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For the above reasons we allow the appeal with costs, set aside the decision of the lower appellate court and restore that of the first court. The plaintiffs-appellants will recover their costs in all the courts as part of the decretal amount of the mortgage.

Appeal allowed.

APPELLATE CIVIL.

*Before Syed Wazir Hasan, Chief Judge and Mr. Justice
B. S. Kisch.*

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March, 3.

TRILOKI NATH AND ANOTHER (DEFENDANTS-APPELLANTS)
v. RAM MANORATH AND OTHERS (PLAINTIFFS-RESPONDENTS).*

Registration Act (XVI of 1908), section 17, sub-section (2), clause (vi)—Mutation case—Petition of compromise filed in mutation court and court's order in terms of it incorporating its terms in the order—Proceedings and order of mutation court, if sufficient proof of settlement and whether exempt from registration—Officer seized of mutation proceedings, if to be regarded a "court"—Registration of mutation proceedings and order, if compulsory.

Where a petition of compromise relating to the entire subject-matter of the dispute pending in the mutation court is presented to the court and in proceedings separately recorded it is verified by the parties and finally, the court accepts it and orders mutation of names in accordance with its terms and the terms are incorporated in the order by means of a reference to the contents of the petition of compromise, *held*, that the proceedings and the order of the court are sufficient proof of the terms of the settlement and they clearly do not require registration for their admissibility in evidence, for an order of a court is exempted from registration under clause (vi) of sub-section (2) of section 17 of the Indian Registration Act, 1908. *Bindesri Naik v. Gangasaran Sahu* (1). *Pranal Annee v. Lakshmi Annee* (2), and *Rani Hemanta Kumari v. Midnapur Zamindari Co.* (3), relied on.

*Second Civil Appeal No. 240 of 1930, against the decree of M. Mahmud Hasan Khan, Subordinate Judge of Gonda, dated the 2nd of June, 1930, reversing the decree of Pandit Girja Shankar, Munsif, Tarabganj, Gonda, dated the 21st of August, 1929.

(1) (1897) L.R., 25 I.A., 9.

(2) (1899) L.R., 26 I.A., 101.

(3) (1919) L.R., 46 I.A., 240.

Held, that the proceedings in mutation cases are certainly not wholly judicial proceedings but they are quasi-judicial proceedings. The officer seized of the mutation proceedings is a "court" within the meaning of the exemption contained in clause (vi) of sub-section 2 of section 17 of the Indian Registration Act, 1908.

Held further, that proceedings of mutation cases and orders thereon are not instruments which alone are required by law to be compulsorily registered under clauses (a), (b) and (c) of section 17(1) of the Indian Registration Act, 1908.

Mr. Radha Krishna, for the appellants.

Mr. Hyder Husain, and Dr. Zafar Husain, for the respondents.

HASAN, C. J. and KISCH, J. :—This is the defendants' appeal from the decree of the Subordinate Judge of Gonda, dated the 2nd of June, 1930, reversing the decree of the Munsif of Tarabganj, dated the 21st of August, 1929.

One Raghbir Singh was the owner in possession of a 1 pie 10 kirants zamindari share situate in the village of Lilui Kalan, pargana Gwarich, district Gonda. He died about 50 years ago and on his death this zamindari share passed into the possession of his widow, Musammat Phulbasi, by right of inheritance. Musammat Phulbasi died in Jeth of 1928. On her death controversy arose as to the right of succession to the estate of Raghbir amongst the collaterals who are stated in the pedigree attached to the plaint of the suit. According to the Mitakshara title to the two-thirds of the estate devolved on the plaintiff, Ram Manorath, and his brother, Mathuranand, in equal moieties and the remaining one-third on one Pragdat but the defendants appellants though one degree more remote than the plaintiff and Pragdat contended that according to the custom of the family the estate of Raghbir should be divided *per stirpes* and on that basis the plaintiff and his brother, Mathuranand, were entitled to a one-third share, Pragdat to a similar share and the defendants to the remaining one-third share. On the 16th

