

of order XXI, rule 94. The procedure which was adopted was out of order. We, therefore, allow the appeal, set aside the decree of the court below and send the case back to the Subordinate Judge of Muzaffarnagar for disposal on the merits. Costs here and hitherto will abide the result.

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Appeal allowed.

APPELLATE CIVIL.

Before Mr. Justice Lindsay and Mr. Justice Sulaiman.

BAKHTAWAR (DEFENDANT) v. SUNDAR LAL AND
OTHERS (PLAINTIFFS).*

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July, 21.

Act No. XVI of 1908 (*Indian Registration Act*), section 17(b)
—Registration—Document in form of a petition to a
court reciting the fact of a previous family settlement.

Held that a document, in the form of a petition to a court of revenue which recited that the parties had already composed their differences and that the property in respect of which mutation of names was sought should be entered in the names of the parties in certain specified proportions, but which did not purport to transfer any property from one party to the other nor to create any fresh title, was not a document which required to be registered. *Satrohan Lal v. Nageshwar Prasad (1) and Baldeo Singh v. Udal Singh (2)*, referred to.

The facts of this case were as follows:—*D*, a Hindu, died leaving his widow *S*, who succeeded to his property, and his daughter *K*. After the death of *S*, *B* applied in the revenue court for mutation of names, claiming as grandson of *D*'s brother and also as adopted son of *D*. This claim was opposed by the daughter *K*. The contestants eventually compromised their

* Second Appeal No. 1528 of 1923, from a decree of P. C. Plowden, District Judge of Meerut, dated the 28th of September, 1923, confirming a decree of Raj Rajeshwari Sahai, Subordinate Judge of Meerut, dated the 17th of February, 1923.

(1) (1916) 19 Oudh Cases, 75.

(2) (1920) I.L.R., 43 All., 1.

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disputes and an unregistered document dated the 9th of January, 1909, was presented to the revenue court, which recited that they had composed their differences and agreed and prayed that the names of *B* and *K* be entered in respect of certain specified shares, respectively. The revenue court ordered mutation of names in accordance therewith, and the parties obtained possession accordingly. Subsequently, after *K*'s death, her sons, claiming as daughter's sons of *D*, sued *B* for recovery of the share of the property in the latter's possession. *B* set up in defence the unregistered compromise deed of 1909. The court held that the document was invalid for want of registration, and decreed the suit. The lower appellate court maintained the decree. *B* appealed to the High Court.

The appeal having been laid before SULAIMAN, J., was by him referred to a Bench of two Judges in view of apparent discrepancies between some earlier rulings of the Court.

Munshi *Ambika Prasad* (with whom Dr. *N. C. Vaish*), for the appellant..

The respondents were not represented.

LINDSAY, J.—After hearing arguments in this case I am of opinion that the appellant is entitled to succeed. The whole question turns on the document, dated the 9th of January, 1909, which was presented in the revenue court. It appears that this document was presented after the death of one Musammat Surjaiti who was the widow of Dungar. When Musammat Surjaiti died, Bakhtawar, who is the grand-nephew of Dungar, seems to have applied to the revenue court claiming to be the heir and to be entitled to have mutation of all the property which had belonged to Dungar, and it further appears that he was

putting forward a title by saying that Musammat Surjaiti had adopted him to her husband Dungar.

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The claim in the revenue court was opposed by Dungar's daughter, Musammat Kamli, and on the date above mentioned we find that a petition was presented to the court which is described as *darkhast razinama*. This document recited that the two parties, namely, Bakhtawar and Musammat Kamli, had already composed their differences regarding the property and had come to an arrangement between themselves by which Musammat Kamli's name was to be entered in respect of 7 bighas 12 biswas odd whilst Bakhtawar's name was to be entered in respect of the rest of the property amounting to 7 bighas 2 biswas odd. The petition describes Bakhtawar as the adopted son of Musammat Surjaiti. *Lindsay, J.*

It is not disputed that the entries have remained in this way ever since the mutation court made an order upon this petition. I am of opinion that this petition is evidence of a previously arranged family settlement arrived at between Bakhtawar and Musammat Kamli, and the true view of the transaction appears to me to be that there was no transfer by one party to the other, nor was there any creation of a fresh title. Bakhtawar was setting himself up as the adopted son whilst Musammat Kamli was opposing him in her character as daughter and heir of the deceased Dungar. It is reasonable to assume that there was a *bonâ fide* dispute between the parties which was eventually composed, each party recognizing an antecedent title in the other. In this view of the circumstances I am of opinion that there was no necessity to have this petition registered. It does not, in my opinion, purport to create, assign, limit, extinguish or declare within the meaning of these expressions as used in section 17 (b) of the Registration

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Act. It is merely a recital of fact by which the court is informed that the parties have come to an arrangement. The whole question raised here has been discussed by me in a ruling which will be found in *Satrohan Lal v. Nageshwar Prasad* (1). I have nothing to add to or subtract from what I said on that occasion. I need only say further that this ruling was cited in a Bench decision, *Baldeo Singh v. Udal Singh* (2). I would, therefore, allow this appeal and setting aside the decrees of both the courts below dismiss the plaintiffs' suit with costs in all courts.

SULAIMAN, J.—I agree, and adhere to the four propositions laid down by me in my referring order which I was inclined to accept if the matter were wholly *res integra*.*

Appeal allowed.

* These were—

(1) That division of property by way of family settlement does not amount to a transfer by one party to the other, nor does any party to such settlement derive title through the other. The settlement merely recognizes the right of the other party and accepts it in part. Not being a transfer, gift or exchange from one party to the other, the transaction does not fall under any of the sections of the Transfer of Property Act which require registration; (2) that even in the absence of a registered document it is open to either party to the family settlement to prove that there had been a family settlement which was acted upon; (3) that if the compromise is reduced to writing then if that document is used as a document of title purporting to create or declare rights in immovable property worth more than Rs. 100, the deed would require registration; but (4) that if the document does not purport to be a document of title creating or declaring such rights but contains a mere recital of a previous settlement arrived at between the parties, the document may be used in evidence in proof of that previous settlement, even though not registered.

(1) (1916) 19 Oudh. Cases, 75.

(2) (1920) I.L.R., 43 All., 1.