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UDIT TIWARI
v.
BIHARI
PANDE.

title. There is a ruling of this Court which is in favour of the respondent in this case, namely, *Dal Chand v. Shamla* (1). With all respect to the learned Judges who decided that case, it seems to us that they failed to distinguish between the case of pleadings by which a question of proprietary title is raised and that of pleadings which merely raise a question as to the nature of the defendant's possession. In the present case, what the plaintiff had to prove in order to succeed was that he, as occupancy tenant, let the land in suit to the defendant, and even though the latter be a co-sharer in the mahal to which the land appertains or even the sole proprietor of that mahal, there would be nothing illegal in such a contract of tenancy as was alleged by the plaintiff. The point thus raised was one the decision of which is within the province of the Revenue Court, and, as we are unable to hold that any question of proprietary title was raised before the Assistant Collector, was determined by that court or was in issue before the District Judge, we must hold that no appeal lay in this case to the latter court. We, therefore, accept this appeal, set aside the order and decree of the lower appellate court and direct the District Judge of Gorakhpur in lieu thereof, to return the petition of appeal presented to his court for presentation to the proper court. The appellant will get his costs in this Court and in the lower appellate court.

Appeal allowed.

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July, 22.

Before Mr. Justice Tudball and Mr. Justice Piggott.

MUMTAZ AHMAD AND ANOTHER (JUDGMENT-DEBTORS) v. SRI RAM (DECREE-HOLDER) AND BHAWANI SINGH AND OTHERS (JUDGMENT-DEBTORS).
Act No. XVI of 1908 (Indian Registration Act), sections 17 (b), 49—Document compulsorily registrable—Assignment of decree for sale of immovable property.

That a deed of assignment of a final decree for the sale of mortgaged property under order XXXIV, rule 5, of the Code of Civil Procedure, 1908, is not a document which is compulsorily registrable under the provisions of section 17(b) of the Indian Registration Act, 1908. Gopal Narayan v. Trimbale Sadashiv (2) and Mutsaddi Lal v. Muhammad Hanif (3) distinguished. Abdul Majid v. Muhammad Faisullah (4) and Baij Nath Lohea v. Binoyendra Nath Palit (5) followed.

*Second Appeal No. 386 of 1913 from a decree of Muhammad Shafi, Additional Judge of Meerut, dated the 5th of February 1913, confirming a decree of Muhammad Husain, Additional Subordinate Judge of Meerut, dated the 29th of August, 1912.

(1) (1905) 2 A. L. J., 176.

(3) (1912) 10 A. L. J., 167.

(2) (1876) I. L. R., 1 Bom., 267.

(4) (1890) I. L. R., 13 All., 89.

(5) (1901) 6 C. W. N., 5.

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THE facts of this case were as follows :—

On the 22nd of June, 1910, Bhawani Singh obtained a decree against Mumtaz Ahmad and others for recovery, by sale of the mortgaged property, of Rs. 2,291-8-0, the amount due on the mortgage. On the 21st of October, 1911, he sold the decree to Sri Ram by an unregistered deed, for Rs. 1,500. Sri Ram applied for substitution of his name in place of the decree-holders, and without any objection on the part of the judgement-debtors, his name was brought on the record under order XXI, rule 16. The assignee applied on the 15th of May, 1912, for execution of the decree transferred to him. The judgement-debtors objected on the ground that the sale-deed, being unregistered, was inoperative and the assignee could not execute the decree. The first court overruled the objection and held that the transfer of a mortgage decree need not be registered. On appeal, the District Judge confirmed the order of the first court. The judgement-debtors appealed to the High Court.

Maulvi *Shafi-uz-zaman*, for the appellants :—

The deed of assignment under which the decree was transferred from the original decree-holders to the present respondents was one which conveyed certain interests in immovable property, for it gave to the vendee the right to get the property sold through the intervention of the court. This right is certainly an interest in immovable property within the meaning of section 17, clause (b), of the Registration Act, and, as such, the registration of the sale-deed was compulsory under the provisions of that section. He relied on *Gopal Narayan v. Trimbak Sadashiv* (1), *Mutsaddi Lal v. Muhammad Hanif* (2), *Abdul Majid v. Muhammad Faizullah* (3), *Ram Ratan Chakerbutty v. Jogesh Chandra Bhattacharya* (4), *Ramasami Pattar v. Chinnan Asari* (5).

Mr. *Nihal Chand* for the respondents, was not called upon.

TUDBALL and PIGGOTT JJ. :—This appeal arises out of execution proceedings. A final decree for sale was obtained under order XXXIV, rule 5, of the Code of Civil Procedure, in respect of certain property. The decree-holder assigned all his rights and interests under the decree to the present respondent by an unregistered deed. The assignee applied to be brought on the record

(1) (1876) I. L. R., 1 Bom., 267. (3) (1890) I. L. R., 13 All., 89.

(2) (1912) 10 A. L. J., 167. (4) (1909) 12 C. W. N., 625.

(5) (1901) I. L. R., 24 Mad., 449.

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in place of the decree-holder. Notice was issued to the judgement-debtors. After several attempts to serve them personally had failed, substituted service was allowed and an order under order XXI, rule 16, was passed in favour of the assignee. The assignee then applied for execution of the decree. Thereupon the judgement-debtors raised an objection that the deed of sale being unregistered, the assignee had no title and therefore could not execute the decree. The courts below, relying on the decisions in *Abdul Majid v. Muhammad Faizullah* (1) and in *Baij Nath Lohca v. Binoyendra Nath Palit* (2) dismissed the objections. Hence the present appeal. On behalf of the appellants it is urged that the deed in question transferred to the assignee an interest in immovable property and therefore in view of section 17 (b) and section 49, clause (a), of the Registration Act, the assignee has no interest. Reliance was placed on *Gopal Narayan v. Trimbak Sadashiv* (3) and *Mutsaddi Lal v. Muhammad Hanif* (4). Of these two, the former decision was passed in 1876 and the judgement gives no reason for the decision. In regard to the latter, it is not in point at all. That case related to the transfer of the rights of the mortgagees under the mortgage-deed by means of an unregistered document. In our opinion, this appeal must fail. In the first place, the proper occasion for the appellants to take this objection was on the application of the assignee for an order under order XXI, rule 16. In the next place, in view of the decisions in I. L. R., 13 All., p. 89, I. L. R., 23 Calc., p. 450 and 6 C. W. N., p. 5, it seems to us that there is no force in this appeal. The latter case is on all fours with the case now before us. A decree not being immovable property, it has been held in the Calcutta cases noted above that the transfer of a decree does not operate to create an interest in immovable property and the deed of transfer is, therefore, not compulsorily registrable. In our opinion, the appeal must fail, and we dismiss it with costs.

Appeal dismissed.

(1) (1890) I. L. R., 13 All., 89.

(3) (1876) I. L. R., 1 Bom., 267.

(2) (1901) 6 C. W. N., 5.

(4) (1912) 10 A. L. J., 167.