operate to vary the terms of the mortgage deed and that a registered document was not necessary. I quite agree in the judgment of the learned Chief Justice and I should not deem it necessary to add anything to what he has said save for the fact that reliance was placed on the ruling in *Raghubans Mani Singh v. Mahabir Singh* (1) to which I was a party. In that case certain lands were claimed on the basis of an agreement of compromise in prior litigation, whereby the title to the lands in question had been expressly admitted. The Judge had received and acted on the compromise and incorporated it into his decree. My learned colleague and I held that the plaintiffs could rely on the decree incorporating the compromise and that a registered instrument was not necessary. The facts of the present case are very different. They amount to no more than this, namely, that the Revenue Court ordered the defendant's names to be recorded as mortgagees in possession, all opposition to the application being withdrawn. The facts in the present case much more nearly approach the facts in the case of *Pranal Anni v. Lakhshmi Anni* (2), in which their Lordships of the Privy Council held the unregistered deed of compromise inadmissible.

In the present case the plaintiffs in effect ask the Court to hold that the petition to the Revenue Court and its order

(1) (1905) I. L. R., 28 All., 78. (2) (1899) I. L. R., 22 Mad., 508.

operated to create a fresh mortgage. To entertain such a contention would be a very serious extension of the ruling of this Court in *Raghubans Muni Singh v. Muhabir Singh* (1). I also would dismiss the appeal.

BY THE COURT:

The order of the Court is that the appeal be dismissed, but under the circumstances without costs.

*Appeal dismissed.*

## APPELLATE CIVIL.

1908

SADAB-UD-  
DIN  
ABMAD  
v.  
CHAJJU.

1908  
November 14.

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

PIARI LAL (PLAINTIFF) v. NAND RAM AND OTHERS (DEFENDANTS.) \*

*Civil Procedure Code, section 13—Res judicata—Suit for sale on a mortgage—Compromise by which mortgagee accepted a simple money decree—Second suit for sale barred.*

A suit for sale on a mortgage was compromised on the terms that the mortgagee should accept a simple money decree for the amount of the mortgage debt, and such a decree was accordingly passed. This decree not being satisfied, the mortgagee again sued for sale of the mortgaged property. Held that the suit was barred. *Shibu Bera v. Chandra Mohan Jana* (2) followed. *Bhola Nath v. Muhammad Sadiq* (3) and *Madho Prasad v. Baij Nath* (4) distinguished.

The facts of this case are as follows:—

In the year 1880 the predecessors in title of some of the defendants and the other defendants executed a mortgage in favour of the predecessor of the plaintiff. A suit was brought upon this mortgage on the 21st of September 1882, in which a sale of the mortgaged property was claimed. The suit was compromised on the terms that a simple money decree only should be passed in favour of the plaintiff and such a decree was passed on the 27th of November 1882. The amount due to the plaintiff on foot of the compromise was, however, not satisfied, or at least not fully satisfied. Thereupon the plaintiff instituted a second suit for sale of the mortgaged property. The first

\* Second Appeal No. 488 of 1907 from a decree of J. H. Cumming, Assistant Judge of Aligarh, dated the 21st of January 1907 reversing a decree of Muhammad Shah, Subordinate Judge of Aligarh, dated the 16th of July 1906.

(1) (1905) I. L. R., 28 All., 78. (3) (1908) I. L. R., 26 All., 223.  
(2) (1906) I. L. R., 33 Calc., 849. (4) Weekly Notes, 1905, p. 152.