

the 15th of December, 1896, and no steps whatsoever have been taken for the obtaining of possession of the property by the mortgagees until the last day of limitation, namely, the 14th of December, 1908, a period of 12 years. The learned judge of this court relied upon the ruling in *Mahabir Prasad Rai v. Bishan Dayal* (1). The facts of that case are unlike those in the present case. There, there was no withholding of possession for a length of time as in this case. We cannot concur in the decision of our learned brother and must allow the appeal. We accordingly allow the appeal, set aside the decree of this court and restore the decree of the lower appellate court with costs in all courts.

*Appeal allowed.*

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CHANDRA.

## FULL BENCH.

*Before Mr. Justice Richards, Mr. Justice Griffin and Mr. Justice Tudball.*

PARMANAND (APPLICANT) v. SAT PRASAD (OPPOSITE PARTY).\*

*Act No. II of 1899 (Indian Stamp Act), sections 2 (21), and 60; schedule 1, article 48 (g)—Stamp—Power of attorney—Document authorizing holder to appear and do all acts necessary for execution of decrees.*

*Held* that a document purporting to authorize the person in whose favour it was executed, who was not a certificated mukhtar or pleader, to appear and do all acts necessary for the execution of a decree of a court, outside the United Provinces, which had been transferred to a court in those Provinces for execution, required to be stamped as a power of attorney with a one rupee stamp, and not as a vakalatnamah or mukhtar-namah.

THIS was a reference under section 6 of the Stamp Act, 1899, made by the District Judge of Cawnpore on the following facts:—

A decree of a Punjab Court was transferred to the court of the District Judge of Cawnpore for execution. A person who was not a legal practitioner filed, on behalf of the decree-holder, some papers in the Cawnpore Court. His authority for acting on behalf of the decree-holder was a 'mukhtar-namah' which was stamped only with a court fee label of 8 annas. The District Judge referred the following question to the High Court:—  
"When a private person acting on behalf of another in a matter

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\* Civil Miscellaneous No. 445 of 1910.

(1) Weekly Notes, 1904, p. 163.

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in the Civil Court files a power of attorney, should not that power be liable to duty under the Stamp Act, or is it properly stamped if filed on plain paper bearing an 8 anna court fee label as if it were a mukhtar-namah under the Court Fees Act?"

The Government Advocate (Mr. A. E. Ryves), in support of the reference:—

The question is important as it appears to be the practice, in parts of these Provinces, of the courts to accept, as properly stamped, documents of this kind in execution cases transferred from the Punjab, where people were allowed to appear and act for parties on the authority of such documents. This practice in the Punjab was due to the exemption contained in the last paragraph of section 37 of the old Code of Civil Procedure (1882), but omitted from order III, rule 2, of the present Code. So, now, in all the Provinces a person other than a legal practitioner can appear and act only in accordance with order III, rule 2. A power of attorney which is required by clause (a) of that rule is defined by section 2, clause (21) of the Stamp Act; and the amount of stamp duty payable is laid down by article 48 of the schedule. The document in question comes under clause (c) or clause (g) of article 48. It should, therefore, be executed on stamp paper of the value of Re. 1. Article 10 of schedule 11 of the Court Fees Act deals with mukhtar-namahs and vakalat-namahs, which are meant only for legal practitioners, and are to be distinguished from ordinary 'powers of attorney.' The Court Fees Act itself makes this distinction between a mukhtar-namah and a power of attorney to institute or defend a suit; *vide* section 19, clause (i).

No one appeared against the reference.

