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July, 11.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Sir Pramaia Charan Banerji.

KOKLA (PLAINTIFF) v. PIARI LAL AND ANOTHER (DEFENDANTS).*

Evidence—Admissibility of evidence—Family settlement—Evidence of settlement consisting of a joint application by the parties for mutation in respect of the property in dispute.

The brother and widow of a deceased Hindu settled a dispute between them as to the ownership of the property of the deceased by means of a joint application in the Revenue Court asking that the property should be recorded half in the name of each. This was done, and subsequently each sold the share of which he or she was recorded as owner. Thereafter the widow sued to recover the share which had gone to her husband's brother. *Held*, that it must be presumed from the application in the mutation proceedings, the recording of names by the Revenue Court in accordance with that application and the subsequent sales on the strength of that record, that the parties entered into a family arrangement, and the application presented to the Revenue Court was, therefore, not compulsorily registrable and was admissible in evidence.

THIS was an appeal under section 10 of the Letters Patent from a judgement of a single Judge of the Court. The facts of the case are fully stated in the judgement under appeal, which was as follows :—

“One Mohan Singh died in 1903 leaving a brother Ram Prasad Singh and a widow Musammat Kokla. A dispute arose between these two on the death of Mohan Singh as to the property of the latter. Ram Prasad, alleging that the property was the joint family property and that Kokla Kunwar was unchaste, claimed the entire property. Kokla Kunwar, on the other hand, alleged that as the widow of Mohan Singh, who had acquired the property for himself, she was entitled to succeed. They put in an application in the Revenue Court before whom proceedings in mutation were being held. In this application they stated that the family being a joint one they had agreed that each be recorded in respect of one-half of Mohan Singh's property. After the mutation proceedings Ram Prasad Singh sold his one-half of the property and Kokla Kunwar also sold hers. Kokla Kunwar instituted this suit in May, 1911, claiming possession of the one-half of the property, which had been sold by Ram Prasad Singh to Piari Lal, defendant No. 2, who is the appellant in this Court. The suit was defended in the court of first instance by Piari Lal alone. The plaintiff alleged that the property was the self-acquired property of her husband to which she was entitled on his death; that she had been induced by fraud and misrepresentation to agree to her brother-in-law being recorded in respect of one-half of the property, and that she had no one to advise her at the time as to the propriety of this agreement. The court of first instance, while holding that there was no fraud or misrepresentation proved to have been practised on her, found that the property was the joint property of the family and that the plaintiff had become unchaste. On these findings the suit was dismissed. The plaintiff appealed. The lower appellate court was not satisfied that the

*Appeal No. 39 of 1913, under section 10 of the Letters Patent,

unobastity imputed to the plaintiff had been established and held that the property had been the self-acquired property of Mohan Singh, inasmuch as he had obtained it personally as a grant from the Government. On the question of fraud the court below states:—'The plaintiff alleges that she acceded to the compromise on account of misrepresentations that were made to her. No misrepresentation was proved, and if it was necessary for her to establish this contention her suit and the present appeal must certainly fail.' In the latter part of the judgement the learned Judge further observes:—'In the case now under consideration there is nothing to show what the circumstances were in which the compromise was arrived at.' The learned Judge was further of opinion that 'the compromise amounted to a transfer of a right to immovable property such as could only be effected by means of a registered instrument.' The compromise in the present case was simply an application put in the Revenue Court. It was not registered. On these findings the lower appellate court decreed the plaintiff's suit. The plaintiff's suit had included a claim for mesne profits, the amount of which was not ascertained in the court of first instance, and the lower appellate court, without noticing this omission, gave the plaintiff a decree for the full amount claimed. In appeal to this Court this last point is also one of the grounds taken in the memorandum of appeal. It is contended on behalf of the appellant that this petition to the Revenue Court should be locked upon in the nature of a family settlement on which the court should act, and I am referred to a ruling of their Lordships of the Privy Council in *Khunni Lal v. Gobind Krishna Narain* (1) and to another case, *Madan Lal v. Chhuttan Singh* (2). With reference to the view of the court below that the document was one requiring registration it is pointed out that the petition to the Revenue Court is not relied on as a deed of transfer of immovable property, but simply as evidence of the agreement between the parties as to how the entry in the Government papers should be made of their respective rights thereto. A further ground taken is that the suit is barred by limitation inasmuch as the plaintiff comes in eight years after the settlement of 1903. Finally it is contended that the conduct of the plaintiff is such as to operate as estoppel in favour of defendant No. 1. The ruling referred to in the judgement of the lower appellate court, *Rustam Ali Khan v. Gaura* (3), does not, in my opinion, bear on the present case. In that case there was a dispute between the plaintiff and her two sisters in the matter of mutation of names in the Revenue Court. A compromise was entered into and the compromise dealt with other properties, over and above the landed property in respect of which the Revenue Court was concerned with in the mutation proceedings, and it was held that in respect of this latter property the compromise could have no effect, inasmuch as the document of compromise had not been registered. It was observed in the course of the judgement that, as bearing on the issues raised in the case, the proceedings before the Revenue Courts, including the petition of compromise and the orders passed by the court, were undoubtedly admissible in evidence and must be taken into account for what they may be worth. In my opinion the contention advanced on behalf of the appellant in respect of the compromise is correct and

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(1) (1911) I. L. R., 33 All., 956.

