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with costs against the property of Tawajjul Husain. The decree makes no further mention of the compromise and does not purport to incorporate it as part of the decree, or contain any direction that it is to be so incorporated or to be considered as forming part of the decree. It further follows that the portions of the compromise not incorporated in the decree must be considered to have no more effect than an agreement between the parties which has not been embodied in a decree. Such an agreement as we have here ought under section 17 of the Registration Act of 1877 to have been registered. Admittedly it has not been registered. We therefore hold that it is not admissible in evidence against the plaintiffs appellants and does not bar this suit." This decision supports the judgment appealed from and is, we think, correct. For these reasons, therefore, we think that both the lower courts were right in dismissing the plaintiff's claim, and we accordingly dismiss this appeal with costs.

Appeal dismissed.

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January 18.

Before Mr. Justice Sir George Knox and Mr. Justice Piggott.

THE COLLECTOR OF SHAHJAHANPUR (JUDGMENT-DEBTOR) *v.* KUNJ BEHARI LAL (DECREE-HOLDER).*

Civil Procedure Code (1908), *section* 53—*Execution of decree—Effect of previous order in execution—Res judicata.*

When the court executing a decree had decided that the decree as it stood was incapable of enforcement against the ancestral property of the original debtor, but could only be enforced against property in the hands of the judgment-debtors by way of inheritance and not by way of survivorship. *Held* that this decision was *res judicata* between the parties to the decree and was not affected by the provisions of sections 52 and 53 of the Code of Civil Procedure, 1908.

THE facts of this case were briefly as follows:—

In April 1903 the decree-holder obtained a decree against the son and grandson of his original debtor, and the decree stated that the judgment-debtors mentioned therein should be liable only as heirs of the deceased debtor. The decree-holder took out execution and attached one village, Sumaria. It was objected that this village had come into the hands of the judgment-debtors by survivorship and was not liable to attachment. The objection

* First Appeal No. 218 of 1909 from a decree of Muhammad Mubarak Husain, Subordinate Judge of Shahjahanpur, dated the 30th of April 1909

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was allowed on the ground that only property which had come to the judgment-debtors by inheritance was attachable and the execution against village Sumaria was dismissed on the 19th of July 1902. The decree-holder then attached and sold such property in the hands of the judgment-debtors as had descended to them by inheritance and realized various sums of money, but his decree remained unsatisfied. He then applied for review of the judgment in the case in which he had obtained the decree, but the application was dismissed on the 31st of March 1905. He then put in the present application in March 1909, and sought to attach other villages in the hands of the judgment-debtors (whose estate was then under the Court of Wards) which had come to them by survivorship. It was objected that the order of the 19th of July 1902 operated as *res judicata*. The lower court dismissed the objection on the ground that the previous order related to another village, Sumaria, and also on the ground that under section 53 of the new Code of Civil Procedure such property was liable to sale. The judgment-debtors as represented by the Court of Wards appealed.

Mr. *A. E. Ryves* for the appellants :—

Section 53 of Act V of 1908 had no application, as the rights of the parties had been decided by the order of the 19th of July 1902, which had become final. The executing court had interpreted the decree and ruled that according to the decree only such property would be liable as had come to the judgment-debtors by the right of inheritance. That court decided that property which had passed to the judgment-debtors by survivorship was not liable under the decree. Section 53 could not have any retrospective effect, and could not give to a party a right which had been taken away by a final decree. The decision of the 19th of July 1902 had the effect of *res judicata*. He relied on *Behari Lal* v. *Majid Ali* (1) and Caspersz, Estoppel and Res judicata (last edition) p. 300. The mere fact that other villages were sought to be attached made no difference, as they fell within the same category, that is, villages which had come to the judgment-debtors by survivorship. The material issue was the same, namely, whether villages which fell under that category were liable. He cited *Krishna Behari Roy* v. *Brojeswari Chowranee* (2).

(1) (1897) I. L. R., 24 All., 188. (2) (1875) L. R., 2 I. A., 283.

