

did not prevent the application of the rule of estoppel if he had by his conduct induced another person to alter his position. They accordingly held that the plea of estoppel was well-founded.

It will thus appear that the weight of authority is entirely on the side of the respondents. The case of *Bai Parvati v. Dayabhai Manchharam* (1), relied on by the learned counsel for the appellant, may be distinguishable. We have not had the advantage of seeing the deed of transfer in that case, but we gather from the judgment that it purported to effect a transfer of the limited interest of the mother and the sister's chance of succession. The judgment clearly states that "it is not a case of an alienation by a widow of property of which she is the life tenant with the consent of the next reversioner." If all that was held in that case was that the deed purported to transfer a mere chance of succession and that such transfer was void, then no difficulty arises. But if it was intended to lay down the general proposition that in no case a reversioner can by his act or conduct estop himself from challenging a transfer after he has succeeded to the estate, then we would not agree with the decision.

We are accordingly of opinion that Surajpal, who actually become the owner after the death of Musammât Balraj Kunwar, by having joined in the deed of gift was estopped from challenging it and that the plaintiff who claims through Surajpal is equally estopped.

The result is that this appeal fails and is hereby dismissed with costs.

Appeal dismissed.

REVISIONAL CIVIL.

Before Mr. Justice Kanhaya Lal.

BADAL RAM (DEPENDANT) v. JHULAI (PLAINTIFF).*

Act No. I of 1872 (*Indian Evidence Act*), section 92, proviso (2) and (3)
—Evidence—Admissibility of—Registered deed of relinquishment of part of leasehold land—Contemporaneous oral agreement regarding payment by landlord of a certain sum.

Plaintiff was a *parjotdar* with a holding of 1 bigha 15 biswas at a rental of Rs. 40 per annum. He executed and registered a deed of relinquishment by

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which he gave up 17 biswansis of his holding and agreed to pay Rs. 21 as rent for the remaining land. The landlord on his part entered into an oral agreement to pay to the plaintiff Rs. 200, out of which Rs. 32 were to be credited in settlement of certain arrears of rent due. The landlord, however, sued for the arrears and obtained a decree. Plaintiff then sued for recovery of Rs. 200 under the abovementioned oral agreement.

Held that plaintiff was not precluded by reason of the existence of the registered deed of relinquishment from giving evidence of the oral agreement under which he claimed. *Abdul Hamid v. Abdul Majid* (1), *Ram Baksh v. Durjan* (2) and *Motabhoj Mulla Bhabhoj v. Mulji Haridas* (3) referred to.

THIS was an application in revision under the Provincial Small Cause Courts Act.

The facts of the case sufficiently appear from the judgment of the Court.

Dr. Kailas Nath Katju, for the appellant.

Munshi Harnandan Prasad, for the respondent.

KANHAIYA LAL, J. :—The plaintiff was *parjoldar* of 1 bigha 15 biswas of land, for which he used to pay Rs. 40 per year as ground rent to the defendant. On the 16th of May, 1917, the plaintiff relinquished 17 biswansis of land and agreed to pay Rs. 21 per year for the remaining land. A formal deed of relinquishment was executed by him, in which it was stated that the plaintiff did so because the portion of land relinquished was not fit for cultivation.

The allegation of the plaintiff was that at the time he executed the said deed of relinquishment there had been a separate oral agreement between him and the defendant by virtue of which the latter agreed to pay Rs. 200 to the former, out of which Rs. 32 were to be credited towards the arrears of rent due by the former to the latter. Subsequently the defendant filed a suit for the recovery of Rs. 32 due to him on account of the said arrears of rent and obtained a decree against the plaintiff. The present suit was filed by the plaintiff for the recovery of Rs. 200 with interest on the strength of the oral agreement aforesaid. The court below found in favour of the plaintiff and decreed the claim.

It is urged on behalf of the defendant that the court below had erred in admitting oral evidence to vary the terms of the deed of relinquishment. The deed of relinquishment is a voluntary

(1) (1913) 11 A. L. J., 770.

(2) (1887) I. L. R., 9 All., 392.

(3) (1915) I. L. R., 39 Bom., 399.

document executed by one party. It is silent as to whether any payment was to have been made to the plaintiff as alleged. It recites that the portion of the land relinquished was not fit for cultivation and was relinquished in consequence, and that the plaintiff shall pay Rs. 21 per year for the remaining land. According to the court below that relinquishment was agreed to by the plaintiff on the strength of a separate oral agreement given by the defendant that he would pay Rs. 200 to the plaintiff in the manner above specified. The question of the existence or otherwise of consideration can always be inquired into irrespective of what is entered in the deed. The deed does not say that the relinquishment was to be made without any payment. It is silent, and the plaintiff was entitled to prove this separate oral agreement under proviso (2), section 92, of the Indian Evidence Act of 1872.

It is argued that the deed of relinquishment was a formal document, registered in the manner required by law, and the decision in *Abdul Hamid v. Abdul Majid* (1) is relied on to show that in the case of such a formal document no evidence about any extraneous matter not referred to in the deed ought to have been admitted. In that case a petition of compromise was filed, by which the disputed property was partitioned in a certain manner and a decree was passed in accordance with the compromise. The allegation of the plaintiff was that the defendant had agreed at the time of compromise to pay a certain sum to the plaintiff in order to equalize the loss. But the evidence adduced by him in support of such an agreement was held to be inadmissible because it was treated as a part and parcel of the agreement evidenced by the compromise, no variation of which could be permitted after a decree was passed in accordance with it. In the present case there were reciprocal promises, each forming a consideration for the other. The plaintiff had agreed to relinquish certain land and to hold the remainder on reduced rent. The defendant, on the other hand, had agreed to pay him a certain sum of money, out of which a portion was to be credited towards the arrears of rent then due. In *Ram Bakhsh v. Durjan* (2), where in defence to a suit upon a hypothecation bond payable

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by instalments it was pleaded that at the time of the execution of the bond it was orally agreed that the obligee should, in lieu of instalments, have possession of a part of the hypothecated property until the amount due on the bond should have been liquidated from the rents, and in accordance with that agreement the plaintiff had obtained possession of the land, it was held that the oral agreement was not one which detracted from, added to, or varied the original contract, and that inasmuch as it only provided for the means by which the instalments were to be paid, it was admissible in evidence. In *Motubhoy Mulla Essabhoy v. Mulji Haridas* (1) a promissory note was executed by the defendant jointly with a certain firm and payable on demand. In a suit filed for the recovery of the money due on the promissory note, the defendant pleaded that by an oral agreement between the parties his liability on the note was to cease on a certain date subsequent to the execution of the date of the said promissory note, the simple acknowledgment by the firm being then substituted for the note. Their Lordships of the Privy Council observed that the agreement set up was not in the nature of a bald averment of a verbal agreement contradicting the written contract, but it was in the nature of a separate agreement, indicating the manner in which the liability of the defendant was to terminate and that oral evidence could be admitted to prove its terms under section 92, proviso (2), of the Indian Evidence Act of 1872.

An agreement to pay as a condition precedent to the enforcement of a deed of relinquishment can also be proved under section 92, proviso (3). The plaintiff really seeks to enforce the payment of the consideration for the agreement, the existence of which has been found to have been established. There is no reason, therefore, to interfere with the decree passed by the court below. The application is dismissed with costs.

Application rejected.

(1) (1915) I. L. R., 39 Bom., 339.