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petition to him must rest on the fact that the parties last resided together within his jurisdiction. The learned District Judge may in this case have been labouring under the misapprehension that the petitioner and his wife last resided at Meerut because of the temporary visit which they paid to this city. But it is clear that that temporary visit did not constitute residence within the meaning of the Act. In view of the fact that the learned District Judge had not jurisdiction to entertain the petition, we have no jurisdiction to confirm the decree which has been passed. It is unnecessary for us to consider the merits of the case. We abstain from expressing any opinion upon the facts set forth in the petition or upon the evidence in support of the petition.

Hyderabad in Scinde is not within the jurisdiction of this Court. It was in Hyderabad, Scinde, that the petitioner and respondent appear to have last resided together, and this Court has no authority to confirm the decree.

We, therefore, decline to confirm it. We set it aside and dismiss the petitioner's petition. Under the circumstances we say nothing as to costs.

Reference rejected.

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January 15.

APPELLATE CIVIL.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Karamat Husain.

KASHI KUNBI AND ANOTHER (PLAINTIFFS) *v.* SUMER KUNBI AND ANOTHER (DEFENDANTS).*

Act No. III of 1877 (*Indian Registration Act*), *sections* 17, 49—*Registration—Compromise, not embodied in the decree, containing a contract for pre-emption.*

The parties to a suit filed a compromise, which, in addition to setting forth the rights of the parties as to the property in suit, went on to provide that if either party sold his share of the property, the other party should have a right to pre-empt. The decree based on this compromise was silent as to the right of pre-emption. *Held* that the compromise required registration, and, not being registered, could not be used to support a suit for pre-emption.

THE facts of this case were as follows:—

The plaintiffs and the defendant vendor had certain disputes as to the shares each inherited from their common ancestor,

* Second Appeal No. 640 of 1909 from a decree of E. H. Ashworth, District Judge of Benares, dated the 1st of May 1909, confirming a decree of Hira Lal Singh, Munsif of Benares, dated the 26th of February 1909.

and in the course of a suit they entered into a compromise on the 2nd March 1892, in which they specified the share each was entitled to. The compromise further recorded an agreement to the effect that if either party sold his share of the property, the subject matter of the litigation, the other party should have a right to pre-empt. The compromise was filed in court and a decree was passed in accordance with the compromise, but it did not embody the provision as to the right of pre-emption. On the 22nd April the defendant vendor Sumer Kunbi sold his share to Nur Khan, whereupon the plaintiffs brought the present suit on the basis of the agreement entered in the compromise of 2nd March, 1892. The defendants pleaded that as that portion was not embodied in the decree it was not admissible in evidence as it was not registered. The court of first instance held on the authority of *Birxj Mohinee Dasee* v. *Kedar Nath Karmakar* (1) and *Patha Muthammal* v. *Esup Rowther* (2) that the compromise should have been registered, and therefore was not admissible in evidence, and dismissed the suit. On appeal the District Judge was of opinion that the deed of compromise was a composition-deed, but feeling himself bound by the rulings relied on by the Munsif dismissed the appeal. The plaintiffs appealed.

Babu *Peary Lal Banerji* (with him Munshi *Gokul Prasad*), for the appellants:—

The pre-emptive clause in the compromise merely gave the plaintiff a right to call upon the defendant vendor to execute a sale-deed in his favour. That portion of the compromise did not create any interest in favour of the plaintiff in the property, but merely created in the plaintiffs a right to obtain a document, *viz.*, a sale-deed, which would create the interest. An agreement to sell did not create any interest in the property. He referred to section 34, Transfer of Property Act. When a completed agreement to sell was declared by the Legislature not to create any interest in the property, an agreement of the nature relied upon, which fell far short of the completed agreement contemplated by section 54, did not create any interest. A document which requires registration must be a document which

(1) (1908) I. L. R., 35 Calc., 1010. (2) (1906) I. L. R., 29 Mad., 365.

