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in the recent case of *Phul Kumari* v. *Ghanshyam Misra* (1). The exact point which is now before us was not in issue before their Lordships, but there are observations in the judgement which clearly support the view taken by this Court. Their Lordships say, " the value of the action must mean the value to the plaintiff. But the value of the property might quite well be Rs. 1,000 while the execution debt was Rs. 10,000. It is only if the execution debt is less than the value of the property that its amount affects the value of the suit." In the case before us the amount of the decree is below Rs. 5,000 and much below the actual value of the property. Therefore, according to the view expressed by their Lordships, the value of the suit should be regarded as the amount of the decree. That amount being less than Rs. 5,000, an appeal from the decree of the court below lay to the District Judge and not to this Court. We accordingly direct that the memorandum of appeal be returned to the appellant for presentation to the proper court. Under the circumstances we make no order as to the costs of this appeal.

Memorandum of appeal returned.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq.

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November, 25.

SITAL PRASAD (DEFENDANT) *v.* LAL BAHADUR (PLAINTIFF) AND GOBIND PRASAD (DEFENDANT).*

Civil Procedure Code (1908), order XXIII, rule 3—Compromise—Petition of compromise filed in subsequent suit—Registration—Act No. XVI of 1908 (Indian Registration Act), section 17.

In a suit for a declaration of title to certain immovable property the plaintiff applied to the Court stating that the suit had been compromised and asking that a decree might be made under order XXIII, rule 3, of the Code of Civil Procedure.

In support of this application he filed a copy of a petition which had been presented shortly before by both parties to the Revenue Court in proceedings for mutation of names in respect of the same property as was in the dispute in the Civil Court, and which set forth that the matter before the Revenue Court had been compromised in the manner therein stated. The petition had been accepted and acted upon by the Revenue Court.

Held that the petition was evidence in the Civil Court that the matter in dispute between the parties had been adjusted out of Court, and that it did not require to be registered.

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* First Appeal No. 91 of 1914, from a decree of Murari Lal, Subordinate Judge of Cawnpore, dated the 20th of December, 1913.

(1) (1907) I. L. R., 35 Calc., 202.

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THE facts of this case were as follows :—

One Musammat Raj Rani Kunwar died on the 19th of March, 1913, possessed as a Hindu widow of zamindari properties. Lal Bahadur, plaintiff, and Sital Prasad, defendant, were rival claimants to the estate, and each of them applied to the Revenue Court for mutation in his own favour. While mutation proceedings were going on, the plaintiff instituted the present suit for a declaration that he and his brother being the nearest reversioners were entitled to the whole estate. Sital Prasad resisted the suit and claimed to be the nearest reversioner on the ground that he was a sapinda of the last male owner. On the 23rd of October, 1915, the parties jointly presented a petition to the Revenue Court stating that the disputes between them had been compromised in this way that "we, Lal Bahadur and Gobind Prasad objectors (in the mutation court) have agreed to recognize that Lala Sital Prasad, applicant (for mutation) has a right in $\frac{3}{4}$ of the property in dispute as a sapinda of the deceased persons . . . and I, Sital Prasad, have agreed to recognize that Lal Bahadur and Gobind Prasad objectors aforesaid have a right in the property in dispute to the extent of $\frac{1}{4}$ share," and praying that mutation might be made accordingly. After noting other terms of the compromise, the petition went on to state that "I, Sital Prasad applicant, and we, Lal Bahadur and Gobind Prasad, will always and at all times abide by the terms of the compromise in every Revenue or Civil Court and in the Court of Wards, etc. In case of violation of the said terms, which, God forbid, may be committed at any time by any one of the parties, the other party will have power to compel the said party to abide by the said terms, by bringing a suit in court or by any other proper means." The petition having been attested in court, mutation was ordered "in accordance with the compromise entered into" by the parties. Subsequently when the suit came on for hearing in the Civil Court, the plaintiff made an application stating that the suit had been settled by the parties out of court, and prayed that it may be decreed in the terms of the compromise, and he filed a certified copy of the above-mentioned petition in support of his allegations. The defendant admitted that he had made the compromise, but alleged undue influence. Besides the petition in the Revenue

court, no oral evidence was given in support of the compromise. The lower court held that the petition in the Revenue Court was admissible in evidence and did not require registration, and having negatived the plea of undue influence, it passed a decree in terms of the compromise. The defendant appealed to the High Court.

