

1913

HADI HASAN
KHAN

v.

PATI RAM.

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February, 17.

It appears to us that if the plaintiff has any remedy it is by way of a suit in a civil court. The appeal is dismissed with costs.

Appeal dismissed.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Banerji.
GOBARDHAN SAHI AND ANOTHER (DEFENDANTS) v. JADUNATH RAI AND ANOTHER (PLAINTIFFS) AND NANHU SAHI AND OTHERS (DEFENDANTS)*
Act No. III of 1877 (Indian Registration Act), section 17 (n)—Mortgage—Agreement to relinquish portion of principal and all interest—Acknowledgement—Registration.

Held that an agreement executed by a mortgagee after the date of the mortgage whereby he relinquished a certain part of the principal and all interest, past and future, on the mortgage in lieu of certain services rendered by the mortgagor to the mortgagee was a document which required registration to make it admissible in evidence, and it could not be said to be an acknowledgement of payment within the meaning of the exception contained in section 17, clause (n), of the Indian Registration Act, 1877.

THIS was a suit for sale upon a mortgage, dated the 21st of March, 1900. In answer to the suit *pro tanto* the defendants pleaded that after the mortgage had been executed the mortgagors rendered certain services to the mortgagee and that in consideration of those services a certain part of the principal and all interest up to date and all future interest were relinquished by the mortgagee. To prove this agreement a certain document was tendered in evidence. The document was unstamped and unregistered. The difficulty as to the stamp was got over by payment of the duty and penalty, but the lower appellate Court rejected the document as inadmissible for want of registration and decreed the claim in full. The defendants appealed to the High Court.

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

The Hon'ble Dr. *Sundar Lal* and the Hon'ble Dr. *Tej Bahadur Sapru*, for the respondents.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit brought to realize the amount of a mortgage, dated the 21st of March, 1900, by the sale of the mortgaged property. The defendants pleaded that after the mortgage had been executed the mortgagors rendered certain services to the mortgagee, and that

*Second Appeal No. 460 of 1912 from a decree of F. D. Simpson, District Judge of Gorakhpur, dated the 16th of January, 1912, confirming a decree of Jagat Narain, Subordinate Judge of Gorakhpur, dated the 13th of November, 1911.

in consideration of those services a certain part of the principal and all interest up to date and all future interest were relinquished by the mortgagee. To prove this agreement a certain document was tendered in evidence. The document was unstamped and unregistered. The difficulty of stamp has been got over by the payment of duty and penalty, but the question of registration remains.

The court below held that the document required registration and therefore was inadmissible in evidence. Section 17 of Act No. III of 1877 (which was the Registration Act in force at the time of the execution of the document in question), provides that certain documents must be registered. A later section provides that documents which require to be registered cannot be admitted in evidence unless they are registered. Amongst the documents requiring registration are all documents of a non-testamentary nature which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest of a certain value to or in immovable property. There can be no doubt that prior to the execution of the document in question the mortgagee had a right to realize from the property mortgaged, all principal, together with all interest then accrued or that might thereafter accrue due on foot of the mortgage.

It is argued that the document in question comes within the exception mentioned in clause (n) to section 17. That clause exempts from the necessity of registration any endorsement on a mortgage deed acknowledging payment of the whole or any part of the mortgage money and also any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage. In our opinion the document in question cannot be said to come within the exceptions mentioned in clause (n). The document is clearly an agreement to forego in part the plaintiffs' rights as against the mortgaged property in consideration of services rendered. It cannot in any sense be said to be a receipt for the payment of money not extinguishing the mortgage in whole or in part. It clearly does extinguish the mortgage to the extent of a considerable portion of the principal and the whole of the interest.

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Under these circumstances we think that the decision of the court below was correct. We accordingly dismiss the appeal with costs.
Appeal dismissed.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

RAM CHANDRA NAIK KALIA (DECREE-HOLDER) v. ABDUL HAKIM
AND OTHERS (JUDGMENT-DEBTORS)*

Civil Procedure Code (1908), order XXI, rule 16—Execution of decree—Decree for money and costs of suit—Transfer of the decree as to costs merely.

Held that a decree for payment of a sum of money and for costs of the suit is one and indivisible and the decree-holder cannot transfer the decree so far merely as it may be a decree for costs, retaining the right to execute the decree for the main sum awarded.

THE facts of this case were as follows :—

One Musammat Najm-un-nissa obtained a decree for dower and for costs against the heirs of her late husband Maulvi Farzand Ali. The heirs of Farzand Ali appealed to the High Court and the decree of the first court was affirmed. The appellants were made liable to pay the costs of Musammat Najm-un-nissa incurred in the High Court. Najm-un-nissa transferred the decree for costs of both the courts to the present appellant Ram Chandra Naik Kalia. The latter put in an application for execution of the portion of the decree transferred to him. The lower court held that the transfer in favour of Ram Chandra Naik Kalia was valid, but that he was not entitled to put the decree into execution, because, under order XXI, rule 16, the transferee became a joint decree-holder with Musammat Najm-un-nissa and as such he could not take out execution in respect of his share of the decree. The application was accordingly dismissed. The decree-holder appealed to the High Court.

Babu Sital Prasad Ghosh (with him Babu Jogindro Nath Chaudhri), for the appellant, contended that the court below was wrong in law in holding that the appellant was a joint decree-holder with Musammat Najm-un-nissa. The decree was not an indivisible decree but the two portions could be separated. Najm-un-nissa could have taken out execution of the decree for costs only and there was no bar to her transferee doing the same. The decree for costs had been passed personally against the heirs of Farzand Ali and Najm-un-nissa could have asked for the execution of that decree by arrest of

*First Appeal No. 239 of 1912 from a decree of W. R. G. Moir, District Judge of Mirzapur, dated the 16th of April, 1912.