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Pandit *Baldeo Ram Dave* (for the Hon'ble Pandit *Sundar Lal*), for the respondent:—

Before section 53 of the new Code was enacted there was a conflict of opinion as to whether the liability of the sons could be determined in the execution department or by a regular suit. He cited *Lachmi Narain* v. *Kunji Lal* (1) and *Amar Chandra Kundu* v. *Sebak Chand Chowdhury* (2). By enacting section 53 the Legislature declared that all property in the hands of an heir shall be deemed to have come to him as the legal representative of his ancestor. Therefore, whether the villages were inherited or had come to the judgment-debtors by survivorship, they were liable. The order of 19th July 1902 only determined that the liability of the son could be determined in the execution department, as was laid down in I. L. R., 16 All., 449.

KNOX and PIGGOTT, J.J.—This appeal in an execution case arises out of the following facts. In April 1902 Kunj Behari Lal, respondent in this Court, obtained a decree against Kunwar Mahendra Singh and Budh Pal Singh, the son and grandson respectively of Raja Narain Singh, in respect of a debt incurred by the said Raja. The decree-holder in the year 1902 sought to execute this decree by attachment and sale of a village which was found to be ancestral property of Raja Narain Singh. The court executing the decree held that the decree, as it stood, was incapable of enforcement against the ancestral property of the original debtor, but only against property in the hands of the judgment-debtors by way of inheritance from Raja Narain Singh, and not by way of survivorship as members of the same joint Hindu family. This decision was acquiesced in by the decree-holder, who, in fact, made an ineffectual attempt to obtain a review of the decree from the court which had passed it. In the month of March 1909 the decree-holder again took out execution against property which was the ancestral property of Raja Narain Singh. He claims to be entitled to do this, because of the provisions of sections 52 and 53 of the new Code of Civil Procedure, Act No. V of 1908. We are of opinion that these provisions do not help him. In the decree of April 1902 Kunj Behari Lal was expressly given the right to recover certain money only from such property as might

(1) (1894) I. L. R., 16 All., 449. (2) (1907) I. L. R., 34 Calc., 643.

have passed to his judgment-debtors by way of inheritance from Raja Narain Singh. The decree has been interpreted in this sense as between the parties, and that interpretation has become *res judicata* between them. The subsequent alteration in the law can have no effect as regards this question, namely, what did the court which passed the decree intend to give to the decree-holder and what rights were actually given him by the said decree. We, therefore, are of opinion that this appeal must prevail. We set aside the order of the lower court and dismiss the application for execution. The appellants will get their costs throughout.

Appeal decreed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Piggott.

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January 19.

KESHO DAS AND ANOTHER (DEFENDANTS) v. MAKSUDAN DAS (PLAINTIFF).*

Landlord and tenant—Denial of lessor's right to sue—Estoppel.

Held that a tenant who had taken a lease from one of several trustees was not competent to deny his lessor's right to sue alone for the rent. *Musammat Purnia* v. *Torab Ally* (1), and *Jainarayan Bose* v. *Kadimbini Dasi* (2) referred to.

THE plaintiff respondent brought a suit for the recovery of arrears of rent for 1312 Fasli to 1314 Fasli as one of the superintendents of a certain temple. The defence was the admission of the liability, but denial of the plaintiff's right to recover the amount, as there were other trustees who were not brought on the record and who had served notice on the defendants not to pay the arrears to the plaintiff alone. The courts below decreed the claim. The defendants appealed.

Pandit *Mohan Lal Sandal* (with him Babu *Durga Charan Banerji*) for the appellants.

Babu *Sarat Chandra Chaudhri* (for Babu *Jogindro Nath Chaudhri*), for the respondent.

STANLEY, C. J., and PIGGOTT, J.—There is no force in this appeal. The plaintiff's suit was brought to recover arrears of rent due by the defendants under a letting made to them by the plaintiff. It is found by the lower appellate court that the

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* Second Appeal No. 1024 of 1908 from a decree of B. J. Dalal, District Judge of Agra, dated the 20th of August, 1908, confirming a decree of Muhammad Nur-ul-Hasan Khan, Assistant Collector, 1st class, of Agra, dated the 15th of May, 1908.

(1) 3 Wyman, 14. (2) (1869)7 B. L. R., 723.