Mr. *M. L. Agarwala*, (with him Munshi *Benode Behari*), for the appellant :—

The petition filed in the Revenue court was, for want of registration, inadmissible in evidence. It was an instrument which purported to declare a right, title or interest to or in immovable property, and was as such a document of which, under section 17 of Indian Registration Act, registration was compulsory. The fact that the Revenue Court ordered mutation in accordance with the terms of the compromise did not render its registration unnecessary. The principle why orders and decrees of court did not require registration was because they operated as *res judicata*; *Pranal Anni* v. *Lakshmi Anni* (1). Orders in mutation proceedings did not and could not affect questions relating to title. There was conflict of authority upon this point in this Court. Cases in favour of the appellant's contention are *Sadar-ud-din Ahmad* v. *Chajju* (2); *Rustam Ali Khan* v. *Musammat Gaura* (3); *Bharosa* v. *Sikhdar* (4); *Deo Chand* v. *Pearay* (5). He also referred to *Raghubans Mani Singh* v. *Mahabir Singh* (6); *Kokla* v. *Piari Lal* (7); *Daya Shankar* v. *Hub Lal* (8).

Pandit *Kailas Nath Katju* (with The Hon'ble Dr. *Tej Bahadur Sapru*), for the respondents:—

The court had made the decree under appeal under order XXIII, rule 3, of the Code of Civil Procedure. The plaintiff's case was that the suit had been adjusted out of court by a lawful agreement or compromise. The agreement alleged to have been arrived at between the parties was a settlement of doubtful rights in the nature of a family arrangement. It was passed on the assumption that there was "an antecedent title of some kind in the parties" and the

(1) (1899) I. L. R., 22 Mad., 508.
(2) (1908) I. L. R., 31 All., 13.
(3) (1911) I. L. R., 33 All., 728.
(4) (1914) 12 A. L. J., 998.
(5) (1914) 12 A. L. J., 1133.
(6) (1905) I. L. R., 28 All., 78.
(7) (1913) I. L. R., 35 All., 502.
(8) (1915) I. L. R., 37 All., 105.

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agreement acknowledged and defined what that title was; *Khunni Lal* v. *Gobind Krishna Narain* (1). Such an agreement was neither a sale nor a gift nor an exchange, and therefore need not be in writing, and so long as it remained merely oral, it would not attract the provisions of section 17 of the Registration Act, which applied only to *instruments*. The petition presented by the parties in the Revenue Court was not itself the compromise, (though even as such it would be admissible in evidence), but only a piece of evidence of the terms of the pre-arranged oral compromise between the parties to adjust the civil suit. The parties thereby only intended to inform the Revenue Court of the terms of their agreement; *Nur Ali* v. *Imaman* (2). Moreover, the defendant did not deny the *factum* of the agreement, he wanted to avoid it by the plea of undue influence which had been negatived. The amended language of order XXIII, rule 3, of the Code of Civil Procedure made it quite clear that if one of the parties pleaded at the hearing a previous amicable adjustment of the suit out of court, the court was bound to inquire into the matter, and if satisfied that the suit had been adjusted by a lawful agreement, to pass a decree in the terms of the agreement.

Mr. *M. L. Agarwala*, in reply.

