

1881

MUHAMMAD
AIZ AHMAD
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v.
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KHAN.

gift for a consideration, and that the words relied on to cut it down to an *ariat* have not that effect. It is to be observed that the Subordinate Judge cites various instances from books on Muhammadan law in which very similar words, used after words of absolute gift, have been read as being descriptive of the motive or consideration of the gift, and ineffectual to control the operation of technical words of gift.

For these reasons their Lordships think that the judgments below are right; and they will humbly advise Her Majesty to affirm the decree of the High Court, and to dismiss this appeal with costs.

Solicitors for the appellant: Messrs. *Barrow and Rogers*.

Solicitor for the respondents: Mr. *T. L. Wilson*.

CIVIL JURISDICTION.

1881
January 31.

Before Mr. Justice Spinkie and Mr. Justice Oldfield.

KALLU MAL (DEFENDANT) v. BROWN (PLAINTIFF).*

Attachment of Property—Suit to establish Right—Suit for compensation for Wrongful attachment—Act X. of 1877 (Civil Procedure Code), ss. 279, 283.

An order striking off an objection to the attachment of property attached in execution of a decree for default of prosecution is not "conclusive" as regards the right which the objector claimed to the property, within the meaning of s. 283 of Act X of 1877.

Held, therefore, where a person objected to the attachment of certain moveable property attached in execution of a decree, claiming it as his own, and his objection was struck off for default of prosecution, that such person might sue for damages for the wrongful attachment of such property without suing to establish the right which he claimed thereto.

THIS was an application to the High Court for the exercise of its powers of revision under s. 622 of Act X of 1877. One Kallu Mal had been sued in the Court of Small Causes at Allahabad by one Brown for compensation for the wrongful attachment in the execution of his decree against one Joakim of a carriage belonging to Brown. It appeared in that suit that, when such carriage had been attached, the plaintiff objected under s. 278 of Act X. of 1877 to the attachment, claiming such carriage as his own property.

* Application, No. 91B. of 1880, for revision under s. 622 of Act X of 1877 of an order of R. D. Alexander, Esq., Judge of the Court of Small Causes at Allahabad, dated the 11th September, 1880.

He failed to appear on the day fixed for the hearing of the objection, and the objection was struck off for default of prosecution. The carriage was subsequently sold. The defendant set up as a defence to the suit that the plaintiff was bound under s. 283 of Act X. of 1877 to bring a suit to establish his right to the carriage, and was not at liberty to sue for compensation for its wrongful attachment until he had done so, as his right was concluded by the determination of the objection. The Judge of the Court of Small Causes disallowed this defence, holding that s. 283 only applied when orders had been passed by the Court after investigation under ss. 280, 281, and 282 of Act X of 1877, and no such order had been passed on the plaintiff's objection, which had been simply struck off for default of prosecution. The defendant applied to the High Court to revise the proceedings of the Judge of the Small Cause Court, under s. 622 of Act X of 1877, on the ground that the plaintiff was bound under s. 283 to sue for the establishment of his right before he could sue for damages.

Munshi *Kashi Prasad*, for the defendant.

Mr. *Hill*, for the plaintiff.

The following judgment was delivered by the Court (SPANKIE, J., and OLDFIELD, J.) :

OLDFIELD, J.—We are of opinion that the view taken by the Judge of the Small Cause Court is correct, and we dismiss this application with costs.

Application rejected.

APPELLATE CIVIL.

Before Sir Robert Stuart, Kt., Chief Justice, and Mr. Justice Pearson.

RAM BARAN RAI (PLAINTIFF) v. MURLI PANDEY AND ANOTHER
(DEFENDANTS). *

*Registered and unregistered documents—Act XVI of 1864—Act III of 1877
(Registration Act), s. 50.*

An unregistered document, executed before Act XVI of 1864 came into force, is not invalidated or postponed to a document registered under Act IX of 1871 under the *Explanation* given in s. 50 of Act III of 1877.

* Second Appeal, No. 1223 of 1879, from a decree of J. W. Power, Esq., Judge of Ghazipur, dated the 12th August, 1879, reversing a decree of Maulvi Mir Badshah, Munsif of Saidpur, dated the 19th April, 1879.

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