

1912

EMPEROR  
v.  
HARDWAR  
PAL.

1912  
May, 14.

We allow the application and quash the proceedings as the Magistrate's action is illegal.

*Application allowed.*

## APPELLATE CIVIL.

*Before Mr. Justice Karamat Husain and Mr. Justice Tudball.*

PIARI LAL AND OTHERS (PLAINTIFFS) v. MAKHAN AND OTHERS (DEFENDANTS).  
*Act No. XVI of 1908 (Indian Registration Act), section 17 (2) (vi)—Mortgage—Receipt for mortgage money—Registration.*

A receipt for money due upon a mortgage was given in the following terms:—"The bond is returned. No money remains due." Held on suit for recovery of the mortgage debt that the receipt did not require to be registered and that the words "no money remains due" did not purport to extinguish the mortgage.

This was a suit to recover money alleged to be due upon a mortgage by sale of the mortgage property. In defence a receipt was produced in the following terms:—"The bond is returned. No money remains due." The court of first instance (Additional Subordinate Judge of Meerut) found that the receipt was not proved, nor the payment of the mortgage money, and decreed the plaintiffs' claim. On appeal the Additional Judge held that the receipt was proved, and, reversing the decree of the court of first instance, dismissed the suit. The plaintiffs appealed, their main contention being that the receipt was inadmissible inasmuch as it was not registered.

Mr. *Nihal Chand* and Munshi *Benode Bihari*, for the appellants.

The Hon'ble Dr. *Sundar Lal* and Pandit *Vishnu Ram Mehta*, for the respondents.

KARAMAT HUSAIN and TUDBALL, JJ.—This was a suit upon a mortgage. One of the pleas in defence was payment of the entire sum due on it. In support of that plea a receipt, dated Asadh Sudi 3rd, Sambat 1950, corresponding to 16th June, 1893, was produced. The court of first instance came to the conclusion that the receipt was not proved and that the payment was not proved. It, therefore, decreed the claim. There was an appeal to

\*Second Appeal No. 760 of 1911 from a decree of C. E. Guiterman, Additional Judge of Meerut, dated the 2nd June, 1911, reversing a decree of Muhammad Husain, Additional Subordinate Judge of Meerut, dated the 14th of November, 1910.

the lower appellate court, which found that the receipt was genuine, and reversed the decree of the first court. The plaintiffs have preferred a second appeal to this Court, and two points are pressed before us. The first is that there is nothing in the receipt and in the oral evidence adduced by the defendants to establish that the receipt refers to the mortgage which is the basis of the suit. The second is that the receipt purports to extinguish the right in the mortgaged property, and that, as it is unregistered, it is inadmissible in evidence. The receipt is to the following effect:—"The bond is returned. No money remains due." The defendants adduced oral evidence to establish that on the day on which the receipt was executed the sum of Rs. 275 was paid. The lower appellate court has believed that evidence.

Regarding the plea that the receipt does not show that the bond in dispute was paid up, we are of opinion that this is entirely a new point which was not raised either in the first court or in the court of first appeal, and as it raises a question of fact, we are not inclined to give the appellants an opportunity to have that point tried *de novo* at this stage of the litigation.

On the second point, having regard to the cases *Dalip Singh v. Durga Prasad* (1), *Imdad Husain v. Tasadduk Husain* (2), *Jiwan Ali Beg v. Basa Mal* (3), *Sri Ram v. Kesri Mal* (4), *Fakir v. Khotu* (5) and *Lakshman v. Damodar* (6), and the express wording of section 17, clause (2), sub-clause (xi), of the Indian Registration Act No. XVI of 1908, we are of opinion that the receipt, though unregistered, so far as it relates to the payment of the entire sum of the money due on the mortgage on the date of the receipt, is admissible in evidence, and the words "no money remains due" do not, in our opinion, purport to extinguish the mortgage. That being so, the receipt does not require registration. The result is that the appeal fails and is dismissed with costs.

*Appeal dismissed.*

(1) (1877) I. L. R., 1 All., 442.

(2) (1884) I. L. R., 6 All., 335.

(3) (1886) I. L. R., 9 All., 108.

(4) (1896) I. L. R., 18 All., 838.

(5) (1882) I. L. R., 4 Bom., 590.

(6) (1900) I. L. R., 24 Bom., 609.