The petition in the Revenue Court was the final form of the so-called oral compromise, and under section 91 of the Evidence Act, no other evidence of its terms was admissible. It was in reality itself the compromise, and as it declared rights of the parties in immovable property it could not be looked at for want of registration.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J. :—This appeal arises out of a suit in which one Lala Lal Bahadur claimed a declaration of his title to certain property which originally belonged to three brothers, Raja Lal, Ambika Prasad and Munna Lal. The plaintiff's claim was that he was the daughter's son of one Bhawani Sahai, the paternal grand-father of the three persons we have named. It appears that while this suit was pending there was also pending in the Revenue Court proceedings for mutation of names. The application for mutation and the opposition thereto were

(1) (1911) I. L. R., 33 All., 356 (367). (2) Weekly Notes, 1884, p. 40.

based on exactly the same considerations as in the civil suit. On the 23rd of October, 1913, a petition was presented in the revenue matter signed by Lal Bahadur (plaintiff) and Sital Prasad (the contending defendant). This petition set forth that the revenue matter had been compromised in the manner set forth in the petition. The petition goes on to say that Lal Bahadur and Gobind Prasad had agreed to recognize that Sital Prasad had a right to three-fourths of the property in dispute as sapinda to Raja Lal and Munna Lal. The Revenue Court acted on the petition and made entries accordingly. On the 21st of November, 1913, the plaintiff presented a petition to the learned Judge before whom the present suit was pending, stating that the suit had been compromised and asking that a decree should be made under order XXIII, rule 3, of the Code of Civil Procedure. He brought on to the file the petition of the 23rd of October, 1913, to which we have referred above. The defendant did not deny that he had joined in the petition, but said that he had done so as the result of fraud and undue influence. The court below held that there was no fraud or undue influence and made a decree in the terms of the alleged adjustment.

In the present appeal it is urged that the petition not being registered was inadmissible having regard to the provisions of section 17 of the Registration Act, XVI of 1908. The respondent contends that the petition to the Revenue Court was not a document that required registration and that it was admissible to prove that an adjustment of the civil suit had been made by the parties out of court and that, in the absence of fraud, it demonstrated that there had had been an adjustment. From time to time the admissibility of such petitions as evidence in subsequent proceedings in the Civil Courts has been raised, and there is undoubtedly some conflict of authority. Section 17 of the Registration Act, clause (*b*), provides that "non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish any right, title or interest of the value of Rs. 100 and upwards to or in immovable property, must be registered. It has been argued that these petitions are instruments requiring registration within the meaning of the section. In most, if not in all, of the cases heretofore decided in which the

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question has arisen the petition was presented to the Revenue Court long before the Civil Court proceedings were instituted. It may perhaps fairly be said that in some of these cases, the party producing the petition of compromise was attempting to use it for the purpose of showing that some right in immovable property had either been "created, declared, assigned, limited or extinguished." If, in the present case, the respondent was seeking to use the petition to show that a right in immovable property had been "created, declared, assigned, limited or extinguished," it might have been urged with great force that if the document "purported or operated" to do any one or more of these things, it was inadmissible for want of registration and that if it did not so "purport or operate" it was inadmissible as irrelevant. In the present case we think that the petition of the 23rd of October, 1913, was produced in the court below merely for the purpose of showing that this very suit had been adjusted by the parties out of court. This is clearly shown by the petition which the plaintiff filed in the Civil Court setting forth that there had been an adjustment. The petition of the 23rd of October does not on the face of it purport to "create, declare, assign, limit or extinguish any right." It was merely a request to the Revenue Court to effect mutation of names in accordance with an agreement come to between the parties. The petition does not on the face of it even purport to be the agreement between the parties. It is simply a "petition" addressed to the Court. Order XXIII, rule 3, provides that where it is proved *to the satisfaction of the court* that a suit has been adjusted wholly or in part by any lawful agreement or compromise, the court shall order such compromise to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit. Prior to the passing of the present Code it had been the practice of this Court not to act under the corresponding section 375 of the old Code, unless the parties were actually agreed that an adjustment had been made when the court was asked to act. The other High Courts, on the contrary, had taken the view that it was open to one of the parties to prove the adjustment even when the other party denied it. The words of the present order seem to indicate that the Legislature has thought well to adopt the

