

APPELLATE CIVIL.

1911
February 15

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Banerji.
BHAGWAN SAHAI AND ANOTHER (DEPENDANTS) v. HAR CHAIN AND
OTHERS (PLAINTIFFS).*

Act No. III of 1877 (Indian Registration Act), sections 17, 49—Registration—Evidence—Petition of compromise unregistered and not embodied in any decree of court.

Held that a petition containing the terms of a compromise between parties to a Revenue Court suit, which had been filed in the Court, but was unregistered and had not been acted upon or embodied in the Revenue Court's decree, could not in a subsequent civil suit be used as evidence of the terms of such compromise, the property purporting to be dealt with thereby being above the value of Rs. 100. *Sadar-ud-din Ahmad v. Chajju*, (1) and *Kashi Kunbi v. Sumer Kunbi* (2) followed.

THIS was a suit for a declaration that the plaintiffs are entitled to retain possession of certain immovable property, and in the alternative, if they were found not to be in possession, that possession might be delivered to them. The property exceeded Rs. 100 in value. It belonged to one Gulzari Lal. Upon his death his daughter, Musammat Sujan, succeeded to it. On her death in 1907, the plaintiffs applied for mutation of names in their favour, as did also the father of the defendants. A compromise was entered into between the parties on the 8th of February, 1908, whereby it was agreed that portion of the property should pass into the hands of the father of the defendants and the remaining portion into the hands of the plaintiffs. The father of the defendants subsequently repudiated this compromise. An application was made to the Revenue Court for mutation, and that court ignoring the compromise ordered mutation in favour of the defendant's father.

In the present suit the compromise above referred to was tendered in evidence in the first court, but it was rejected on the ground that not being registered and the property being of the value of Rs. 100 and upwards, it was not admissible in evidence; and holding that the plaintiff's suit was based upon this compromise alone that court dismissed the plaintiff's claim *in toto*,

* First Appeal No. 109 of 1910 from an order of L. Johnston, District Judge of Meerut, dated the 10th of August, 1910.

(1) (1908) I. L. R., 31 All., 13. (2) (1909) I. L. R., 32 All., 206.

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without giving the plaintiffs an opportunity of establishing their title to the property or portion of it as the reversionary heirs of Gulzari.

On appeal, however, the District Judge held that the compromise was admissible and remanded the case under order XXI, rule 23, of the Code of Civil Procedure. From this order the defendants appealed to the High Court.

Dr. *Satish Chandra Banerji* (with him *Babu Harendra Krishna Mukerji*), for the appellants.

Dr. *Tej Bahadur Sapru* for the respondents.

STANLEY, C. J., and BANERJI, J.—This is an appeal from an order of remand passed under order XXI, rule 23, of the Code of Civil Procedure. The suit was one for a declaration that the plaintiffs are entitled to retain possession of certain immovable property, and in the alternative, if they were found not to be in possession, that possession may be delivered to them. The property exceeds Rs. 100 in value. It belonged to one Gulzari Lal. Upon his death his daughter, Musammat Sujan, succeeded to it. On her death in 1907, the plaintiffs applied for mutation of names in their favour, as did also the father of the defendants. A compromise was entered into between the parties on the 8th of February, 1908, whereby it was agreed that portion of the property should pass into the hands of the father of the defendants and the remaining portion into the hands of the plaintiffs. The father of the defendants subsequently repudiated this compromise. An application was made to the Revenue Court for mutation, and that court ignoring the compromise ordered mutation in favour of the defendant's father. Hence the present suit.

In their claim the plaintiffs alleged that Musammat Sujan, the daughter of Gulzari, was the last owner of the property and was the plaintiff's cousin by family relationship and was in possession of the property as daughter in a Hindu family and had a life-interest in it. A reference was then made to her death, and in the second paragraph of the plaint the plaintiffs say that on the death of Musammat Sujan a dispute arose between the plaintiffs and the father of the defendants, and that an application for mutation of names was presented on behalf of both parties in the Revenue Court; that the plaintiffs alone claimed

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the whole property of Gulzari on the one hand and the father of the defendants alone claimed the whole property on the other hand. Then reference is made to the compromise to which we have referred. The compromise was tendered in evidence in the first court, but it was rejected on the ground that not being registered and the property being of the value of Rs. 100 and upwards, it was not admissible in evidence; and holding that the plaintiff's suit was based upon this compromise alone that court dismissed the plaintiff's claim *in toto*, without giving the plaintiffs an opportunity of establishing their title to the property or portion of it as the reversionary heirs of Gulzari.

An appeal was preferred to the lower appellate court. That court held that the compromise was admissible in evidence, notwithstanding the fact that it was not registered. The learned Judge says:— "I find that the compromise petition in suit did not require to be registered and was admissible in evidence," and that "the lower court improperly held that the test was whether the compromise was incorporated in the decree, and that this was not the test of admissibility." That court accordingly remanded the suit to the court of first instance for determination on the merits. This appeal was then preferred.

As regards the admissibility in evidence of the compromise the learned District Judge was, in our opinion, entirely in error. Neither the compromise, nor any terms of the compromise, was embodied in any decree or order, and to admit such a compromise in evidence is entirely in contravention of the provisions of the Registration Act. If authority were needed for this, it is to be found in the Full Bench case of *Sadur-ud-din Ahmad v. Chajju* (1). There it was held by a Full Bench, of which both of us were members, 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 a registered instrument of mortgage. In the subsequent case of *Kashi Kunbi v. Sumer Kunbi* (2) a Bench of this Court, of which one of us was also a member, held in a case in which the

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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, and in which the decree based on the compromise was silent as to the right of pre-emption, that the compromise required registration, and not being registered, could not be used to support a suit for pre-emption. In the judgement in that case the authorities are dealt with. In that case some of the terms of the compromise were embodied in a decree, but the provision as to pre-emption was nowhere mentioned in the decree. In the present case no portion of the compromise is embodied in any decree or order. On the contrary, the order of mutation entirely ignored the petition of compromise. Clearly, therefore, this petition was not admissible in evidence to prove the agreement set out in it. The lower appellate court was, we think, justified in remanding the suit, but not upon the ground on which it was remanded. The court of first instance ought under the circumstances to have heard the case upon the merits and tried the question of title set up by the respective parties irrespective of the compromise.

For these reasons the order of remand of the court below was rightly passed and the court of first instance must try the question of title set up by the respective parties. We accordingly dismiss the appeal, but under the circumstances the costs will abide the event.

Appeal dismissed.