(2) (1912) 10 A. L. J., 101.

(3) (1911) I. L. R., 33 All., 728.

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must be sustained. By the petition to the Revenue Court neither of the parties thereto purported to convey any property. The petition simply contained a statement by the parties that they agreed that each should be recorded in respect of one-half of the property in dispute. Such documents are put in every day in the Revenue Courts and so far as my experience goes registration of such instruments is not insisted on. If then registration of this document is not necessary, it can be looked to as evidence of the agreement between the parties so far back as 1908. The plaintiff alleged that the compromise, as it is called, had been obtained from her by means of fraud, misrepresentation, &c. As I understand the judgements of the courts below the plaintiff made no attempt to lay even the foundation of a case of fraud or misrepresentation, and there is undoubtedly a clear finding by the lower appellate court that no fraud or misrepresentation was proved. The settlement of the dispute between the parties embodied in the application to the Revenue Court was a good agreement and is good evidence of what the parties considered should be done in the dispute they were engaged in. This being the case and nothing having happened subsequent to this agreement which would give the plaintiff any right to rescind from it, I must hold that the plaintiff's suit is not maintainable. I allow the appeal, set aside the decree of the lower appellate court and dismiss the plaintiff's suit with costs in all courts."

The plaintiff appealed.

The Hon'ble Pandit *Moti Lal Nehru*, for the appellant.

The Hon'ble Dr. *Sundar Lal* and Dr. *Satish Chandra Banerji*, for the respondents.

RICHARDS, C. J. and BANERJI, J.—The facts out of which this appeal arises are fully set forth in the judgement of the learned Judge of this Court which is reported in 11 A. L. J. R., 157. To put them very shortly, the dispute is about a moiety of the property which at one time belonged to Mohan Singh. Mohan Singh died in 1908, leaving a brother, Ram Prasad Singh, and a widow, Musammat Kokla, the plaintiff in the present suit. They were disputing about the estate of Mohan Singh. Ram Prasad Singh alleged that he was joint with Mohan Singh, whilst Musammat Kokla said that Mohan Singh was separate. The dispute ended by the parties agreeing that half the property should be recorded as belonging to Musammat Kokla, whilst the other half should be recorded as belonging to Ram Prasad Singh. Later on, Ram Prasad sold the half share that stood in his name, whilst Musammat Kokla sold the half that stood in her name. She then brought the present suit to recover the half that had stood in Ram Prasad's name and had been sold by him. The lower appellate court has found that Mohan Singh and Ram Prasad

Singh were separate, but it has also found that it was not established that any fraud or misrepresentation had been practised on Musammat Kokla and accordingly decreed her suit.

The learned Judge of this Court held that under the circumstances the petition filed in mutation proceedings must be regarded as a family settlement and it did not require registration, and on these grounds dismissed the plaintiff's suit.

In our opinion, it must be presumed from the whole proceedings commencing with the petition for mutation, the order of the revenue authorities recording the names in accordance with the petition, and the subsequent sales upon the strength of this record, that the parties entered into a family arrangement. On these grounds we think the decree of the learned Judge of this Court ought to stand. We, therefore, dismiss the appeal with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Sir Pramada Charan Banerji.

SRI KISHAN DAS AND ANOTHER (PLAINTIFFS) v. YAKUB KHAN AND OTHERS (DEFENDANTS).*

Landlord and tenant—Tenant in possession without a patta—Suit to enforce hypothecation of property as security for rent.

Held that a hypothecation of other property by certain tenants as security for their rent was none the less enforceable because, though the tenants had executed a kabuliati in respect of the land held by them, no patta had been executed by the landlords in their favour. Sheo Karan Singh v. Maharaja Parbhu Narain Singh (1) referred to.

THIS was a suit to enforce a hypothecation of certain property executed by tenants as security for their rent. The tenants were in possession of the land leased to them, in respect of which rent was due, and had executed a kabuliati therefor; but no patta had been executed in their favour by the landlords, and upon this ground it was contended that no rent was legally exigible and the security was not enforceable. The court of first instance decreed the claim; but the lower appellate court gave effect to the defendants' contention and reversed this decree. The plaintiffs appealed to the High Court.

* Second Appeal No. 82 of 1913, from a decree of Abdul Hasan, Additional Subordinate Judge of Moradabad, dated the 21st of September, 1912, reversing a decree of Sidheshwar Mitter, Munsif of Amroha, dated the 23rd of September 1911.

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