

1911

BHAGWAN  
DAS  
v.  
KARAM  
HUSAIN.

article 62 or 120 or 132, the claim is within time. Article 61 which provides the limitation for suits "for money payable to the plaintiff for money paid for the defendant," relied upon by the learned vakil for the defendants is clearly inapplicable.

For the above reasons I am of opinion that neither branch of the claim is barred by limitation and the decision of the court below is erroneous. I would allow the appeal and remand the case to the court below for trial on the merits.

CHAMBER, J.—I agree with the judgement of my brother BANERJI, and have nothing to add.

By THE Court.—The order of the Court is that the appeal is allowed, the decree of the court below is set aside and the case is remanded to that court under order XII, rule 23, of the Code of Civil Procedure for trial on the merits.

*Appeal allowed.*

## APPELLATE CIVIL.

1911  
May 29.

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

RUSTAM ALI KHAN AND OTHERS (DEFENDANTS) v. MUSAMMAT GAURA  
(PLAINTIFF).\*

*Act No. XVI of 1908 (Indian Registration Act), section 49—Registration—Evidence of title—Petition of compromise in a mutation case and order thereon.*

*Held* that a petition of compromise filed in a mutation case before a court of Revenue and the order of the court thereon can neither effect nor prove a conveyance of the immovable property to which the mutation proceedings may relate. *Pranal Anni v. Lakshmi Anni* (1), *Raghubans Mavi Singh v. Mahabir Singh* (2), *Kashi Kumbi v. Sumer Kumbi* (3), *Biraj Mohini Dasee v. Kedar Nath Karmakar* (4), *Muthayya v. Venkataratnam* (5) and *Sadar-ud-din Ahmad v. Chajju* (6) referred to.

THIS was a suit by one Musammat Gaura for a declaration of her title to certain property which had been mortgaged by the plaintiff's sister Musammat Mahtabo and brought to sale in execution of a decree upon the mortgage. The plaintiff's case

\* First Appeal No. 20 of 1911 from an order of E. E. P. Rosa, Additional Judge of Jaunpur, dated the 8th of December, 1910.

(1) (1899) I. L. R., 23 Mad., 508.

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

(3) (1900) I. L. R., 32 All., 206.

(4) (1908) I. L. R., 35 Cal., 1010.

(5) (1901) I. L. R., 23 Mad., 533.

(6) (1908) I. L. R., 31 All., 113.

1911

---

 RUSTAM ALI  
 KHAN  
 v.  
 MUSAMMAT  
 GAURA.

was that the property in suit had been sold by her father to one Sheo Ghulam and bought back by her from the purchaser. The court of first instance (Munsif of Jaunpur) dismissed the suit, basing its judgement mainly upon certain mutation proceedings which took place after the death of plaintiff's father in the course of which the plaintiff and her two sisters came to a compromise regarding their title to certain property said to be identical with the property in suit. The court held that the compromise and the order passed thereon conferred title on the three sisters to the extent specified therein. On appeal the Additional District Judge disagreed with this view of the court below and remanded the case for trial on the merits. The defendants appealed to the High Court.

Mr. S. A. Haidar, for the appellants.

Mr. Muhammad Ishaq Khan, for the respondent.

KNOX and PIGGOTT, JJ.—In this case Rustam Ali Khan, the principal defendant appellant, took a mortgage of a half-share in a certain house from one Musammat Mahtabo, and eventually brought the said half-share to sale in execution of his decree. The plaintiff, Musammat Gaura, is own sister of Musammat Mahtabo. She sues for a declaration that the entire house is her property and that no part of it is liable to be sold in execution of the decree obtained by Rustam Ali Khan on his mortgage. The plaintiff's case is that the house in suit did not form part of the estate of her late father, as inherited by her sisters, Mahtabo and Shitabo; she says that, on the contrary, this house had been sold by her father in his life-time to one Sheo Ghulam, and purchased from Sheo Ghulam by the plaintiff herself. The learned Munsif who tried the suit in the first instance fixed four issues; and it may perhaps save the parties trouble hereafter if we take occasion to remark in this place that the issues so fixed hardly seem to cover the whole ground. They take no account of the pleas raised in the fifth paragraph of the written statement filed by Rustam Ali Khan, to the effect that he took his mortgage of half the house from Musammat Mahtabo in good faith, with the knowledge of the plaintiff, and under such circumstances as would justify a finding that the plaintiff was allowing her sister, Mahtabo, to appear as the ostensible owner of half the house.

1911

RUSTAM ALI  
KHAN  
v.  
MUSAMMAT  
GAURA.

