been defined in section 3 of the Transfer of Property Act as meaning rooted in the earth or embedded in the earth as in the case of walls or buildings. There is no reason to suppose that that expression in this Act has a different meaning. It is by virtue of such a definition that house property is treated as immoveable property under the Transfer of Property Act and also under the General Clauses Act, vide *Abdul Khan* v. *Shakira Bibi* (1).

[The rest of the judgment is not material for the purposes of the report].

Appeal dismissed.

Before Mr. Justice Banerji and Mr. Justice King.

1929 *January*, 25

MANGALI PRASAD AND ANOTHER (PLAINTIFFS) *v.* BABU RAM AND OTHERS (DEFENDANTS).*

Award purporting to partition property—Signed by parties—Registration—Admissibility in evidence—Relinquishment of right of redemption by Hindu father—Without legal necessity and benefit to the family—Not binding on his sons.

An award does not require registration merely because it is signed by the parties to the reference and purports to partition the property.

Where a Hindu father relinquished his right of redemption without any legal necessity or benefit to the family, the relinquishment was not binding on the sons.

Tek Lal Singh v. *Sripati Chowdhury* (2), referred to, *Wazir Ali* v. *Mahbub Ali* (3), followed.

Pandit *Uma Shankar Bajpai*, for the appellants.

Munshi *Narain Prasad Asthana*, for the respondents.

BANERJI and KING, JJ. :—This appeal arises out of a suit for possession of one-third share of a house. The

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* Second Appeal No. 255 of 1926, from a decree of Farid-ud-din Ahmad Khan, Subordinate Judge of Mainpuri, dated the 5th of November, 1926, reversing a decree of Lachhman Prasad, Munsif of Mainpuri, dated the 3rd of September, 1924.

(1) (1927) I. L. R., 50 All., 348. (2) (1913) 20 Indian Cases, 860.
(3) (1914) 22 Indian Cases, 412.

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house originally belonged to Mulu and on his death his three sons, Narpat, Ram Sahai and Alkhi became joint owners of one-third share each. Narpat mortgaged his one-third share in 1901 to his brother Ram Sahai for Rs. 150 with possession. The plaintiffs are the son and grandson of Narpat. They allege that they redeemed the mortgage in 1922 by payment of the mortgage money to Anokhey Lal, son of Ram Sahai. They alleged that in spite of the redemption Anokhey Lal and defendants Nos. 2 to 4, who are the sons of Alkhi, refused to allow the plaintiffs to take possession; hence the suit.

The defence set up by defendants Nos. 2 to 4 was that in 1909 there was a partition of the house between the three brothers. The partition was in accordance with an arbitration award. According to the terms of the award Narpat relinquished his one-third share in the house in consideration of release from liability to pay the mortgage money, and the two brothers Ram Sahai and Alkhi were allotted a half share each in the house. It is pleaded, therefore, that Narpat surrendered his equity of redemption and the plaintiffs had no right to make the so-called "redemption" in 1922 and are not entitled to recover possession of Narpat's share.

The plaintiffs contend that they are not bound by the award of the abitrators since they were no parties to it. Their father signed the award but his action is not binding upon them since it amounted to a relinquishment of his interests without legal necessity and without any benefit to the family. It was also pleaded that the arbitration award was inadmissible in evidence for want of registration.

The court of first instance repelled the pleas raised in defence and decreed the plaintiffs' claim. The lower appellate court took the view that the arbitration award was valid and binding upon the plaintiffs and therefore dismissed their claim *in toto*.

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Three principal points are raised by the learned advocate for the appellants.

The first point is that the award is inadmissible in evidence for want of registration since it amounts to a deed of partition. He relies upon the ruling of the Calcutta High Court in *Tek Lal Singh* v. *Sripati Chowdhury* (1). In that ruling it was observed that a document which purports to be an award may amount to something more than an award. If the parties to the reference affix their signatures to the award in token of their acceptance of the decision of the arbitrators the award may become thereupon a deed of partition and may as such become compulsorily registrable. These observations, however, were *obiter dicta*. The court held that the document in question was an award, and as such was not compulsorily registrable.