practice prevailing in the other courts and that the court must now inquire whether or not there has been an adjustment out of court. There was nothing to prevent the parties to the present suit coming to an oral agreement of adjustment. The only transactions relating to immovable property which require to be made in writing are those specified in the Transfer of Property Act. If the parties had presented to the Civil Court a petition in the same terms as that presented to the Revenue Court the Civil Court would undoubtedly have received it and acted upon it. We do not think that anyone could have contended that such a petition required registration. Suppose that both parties had signed such a petition and that on the strength of it the respondent had asked the court to act under order XXIII, rule 3: suppose further that the applicant had opposed the court so acting on the ground that he had been induced to sign the petition by fraud; and that the court had found that there was no fraud; we think it clear that the court would have been bound to make a decree in terms of the adjustment and that the applicant could not have successfully contended that the signed petition was inadmissible for want of registration. We think that the petition (which both parties signed) to the Revenue Court was in the circumstances of the case admissible as evidence that the present suit had been adjusted out of court. The significance to be attached to the evidence is of course another matter. In the present case when we consider that the mutation proceedings and the Civil Court suit were going on simultaneously and that it was exactly the same dispute, it is clear that the present suit was adjusted. It is quite clear that the petition in the revenue matter was made in pursuance of the agreement to adjust the dispute pending between parties. In the natural course of events if Sital Prasad had kept good faith, he would have joined in a petition to the Civil Judge couched in exactly the same terms as the petition he had joined in to the Revenue Court. We think that the court below was justified in coming to the conclusion that the parties had adjusted the suit out of court, and that being so, it was the duty of the learned Judge to make the decree in terms of that adjustment. We see no reason to differ from the view taken by the court below on the question of undue influence and fraud, nor was

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it seriously urged that we should do so. We dismiss the appeal with costs.

Appeal dismissed.

1915 *November*, 26.

Before Sir Henry Richards, Knight, Chief Justice, and Mr. Justice Muhammad Rafiq.

RAM SARUP AND OTHERS (DEFENDANTS) *v.* JASWANT RAI AND OTHERS (PLAINTIFFS).*

Act No. IX of 1908 *(Indian Limitation Act), section* 12; *schedule I, article* 179—*Limitation—Application for leave to appeal to His Majesty in Council—Exclusion of time requisite for obtaining a copy of the decree.*

Held that section 12 of the Indian Limitation Act, 1908, applies to applications for leave to appeal to His Majesty in Council. The appellant is therefore entitled to exclude the day upon which the judgement complained of was pronounced and the time requisite for obtaining a copy of the decree from the period of limitation prescribed.

THIS was an application for leave to appeal to His Majesty in Council against a decree of the High Court. A preliminary objection was taken that the application was beyond time, which resolved itself into the question whether the applicant was entitled to exclude from the period of limitation the time requisite for obtaining a copy of the decree from which the applicant sought leave to appeal.

Munshi *Gulzari Lal* and Pandit *Kailas Nath Katju*, for the appellants.

Munshi *Benode Behari*, for the respondents.

RICHARDS, C. J., and MUHAMMAD RAFIQ, J. :—This is an application for leave to appeal to His Majesty in Council. A point has been taken on behalf of the respondent that the application was not presented within time. Article 179 of the Limitation Act prescribes a period of limitation of six months from the date of the decree. Section 12, clause 2, of the Limitation Act now in force provides that in computing the period of limitation prescribed for an application "for leave to appeal" the day on which the judgement complained of was pronounced and the time requisite for obtaining a copy of the decree shall be excluded. It is admitted that if this provision applies to an application for leave to appeal to His Majesty in Council the application is within time. Prior to the passing of the present Limitation Act, appeals to His Majesty

* Privy Council Appeal No. 19 of 1915.