On the issues fixed by him, however, the learned Munsif decided one only, the fourth, which referred to certain proceedings in mutation before a Revenue Court which followed on the death of the plaintiff's father. There was a dispute at the time between the plaintiff and her two sisters. This dispute came before the Revenue Courts in connection with the question of the entries to be made in the revenue registers consequent on the death of the father of these ladies. The plaintiff and her sisters filed before the Revenue Court a petition of compromise, in which they explain how they have settled the differences between them in reference to the estate left by their father. It is not denied that this petition deals with matters beyond the scope of the Revenue Court's inquiry; the order actually passed by that court referred only to a certain plot of land Bs. 0-1-19 in area, and as to this it directed simply that the names of the plaintiff (Musammat Gaura) and her sisters Mahtabo and Shitabo, should be recorded in the revenue registers as proprietors of this plot in equal shares. The learned Munsif held in effect that this petition of compromise operated to confer upon the three ladies concerned a proprietary right to the extent of one-third each in the house in suit; that the plaintiff was bound by its terms, which were capable of being enforced as they stood, on the strength of the petition itself and of the order passed upon it by the Revenue Court; and that consequently it was not necessary to determine the issue whether the entire house had or had not passed to the plaintiff by purchase from Sheo Ghulam. On appeal from the decree which followed on this finding the learned Additional Judge points out that the petition of compromise relates admittedly to immovable property of a value exceeding Rs. 100; that title in such property could only pass by registered deed or by decree of a competent court; that it did not appear from the facts as laid before him that the order in mutation passed by the Revenue Court referred to the house now in suit at all, and that in any case the petition and the order of the Revenue Court therein could not between them operate so as to transfer proprietary title in the house from the plaintiff to any other person. He therefore set aside the decree of the first court and remanded the case for trial with reference to the remaining issues fixed and to

the pleadings of the parties. The defendants come to us in appeal against this order of remand, which, however, seems to be clearly right. Where the law requires a registered instrument in order to the effecting of a certain transfer of property by way of sale, mortgage, exchange or gift, such transfer can only be effected by registered instrument or by decree of a competent court. In none of the numerous rulings to which we were referred, will anything be found to contradict this proposition of law. On the contrary, the principle involved appears distinctly in the ruling of their Lordships of the Privy Council in *Pranal Anni v. Lakshmi Anni* (1) and in the judgement of this Court in *Raghubans Mani Singh v. Mahabir Singh* (2), where the decree of a competent court made good what would otherwise have been a defective title. Cases in which the weakness of an unregistered petition of compromise, not incorporated in any decree or order by a competent court, to confer title is shown are numerous. We may refer to *Kashi Kunbi v. Sumer Kunbi* (3), *Biraj Mohini Dasee v. Kedar Nath Karmakar* (4), *Muthayya v. Venkataratnam* (5) and *Sadar-ud-din Ahmad v. Chajju* (6). This last is particularly in point because dealing with a compromise filed in a mutation case.

It was contended in argument before us that the plot of land referred to in the mutation order of the Revenue Court was identically the same property under a different description as the "house" which forms the subject-matter of the present suit. The point is by no means clear on the evidence as it stands; but it is not material for the determination of this appeal because the order of the Revenue Court in mutation could not in any case operate so as to confer title. The fact is that the learned Munsif would seem to have tried to find a short cut to the decision of this case, by adopting a view of the law and the facts which was not put forward by either of the parties to the case. He says in effect that Musammat Gaura may have been full owner of the entire house in suit in her father's lifetime; but that after her father's death she conveyed a one-third share in this house to each of her sisters, and this conveyance he holds to have been at

1911

---

 RUSTAM  
 ALI KHAN  
 v.  
 MUSAMMAT  
 GAURA.

(1) (1899) J. L. R., 22 Mad., 508.

(4) (1908) I. L. R., 35 Calc., 1010.

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

(5) (1901) I. L. R., 25 Mad., 553.

(3) (1910) I. L. R., 32 All., 206.

(6) (1908) I. L. R., 31 All., 13.

1911

RUSTAM ALI  
KHAN  
v.  
MUSAMMAT  
GAURA.

once effected and proved by the petition of compromise and the order in mutation passed thereon by the Revenue Court. This is not a correct view of law; and if the petition of compromise was tendered in evidence as a title-deed, that is to say, as a document by which transfer of ownership was effected between Musammat Gaura and her sisters, it was not admissible in evidence by reason of section 49 of the Indian Registration Act (III of 1877). It would not appear, however, from a perusal of the pleadings that the case thus made out by the learned Munsif was the case set up by the defendant Rustam Ali Khan. The defendant's case is that there was never any real transfer of ownership from the plaintiff's father to Sheo Ghulam, or from the latter to the plaintiff; that the house in suit formed part of the estate of the plaintiff's father at the time of his death, and was treated *as such* by the three daughters when they settled their differences by the compromise in the mutation case. As bearing upon the issues thus raised, the proceedings before the Revenue Courts, including the petition of compromise and the orders passed by the court, are undoubtedly admissible in evidence, and must be taken into account for what they may be worth in deciding those issues.

The essential issues in the case still remain to be tried, and the learned District Judge was clearly right in remanding the case to the first court for the purpose. We dismiss this appeal with costs.

*Appeal dismissed.*