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in itself creates a right. He referred to the Registration Act, section 17, clause (*h*), and relied on *Jiwan Ali Beg* v. *Basa Mal* (1) and *The Bengal Banking Corporation* v. *S. A. Mackertich* (2). He further submitted that as the compromise formed part of the pleadings in a proper judicial proceeding, it did not require registration. He relied on *Bindesri Naik* v. *Ganga Saran Sahu* (3). A composition deed included a deed embodying an amicable arrangement of a law suit; Wharton's Law Lexicon.

Maulvi *Muhammad Ishaq* for the respondent was not called upon, but he referred to F. A. 57 of 1902, decided on 9th March 1904.

STANLEY, C. J., and KARAMAT HUSAIN, J.—We think that the view of the law expressed by the learned Munsif in his judgment is correct. It appears that the parties were involved in litigation in the court of the Subordinate Judge of Benares. They compromised the suit, filing a *sulahnama*, dated the 2nd of March 1892. In this *sulahnama* the rights of the parties in certain immovable property of the value of Rs. 100 and upwards were declared and the document therefore was compulsorily registrable in view of the provisions of sections 17 and 49 of the Registration Act. In the *sulahnama* it was provided that, if either party sold his share of the property, the subject-matter of the litigation, the other party should have a right to pre-empt. A decree was passed upon the compromise, but that decree is silent as to the existence of any pre-emptive right whatever. The present suit arises out of a claim brought by two of the parties to the former litigation to have a right to pre-empt under the provisions of the *sulahnama* established. The learned Munsif dismissed the suit on the ground that the document of the 2nd of March 1892, not having been registered, was not admissible in evidence, and that the plaintiff could not therefore establish any right to pre-empt thereunder. For the view which he entertained the learned Munsif referred to the rulings in *Biraj Mohinee Dasee* v. *Kedar Nath Karmakar* (4) and in *Patha Muthammal* v. *Esup Rowther* (5). These decisions support the view of the learned Munsif. On appeal the learned

(1) (1886) I. L. R., 9 All., 108.
(2) (1884) I. L. R., 10 Calc., 315.
(3) (1897) I. L. R., 20 All., 171.
(4) (1908) I. L. R., 35 Calc. 1010.
(5) (1906) I. L. R., 29 Mad. 365.

District Judge expressed some doubt as to the correctness of the rulings in question, but held that he was bound by those rulings in the absence of any ruling to the contrary by this Court. He therefore affirmed the decision of the court of first instance.

The appeal now before us was preferred by the plaintiffs, and the only ground of appeal is that the *sulahnama* (*i.e.*, the agreement of the 2nd of March 1892) did not require registration. That document undoubtedly declared the rights of the parties in immovable property of the value of Rs. 100 and upwards and was therefore compulsorily registrable. But it is argued that the provisions contained in it as to pre-emption were not required to be registered, and that inasmuch as a decree was passed determining the rights of the parties in the immovable property, the document was admissible in evidence to prove the right of pre-emption claimed, that, in other words, the document may be divided into two parts, one of which required and the other did not require registration within the meaning of the Registration Act. We think there is no force in this contention. Section 49 of the Registration Act provides that no document required by section 17 to be registered shall affect any immovable property comprised therein or "be received as evidence of any transaction affecting such property." The *sulahnama* in so far as it purported to create a right of pre-emption was a transaction affecting property within the meaning of this section, and in our opinion it was rightly held that, as the document was not registered, no evidence of its contents could be given to establish a claim of pre-emption. In the unreported case of *Musammat Fatima Bibi* v. *Mirza Sadr-ud-din Beg* (1), which was decided by a Bench of this Court, of which one of us was a member, on the 9th of March 1904, a similar question was dealt with. In that case a contention similar to the one which has been raised before us by the learned vakil for the appellants was raised. In the judgment we find the following passage dealing with this contention:—"But turning to the decree of September 17th, 1892, we find that the only parts of the compromise incorporated in it are those in which consent is given to the passing of a decree for Rs. 24,375

(1) F. A. No. 57 of 1902.

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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