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January 23.

## CIVIL JURISDICTION.

*Before Mr. Justice Straight and Mr. Justice Oldfield.*

MARTIN (PLAINTIFF) *v.* SHEO RAM LAL (DEFENDANT).\*

*Registration—Unregistered indigo "sattah"—Admissibility in evidence of claim for damages—Act III of 1877 (Registration Act), s. 49.*

*S* gave *M* a lease of certain land, which required by law to be registered, but which was not registered, in which it was stipulated that, if he failed to deliver any portion of such land, he should pay damages at a certain rate per bigha in respect of the portion not delivered, and in which such land was hypothecated as security for the payment of such damages. *S* having failed to deliver a portion of such land, *M* sued him for damages in respect of such portion according to the terms of the lease, not seeking to enforce the hypothecation, as the lease was not registered, but seeking only a money-decree. *Held* that the lease, being unregistered, could not be received as evidence even of *S*'s personal liability thereunder. *Sheo Dial v. Prag Dat Misr* (1) distinguished.

THIS was an application to the High Court by the plaintiff in a suit for the exercise of its powers of revision under s. 622 of Act X of 1877. The facts of the case are sufficiently stated for the purposes of this report in the order of the High Court.

Mr. *Conlan* and *Shah Asad Ali*, for the plaintiff.

The *Senior Government Pleader* (*Lala Juala Prasad*) and *Pandit Ajudhia Nath*, for the defendant.

The order of the Court (STRAIGHT, J., and OLDFIELD, J.) was delivered by

STRAIGHT, J.—This is an application under s. 622 of the Civil Procedure Code for revision of a decision of the Subordinate Judge of Azamgarh, passed upon the 22nd September 1880. The petition was not filed until the 11th July, 1881, nearly ten months after the judgment complained of had been given, and we cannot avoid remarking not only that such delay is most unpardonable, but that it is high time some period of limitation were provided by the Legislature within which these applications for revision must be made.

The circumstances of the case appears to be as follows. On the 13th March, 1875, the defendant Sheo Ram Lal, zamindar of mauza

\* Application, No. 98 of 1881, for revision under s. 622 of Act X of 1877 of a decree of *Rai Bhagwan Prasad*, Subordinate Judge of Azamgarh, dated the 22nd September, 1880, reversing a decree of *Maulvi Kamar-ud-din*, Munsif of Azamgarh, dated the 24th June 1880.

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Basaipur, in the Azamgarh district, executed an instrument in favour of Mrs. Elizabeth Martin, the plaintiff, in which, after reciting that upon a balancing of accounts Rs. 61 was found to be due from the defendant to the plaintiff, the former in consideration of the above amount "gave to Mrs. Martin aforesaid 13 bighas 10 biswas of land at the rent of Rs. 4 or Rs. 5 per bigha, as preferred or chosen by the godown agents, for a period from 1282 to 1284 fasli, namely, for a term within three years, at the time of sowing indigo *i. e.*, I (the executant) will give the land to the aforesaid karindas for sowing indigo from 15th Chait till the 15th Jaith: that should I, or any under-tenant or non-hereditary tenant, or anybody else, cause interference and offer obstruction in the sowing of the indigo, I shall pay damages to the lady at the rate of Rs. 40 per bigha: that should I fail to give all the field as provided in the lease to the godown servants, and any part of such land remains with me, I shall pay damages at the rate of Rs. 40 per bigha: that if anything remains unpaid to the lady of the principal *zar-i-peshgi* money, she will be competent to realize the same from me or my property, together with the damages in respect of the land, in any way she thinks proper, and that till the payment my share in mauza Basaipur, and also other property, moveable and immoveable, shall remain pledged and hypothecated for the dues under the lease." The defendant, so the plaintiff alleges, did not give her the 13 bighas 10 biswas contracted for, but only 4 bighas 9 biswas 1 dhur, and the suit now under consideration was brought to recover Rs. 361-14-6 as damages, at the rate of Rs. 40 per bigha on the 9 bighas 9 dhurs not surrendered, and Rs. 38-12-9 balance of the Rs. 61-1-0 unpaid. It will be observed that though the instrument of the 13th March, 1875, contains an hypothecation of property for the damages, the plaintiff did not ask to enforce that part of the contract but only sought a money-decree. The Munsif decreed the plaintiff's claim, but on appeal the Subordinate Judge reversed his decision, holding that the document of the 13th March, 1875, being a lease for more than one year, and containing an hypothecation of immoveable property, was, under s. 17 of Act III of 1877, compulsorily registerable, and not having been registered was inadmissible in evidence. It is obvious that in speaking of Act III of 1877 the Subordinate Judge fell into error, as the law in force

