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SITLA DIN v. SHEO PRASAD.

The *Junior Government Pleader* (Babu *Dwarka Nath Banarji*), for the appellant.

Pandit *Bishambhar Nath*, for the respondents.

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

STRAIGHT, J.—We do not concur in the Judge's view that art. 179, cl. 6, of the Limitation Act XV of 1877 has any relevancy to the present case. But we think that the application of the 17th January, 1879, was in time, because we hold that the proceedings of the 27th March, 1876, may be considered as properly constituting a step in execution of decree. In adopting this view we follow and approve the decision in *Ghansham* v. *Mukha* (1). The appeal is dismissed with costs.

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July 11.

Before Mr. Justice Straight and Mr. Justice Duthoit.

GANGA RAM (PLAINTIFF) *v.* CHANDAN SINGH (DEFENDANT).*

Bond—Fraudulent alteration of hypothecation clause.

The obligee of a bond for the payment of money, in which a certain share of a village had been hypothecated as collateral security, having fraudulently altered such bond so as to make it appear that a larger share of such village was hypothecated, sued the obligor to recover the money due on such bond, by the sale of such larger share. The obligor admitted the execution of the bond and that a certain sum was due thereon. *Held*, on the question whether under these circumstances the obligee was entitled to relief as regards his claim for money, that he was not so entitled, inasmuch as the bond on which his suit was brought must be discarded, being a forgery, and therefore the suit as brought failed. S. A. No. 1037 of 1879 (2) decided the 11th March, 1880, distinguished.

THE plaintiff in this suit claimed Rs. 607, principal, and Rs. 23-11-0, interest, on a bond dated the 8th January, 1878, purporting to hypothecate a 5 biswas and 8 biswansis share of mauza Khajra Ghatam and certain other property. He claimed to recover such amount by sale of the hypothecated property. The defendant admitted the execution of the bond, and that he owed Rs. 332 odd under it; but alleged that he had only hypothecated in the bond a 5

* Second Appeal, No. 66 of 1881, from a decree of C. J. Daniell, Esq., Judge of Moradabad, dated the 29th September, 1880, affirming a decree of Maulvi Ain-ud-din, Munsif of Belari, dated the 30th June, 1880.

(1) I. L. R. 3 All. 320. (2) Unreported.

biswansis 8 kachwansis share of mauza Khajra Ghatam, and the plaintiff had, after the execution of the bond, fraudulently altered 5 biswansis 8 kachwansis into 5 biswas and 8 biswansis. The Court of first instance found as a fact that the bond had been so altered, either by the plaintiff himself or with his knowledge; and on that ground dismissed the suit. On appeal by the plaintiff the lower appellate Court affirmed the decision of the Court of first instance.

The plaintiff appealed to the High Court, contending that the alteration in the bond did not justify the dismissal of his claim altogether, and the suit, as regards the claim for money due, should have been decided on its merits.

Munshi *Hanuman Prasad* and Lala *Lalta Prasad*, for the appellant.

The *Senior Government Pleader* (Lala *Juala Prasad*) and Shah *Asad Ali*, for the respondent.

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

STRAIGHT, J.—We cannot concur in the Judge's view that the deed produced by the plaintiff-appellant was a forgery in its entirety; on the contrary, we think with the Munsif that it was the instrument originally executed on the 8th January, 1878, but that the 5 biswansis 8 kachwansis of Khajra Ghatam have been altered into 5 biswas 8 biswansis. The question then to be considered is, in what way does this circumstance affect the plaintiff's suit? Now it must not be lost sight of that the defendant-respondent admitted the execution of a bond for Rs. 607 on the 8th January, 1878 in favour of the plaintiff, and that the consideration for it was made up of an old bond-debt for Rs. 281 and Rs. 129 received in cash, the balance of Rs. 197 never, as he alleged, having been paid to him by the plaintiff-appellant. He further stated that he had made payments in kind towards satisfaction of the debt to the extent of Rs. 77-2-3, but he added, what we have already remarked we consider established, namely, that he had only mortgaged 5 biswansis 8 kachwansis of Khajra Ghatam. It will therefore be seen that he confessed a bond-transaction with the plaintiff-appellant and consideration to the extent of Rs. 410 of which he alleged he had paid off Rs. 77-2-3. The point then arises, whether the plain-

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GANGA RAM v. CHANDAN SINGH.

tiff-appellant, having come into Court with a claim upon a bond for enforcement of lien, the execution of which, though not as it now stands, is admitted by the defendant-respondent, who also allows that he is indebted to the plaintiff-appellant to the extent of Rs. 332-13-9, he is entitled to obtain the relief he asks, when such bond is found to have been altered in such a way as to give it an operation and effect that was not originally contemplated between the parties at the time of its execution. We certainly do not think that in the present form of his claim the plaintiff-appellant should be allowed to succeed. His suit was instituted upon an instrument which had been intentionally altered in a most important and material particular, either by himself or with his knowledge, behind the back and the cognizance of the obligor, for his own advantage and to the detriment of the defendant-respondent. In other words, he sought to enforce hypothecation against 5 biswas 8 biswansis of land, when only 5 biswansis 8 kachwansis had been pledged. When the contract upon which he based his suit is found never to have been made in the shape he set it up, it does not appear to us that, having thus been detected in a forgery, he should be allowed to revert to the contract that actually was made. It seems to us that on all grounds of equity and good conscience the bond now produced by the plaintiff should be discarded as evidence of the hypothecation of land, and this being so, the claim of the plaintiff-appellant as brought falls to the ground. In expressing this view, we wish to add that we in no way depart from the opinion expressed by Spankie and Straight, JJ., in Second Appeal No. 1037 of 1879 (1), the facts of which case are obviously distinguishable from the present, in that there the alteration was of some figures on the back of the bond-showing the amount paid off, while here it is in the operative and effective part of the body of the instrument. How far, and to what amount, the plaintiff-appellant may be able to recover the money-debt due from the defendant-respondent is not a matter with which we are now called upon to deal. It is sufficient to say that the suit, being brought upon a bond which has been rejected as evidence of the hypothecation of land, in that shape fails, and this appeal must therefore be dismissed with costs.

Appeal dismissed.

(1) Unreported.