On the other side we have been referred to a decision of the Punjab Chief Court in the case of *Wazir Ali* v. *Mahbub Ali* (2) which case is very much on all fours with the case before us. In that case also some brothers divided the family property between them and appointed arbitrators to carry out the partition. The award was signed not only by the arbitrators but also by the four brothers. It was contended in that case also that the award was inadmissible for want of registration as it amounted to a deed of partition. It was held that the document signed by arbitrators as their award does not cease to be an award merely because the settlement was arrived at by the parties and was also signed by them. As an award it did not require registration. In our opinion the reasoning of the learned Judges who decided this case was sound and we agree with the view that an award does not require registration merely because it is signed by the parties to the reference and purports to

(1) (1913) 20 Indian Cases, 860. (2) (1914) 22 Indian Cases, 412.

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partition the property. The award is therefore admissible in evidence.

The next contention is that the sons, namely, the plaintiffs, are not bound by their father's acceptance of this award. On this point we are in agreement with the learned advocate for the appellants. In the first place, it is clear that there was no substantial consideration for Narpat's relinquishment of his interests in the family property. He was not under any personal liability to pay the mortgage money as the mortgage was with possession. He gained nothing by relinquishment of his right of redemption and such relinquishment must be regarded as without consideration.

In the next place, it is clear that the relinquishment was not made for legal necessity or for the benefit of the family and in that view of the case also it is not binding on the sons.

The next point raised is that in any case the plaintiffs' suit should have been decreed as against Anokhey, defendant No. 1, since he had admitted the alleged redemption of the mortgage in 1922 by receipt of the mortgage money. Here again we agree with the contention of the appellants. Anokhey Lal is the son of the original mortgagee and he is admittedly in possession of half the house in dispute. He admits that the plaintiffs have not lost their right of redemption by reason of the family partition in 1909 and that they have in fact redeemed the mortgage by payment of the mortgage money to him. We see no reason whatever why their claim for one-third of the house should not be decreed as against Anokhey Lal. His father accepted liability for the plaintiffs' mortgaged share by receiving Rs. 75 (half the mortgage money) from Alkhi at the time of the partition in 1909, and Anokhey Lal admittedly received the whole of the mortgage money from the plaintiffs in 1922.

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The plaintiffs are therefore entitled to recover possession of the one-third share out of the half share which is in the possession of Anokhey Lal..

We accordingly allow the appeal as against Anokhey Lal and decree the plaintiffs' suit for possession of one-third share in the house as against Anokhey Lal only. The appeal as against the other defendants is dismissed with costs throughout. Anokhey Lal never contested the suit or appeals, so no costs are awarded against him.

REVISIONAL CRIMINAL.

Before Mr. Justice Boys and Mr. Justice Sen.

EMPEROR *v.* RAM LAL AND ANOTHER.*

1929 January, 28.

Criminal Procedure Code, section 110—Notice—Evidence of general repute—Admissibility of suspicions—Admissibility of previous convictions and the evidential value thereof—Reference—Procedure.

In proceedings under section 110 of the Criminal Procedure Code each man proceeded against is entitled to a separate notice and not to have the charges which are going to be made against him confused with the charges that are being made against somebody else.

The suspicion of a witness that the accused person committed a particular theft is wholly inadmissible. A witness can not say what he suspects. He can depose to facts within his knowledge, and it will be for the magistrate to determine whether those facts alone or with other evidence create such a conviction in his mind as to justify calling for security.

Evidence of general repute does not mean the placing of a heterogeneous mass of more or less general statements by any witness who can be produced to say something on hearsay or otherwise and label it "general repute". A man's general repute is just as much a fact as any other fact which can be

* Criminal Reference No. 837 of 1928.