RICHARDS, GRIFFIN and TUDBALL, JJ.:—This is a reference under section 60 of the Stamp Act of 1899. A document was produced in the Court of the District Judge of Cawnpore. It was assumed by the court below that this was a document which authorized the holder who is nominated therein to appear and do all acts necessary for the execution of a certain decree which had been transferred from the Punjab to Cawnpore for execution. We are dealing with the case on the assumption that the document if duly stamped was sufficient for the purpose. The

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document bears an eight anna court fee label and no other stamp. The donee of the power is not a certified mukhtar or pleader, and the question is whether under these circumstances the document is duly stamped. Section 2, clause (21) of the Stamp Act defines the expression "power of attorney" in the following terms:—"A power of attorney includes any instrument (not chargeable with a fee under the law for the time being in force) empowering a specified person to act for and in the name of the person executing it." The present document, as we shall presently show, clearly falls within this definition. Article 48 of Schedule I of the Stamp Act provides for the stamp on a power of attorney falling within the definition which we have quoted above. Clause (c) provides that when the document authorizes one person or more to act in a single transaction other than the case mentioned in clause (a) the proper stamp shall be one rupee. Clause (g) is a general provision for all such powers of attorney not provided for by other clauses.

Article 10, Schedule II, of the Court Fees Act provides for the stamping of mukhtar-namahs and vakalat-namahs. Clause (a) refers to a mukhtar-namah or vakalat-namah presented to any Civil or Criminal Court other than a High Court or to a Revenue Court or to any Collector or Magistrate or other Executive officer except such as are mentioned in clauses (b) and (c). Clause (b) provides for the same class of documents when presented to a Commissioner of Revenue, Circuit or Customs or to any officer charged with the executive administration of a division, not being the chief revenue or executive authority. Clause (c) provides for the same class of documents when presented to a High Court, Chief Commissioner, Board of Revenue or other chief controlling revenue or executive authority. It appears to us that all these documents are documents which it was intended to exclude from the definition of the expression power of attorney in section 2, clause (21) of the Stamp Act. It, therefore, seems to us that it is clear that the documents referred to in article 10, Schedule II, of the Court Fees Act are restricted to documents given to and presented by duly certificated mukhtars and pleaders under the Legal Practitioner's Act. We may point out that we are not deciding that the document in the present case,

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if it was duly stamped, was sufficient to entitle the donee to execute or take steps to execute the decree in Cawnpore. Our decision relates only to the question whether or not the document was duly stamped. Assuming merely for the purpose of deciding the question before us that the document was sufficient if duly stamped, we hold that the document was not duly stamped, and that it ought to have been stamped with the stamp provided for by article 48, Schedule I, of the Stamp Act. We make no order as to costs.

## APPELLATE CIVIL.

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February 21.

*Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.*  
SHIB CHARAN DAS (PLAINTIFF) v. RAM CHANDRA SARUP AND OTHERS  
(DEPENDANTS).\*

*Award—Refusal of court to file a private award—Subsequent suit to enforce terms of award—Res judicata.*

*Held* that the refusal of a court to file a private award will not operate as *res judicata* in respect of a subsequent suit brought to enforce the award. *Kunji Lal v. Dwaga Prasad* (1) followed. *Basant Lal v. Kunji Lal* (2) referred to.

THE facts of this case were as follows:—The plaintiff and other parties had disputes about the partition of certain property which belonged to them. They prepared lots and appointed an arbitrator for the purpose of assigning the lots to the different persons interested. On the 17th December, 1904, an agreement of reference was drawn up and one Babu Kumanuj Dayal was appointed arbitrator. On the 23rd of December, 1904, lots were drawn and lot No. 1 fell to the share of the plaintiff and his co-sharers. One of the properties comprised in that lot was 20 biswas of the village Sherpur. On the 14th of December, 1905, an award was made, but in that award by a mistake instead of entering the whole of the 20 biswas of the village Sherpur in lot No. 1 only a half of that village was entered by the clerk who copied out the lots embodied in the award. The mistake was discovered and the attention of the arbitrator was drawn to

\* First Appeal No. 390 of 1909 from a decree of Kanhaiya Lal, Second Additional Judge of Meerut, dated the 11th of August, 1909.

(1) ( 1910 ) I. L. R., 32 All., 484.      (2) ( 1905 ) I. L. R., 28 All., 21.