

1918

MUHAMMAD
FARZAND
ALI
v.
RAHAT ALI.

to allow this to be done. Any question of limitation that may arise will be decided by the court in the usual way according to law. The court below will fix a time within which the applicant will pay the court fee. In regard to the costs of this application, they will be costs in the cause and will abide the result.

Application allowed.

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February, 5.

MISCELLANEOUS CIVIL.

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

BIHANA AND ANOTHER (PETITIONERS) v. GUMAN SINGH AND OTHERS
(OPPOSITE PARTIES).*

Act No. XVI of 1908 (Indian Registration Act), section 17—Registration—Agreement by reversioners to forego right to sue for declaration respecting an alienation made by a Hindu widow.

Held that an agreement by which the reversioners to certain property in the possession of a Hindu widow agreed not to enforce their right to sue for a declaration that a gift of such property made by the widow was not binding upon them was not a document which was compulsorily registrable under section 17 of the Indian Registration Act, 1908.

THE facts of this case were as follows :—

One Musammam Bhana, a Hindu widow, having a widow's estate, executed a deed of gift in favour of her husband's sister's sons. The plaintiffs were the presumptive reversioners. After the deed of gift had been executed, they were preparing to bring a suit for a declaration that the deed of gift was not binding upon them. The donees and the plaintiffs came to terms. The plaintiffs executed an agreement in favour of the donees under which they agreed not to enforce their right to the declaration which they were about to seek in consideration of the donees transferring to them half of the property and also undertaking to support Musammam Bhana for the rest of her life and to pay off her debts. The donees executed an agreement at the same time under which they agreed that they would transfer half the property to the plaintiffs and would support Musammam Bhana and pay her debts. In spite of this agreement the plaintiffs brought the present suit, in which they asked for a declaration that they were heirs to the

* Civil Miscellaneous No. 421 of 1917.

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property and that the deed of gift should be set aside as against them. The court of first instance held that in view of the agreement the plaintiffs' suit was barred, and dismissed it, the defendants being fully willing to carry out their terms of the contract. The plaintiffs appealed. The appellate court held that the agreement ought to have been registered under section 17 of the Registration Act, and that as it had not been registered, it was not admissible in evidence, and, this evidence having vanished, it gave the plaintiffs a declaration that the deed of gift was not binding upon them.

At the instance of the defendants the case was referred to the High Court under rule 17 of the Kumaun Rules of 1894.

Munshi *Lakshmi Narain*, for the petitioners.

Munshi *Damodar Das*, for the opposite parties.

TUDBALL and MUHAMMAD RAFIQ, JJ. :— This is a reference under Rule 17 of the Rules and Orders relating to the Kumaun Division of 1894. The facts are simple. Musammat Bhana, a Hindu widow, having a widow's estate, executed a deed of gift in favour of her husband's sister's sons. The plaintiffs are the presumptive reversioners. After the deed of gift had been executed they were preparing to bring a suit for a declaration that the deed of gift was not binding upon them. The donees and the plaintiffs came to terms. The plaintiffs executed an agreement in favour of the donees under which they agreed not to enforce their right to the declaration which they were about to seek in consideration of the donees transferring to them half of the property and also undertaking to support Musammat Bhana for the rest of her life and to pay off her debts. The donees executed an agreement at the same time under which they agreed that they would transfer half the property to the plaintiffs and would support Musammat Bhana and pay her debts. In spite of this agreement the plaintiffs have brought the present suit, in which they ask for a declaration that they are heirs to the property and that the deed of gift should be set aside as against them. The court of first instance held that in view of the agreement the plaintiffs' suit was barred and dismissed it, the defendants being fully willing to carry out their terms of the contract. The plaintiffs appealed. The appellate court held that the

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agreement ought to have been registered under section 17 of the Registration Act, and, as it had not been registered, it was not admissible in evidence, and, this evidence having vanished, it gave the plaintiffs a declaration that the deed of gift was not binding upon them. We are asked our opinion as to whether the decree passed by the Commissioner was correct, and if not, what decree should have been passed in the case. We have examined the agreement. In our opinion it was not compulsorily registrable under section 17 of the Registration Act. It conveyed no right, title or interest, nor did it purport or operate to extinguish any right, title or interest vested or contingent in immovable property of the value of Rs. 100. All that the plaintiffs agreed to do was to forego their right to sue for a declaration for a certain consideration. As reversioners they had no transferable right, title or interest in the property nor did they purport to transfer any such right. They simply agreed not to sue for the declaration for which they have now sought by this suit in court. The document was clearly admissible in evidence. In the circumstances of the case as stated above we think that the plaintiffs' suit was rightly dismissed by the court of first instance. It is nowhere alleged that the defendants have refused to carry out their agreement. In the course of the suit the defendants expressed their willingness to be faithful to their word. There was consideration for the agreement, and we think that the plaintiffs were bound thereby. In our opinion the decree of the appellate court should be set aside and that of the court of first instance should be restored and the defendants should have their costs in all courts including the costs of this reference. The costs in this Court will include Rs. 50 pleader's fees of the defendants.

Appeal decreed.