

FULL BENCH.

Before Justice Sir Cecil Walsh, Mr. Justice Lindsay, Mr. Justice Sulaiman, Mr. Justice Mukerji, Mr. Justice Banerji, Mr. Justice Ashworth and Mr. Justice Iqbal Ahmad.

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March. 31.

BANSIDHAR AND OTHERS (DEFENDANTS) v. SAMPAT
KUMAR SINGH AND OTHERS (PLAINTIFFS).*

Act No. II of 1927 [Indian Registration (Amendment) Act],
section 2—Registration—Written contract for sale con-
taining acknowledgment of receipt of part considera-
tion or earnest money.

A contract for the sale of immovable property which contains an acknowledgement of the receipt of part consideration or earnest money does not require registration.

Dayal Singh v. Indar Singh (1), referred to.

THIS was a reference to the Chief Justice for the appointment of a Full Bench for the decision of the point of law set forth in the following order:—

LINDSAY and SULAIMAN, JJ. :—This appeal arises out of a suit for specific performance of a contract for sale. The court below has decreed the claim. One of the points raised in appeal on behalf of the appellants is that the alleged contract of sale, dated the 1st of September, 1918, reciting the receipt of Rs. 500 out of the sale consideration, required registration. The point in this form was not taken in the court below, but since the appeal was filed the case of *Dayal Singh v. Indar Singh* (1), has been decided by their Lordships of the Privy Council, on which strong reliance is placed on behalf of the appellants.

*First Appeal No. 445 of 1923, from a decree of Jogendra Nath Chandhri, Subordinate Judge of Gorakhpur, dated the 11th of September, 1923.

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As the question, whether contracts for sale, if reduced to writing, which contain an acknowledgment of receipt of part consideration require registration, is a very important one and arises in numerous cases, we think that it is necessary that this point should be considered by a larger Bench, so that the decision may be authoritative. We, therefore, refer the following question to a Full Bench :— Whether the contract for sale, as embodied in the document No. 337, dated the 1st of September, 1918, printed at page 155 of the paper-book, required to be registered.

The record will be placed before the Hon'ble the Acting Chief Justice for the constitution of a Full Bench.

Sir *Tej Bahadur Sapru*, Dr. *Surendra Nath Sen*, Munshi *Haribans Sahai* and Pandit *S. S. Shastry*, for the appellants.

Mr. *B. E. O'Connor*, Dr. *Kailas Nath Katju*, Mr. *Sankar Saran* and Munshi *Harnandan Prasad*, for the respondents.

LINDSAY, J. :—The question to be decided by this Full Bench is set out in the referring order of the 2nd December, 1926, in the following terms :—

“ Whether the contract for sale, as embodied in the document No. 337, dated the 1st of September, 1918, printed at page 155 of the paper-book, required to be registered.”

The paper-book mentioned is the printed record of First Appeal No. 445, of 1923, and the document at page 155 purports to be a contract for the sale of immovable property, consisting of a 14-anna share in mahal No. 1 of mauza Dudhai, for a sum of Rs. 36,000. In the body of the deed it is recited that

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the executants (the proposed vendors) being in need of Rs. 500 for the purchase of the stamp for the sale-deed and for other necessary expenses have taken this sum from the proposed purchasers, credit for which is to be allowed to the purchasers against the settled price of Rs. 36,000. In the concluding portion of the deed this sum of Rs. 500 is spoken of as being earnest money, but the payment was clearly a payment of a portion of the purchase money.

The reference of the question mentioned above for the decision of this Bench was rendered necessary by the judgement of their Lordships of the Privy Council in *Dayal Singh v. Indar Singh* (1).

On the 13th of December, 1926, when the case first came up before the present Bench, the hearing was adjourned in view of impending legislation and since then there has been passed the Indian Registration (Amendment) Act, 1927 (Act II of 1927) which has come into force from the 18th of February, 1927. By this Act there has been added to section 17, sub-section (2), of the Indian Registration Act, 1907, the following explanation:—

“*Explanation.*—A document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.”

The document of the 1st of September, 1918, with which we are now concerned, is a document of the description given in the above explanation, and it follows, therefore, that in virtue of this new enactment it did not require to be registered.

(1) (1926) 24 A.L.J., 807.

With this answer to the question submitted for decision, the record is returned to the Bench concerned.

WALSH, SULAIMAN, MUKERJI, BANERJI, ASHWORTH and IQBAL AHMAD, JJ. :—We agree.

Reference answered in the negative.

APPELLATE CIVIL.

Before Sir Grimwood Mears, Knight, Chief Justice, and Mr. Justice Dalal.

MITTHU LAL (DEFENDANT) v. DEOJIT AND ANOTHER
(PLAINTIFFS).*

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Mortgage—Suit for sale—Preliminary decree—Objection as to amount due on mortgage not competent after passing of the preliminary decree—New ground of appeal added after period of limitation—Such ground not entertainable.

An objection that the amount due on a mortgage ought to be reduced should be put forward at the time the preliminary decree is passed. At the time of the preparation of the final decree the amount fixed in the preliminary decree cannot be altered except for some reason or some event which may have happened subsequent to the preliminary decree. *Imam Ali v. Baij Nath Ram Sahu* (1), distinguished.

A plea raised in a ground of appeal added at a date when it is time-barred, although the addition was made with the permission of the court and without any objection on the ground of limitation being raised by the other party, cannot be argued.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgement of the Court.

* First Appeal No. 157 of 1924, from a decree of Muhammad Ziaul Hasan, Subordinate Judge of Mainpuri, dated the 19th of January, 1924.

(1) (1906) I.L.R., 33 Calc., 618.