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at the time of execution of the document was Act VIII of 1871. This, however, makes no material difference, as the provisions of both Acts upon this point are identical. As against the Subordinate Judge's decision it was urged before us by Mr. Conlan for the plaintiff that, the suit being merely one for damages, the document of the 13th March, 1875, was admissible to show the personal liability of the defendant, under the authority of the Full Bench ruling of the Court in *Sheo Dial v. Prag Dat Misr* (1). It was, moreover, contended that the document, if a lease at all, was not from year to year, but for one year, and as such not compulsorily but optionally registrable.

The first question to be determined is as to the nature of the document, and upon examining its language we can come to no other conclusion than that it is a lease of 13 bighas 10 biswas and for a term "exceeding one year" at least, if not for three years. Such in our opinion being the character of the instrument, it was compulsorily registrable under s. 17 of Act VIII of 1871, the law in force at the time of its execution, and not having been so registered, was primarily inadmissible in evidence in the present suit, under the provisions of s. 49 of Act III of 1877. The next point to be considered is, whether the document, though a lease for more than one year and though unregistered, can be received to the extent that it shows a personal liability in the defendant to damages. It appears to us that the present case is wholly different and distinguishable from the Full Bench decision already referred to. There a loan had been made, and what we held was that to establish the debt the unregistered bond might be given in evidence. But no such state of things exists here. The present suit is essentially one for damages for breach of a contract of lease to surrender certain lands to the plaintiff for cultivation, and the measure of damages has to be estimated according to the amount of land that the defendant has failed to deliver over. Before the question can be opened up the contract itself must be established, and as this is in the nature of a lease and records a transaction affecting immoveable property for a term exceeding one year, its non-registration is fatal to its production. In short it is impossible to separate the leasing of the

(1) I. L. R. 2 All, 229.

land from the defendant's personal liability for damages, or to hold that the contract is other than one and indivisible. Such being our view, it is unnecessary to consider the points urged on behalf of the defendant. We hold that the decision of the Subordinate Judge was right, and that this application must be dismissed with costs.

*Application rejected.*

## APPELLATE CIVIL.

*Before Mr. Justice Straight and Mr. Justice Brodhurst*

PADARATH SINGH (DEFENDANT) v. RAJA RAM AND AFTER HIS  
DEATH AKAUTI KUAR (PLAINTIFF. \*)

*Joint Hindu family—Suit by son to set aside Father's alienation of ancestral property—Death of son—Abatement of suit—Hindu mother.*

Where a Hindu minor, governed by the law of the Mitakshara, on whose behalf a suit to set aside his father's alienation of ancestral property had been instituted, died, *held* that no right to sue survived in favour of his mother, but the suit abated.

THE facts of this case are sufficiently stated for the purposes of this report in the judgment of the High Court.

Munshi *Kashi Prasad* and Babu *Lal Chand*, for the appellant.

Pandit *Bishambhar Nath*, for the respondent.

The judgment of the Court (STRAIGHT, J., and BRODHURST, J.) was delivered by

STRAIGHT, J., (BRODHURST, J., concurring).—The two suits involved in these Second Appeals 51 and 52 of 1881 were instituted on behalf of the minor plaintiff, Raja Ram, by his guardian and mother Akauti Kuar, against Mathura Singh his father, Sheo Saran Singh and Dukhi Singh mortgagees, and Padarath Singh auction purchaser, to recover a half share of certain ancestral properties, which it was alleged had been improperly incumbered by the said Mathura Singh, and subsequently sold in execution of decrees obtained on the mortgages executed by him. The Munsif dismissed

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\* Second Appeal, No. 51 of 1881, from a decree of Rai Bhagwan Prasad, Subordinate Judge of Azamgarh, dated the 25th November, 1880, reversing a decree of Maulvi Mazhar Husain, Munsif of Muhammadabad, dated the 28th June, 1880.