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of June, 1928 Pragdat, Tirloki Nath (now one of the defendants) and Swami Dayal filed an application in the mutation court, claiming entry of their names in the khewat of the village in accordance with the alleged custom of the family (exhibit A1). On the 12th of July, 1928, the plaintiff and his brother, Mathuranand, filed an objection to the application just now mentioned and claimed mutation in accordance with the rule of the Mitakshara (exhibit A2). On the same date Pragdat also filed a petition of objections, claiming one-half for himself and the remaining half for the plaintiff and his brother (exhibit A3). Trilokinath's pleader also made a statement on the same date in which he adhered to the claim made in the first application and relied upon the custom of succession *per stirpes* (exhibit A4). The plaintiff's brother, Mathuranand, in his statement before the mutation court denied the alleged custom (exhibit A5), but Pragdat admitted it (exhibit A6). On the 26th of July, 1928, both parties combined in making an application to the court asking for an adjournment of the case to enable them to settle the controversy by means of a compromise (exhibit A7). On the 23rd of August, 1928, a petition of compromise was filed and it was stated therein that the parties had amicably settled the dispute. They prayed that the entry of names in the village khewat be made in accordance with the shares specified in it (exhibit A9). The allotment of shares indicated in this application was according to the custom which the defendants had set up originally and on which the initial application of the 16th of June, 1928, was founded. The court verified the compromise and obtained the signatures of all the parties concerned on a part of the record of the proceedings of the mutation case. On the 3rd of September, 1928, the court decided the case by its order of that date in accordance with the compromise (exhibit A12) and the day following; that is on the 4th of September, 1928, the plaintiff

made an application to the mutation court, stating that certain verbal errors had been made in the specification of shares in the petition of compromise and praying that the order of the previous date might be revised (exhibit A17). The court rejected the application on the same date (exhibit A13). Thereupon the suit, out of which this appeal arises, was filed.

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It will be seen from what has been stated above that according to the terms of the compromise, on which the order of the mutation court rested, the plaintiff was allotted a one-sixth share, the remaining one-sixth having been allotted to his brother, Ram Manorath. In this suit the compromise is repudiated on various grounds and the relief prayed for is the recovery of a one-sixth share in accordance with the law of the Mitakshara. The defendants relied upon the compromise and also on the custom already stated on the recognition of which the settlement had proceeded. At the trial, however, they declined to adduce evidence in support of the custom independently of the compromise.

The court of first instance upheld the defence and dismissed the suit. On appeal by the plaintiff the lower appellate court reversed the decision of the court of first instance and decreed the suit on the sole ground that the petition of compromise, dated the 23rd of August, 1928 (exhibit A9), being inadmissible in evidence for want of registration, the plaintiff's title according to law prevailed.

In support of the appeal the learned Advocate for the defendants-appellants presented his arguments before us in two aspects. (1) That in this particular case the terms of the compromise were settled at a village panchayet held previous to the date of the compromise and the application was merely an intimation of those terms to the court with a prayer that mutation might be made in accordance therewith. The petition

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of compromise therefore was not an instrument "which purports or operates to create, declare, assign, limit or extinguish . . . any right, title or interest" in the property in suit and (2) that at all events the terms of the settlement were by reference incorporated into the order of the court and an order of a court is exempted from registration under clause (vi) of sub-section (2) of section 17 of the Indian Registration Act, 1908.

We propose to decide this appeal on the second aspect of the argument. The petition of compromise dated the 23rd of August, 1928 (exhibit A9), related to the entire subject-matter of the dispute pending in the mutation court. It was presented to the Court and in proceedings separately recorded it was verified by the parties. Finally, the court accepted it and ordered mutation of names in accordance with its terms. The terms were incorporated in the order by means of a reference to the contents of the petition of compromise. The result is that the proceedings and the order of the court are sufficient proof of the terms of the settlement and they clearly do not require registration for their admissibility in evidence. This view is wholly covered by a series of decisions of their Lordships of the Judicial Committee in *Bindesri Naik v. Gangasaran Sahu* (1); *Pranal Annee v. Lakshmi Annee* (2), and *Rani Hemanta Kumari v. Midnapur Zamindari Co. Ltd.* (3). The only argument suggested against this conclusion was that the officer seized of the mutation proceedings was not "a court" within the meaning of the exemption contained in clause (vi) of sub-section (2) of section 17 of the Indian Registration Act, 1908. In support of this view there is no decision of any court nor do we think there is any reason. Proceedings in mutation cases are certainly not wholly judicial proceedings but they are quasi-judicial proceedings—*Sadik Husain Khan v. Hashim Ali Khan* (4). The

(1) (1897) L.R., 25 I.A., 9.

(2) (1899) L.R., 26 I.A., 101.

(3) (1919) L.R., 46 I.A., 240.

(4) (1916) L.R., 43 I.A., 212.

provisions of the United Provinces Land Revenue Act, 1901, relating to cases of mutation of names distinctly show that the officer seized of mutation cases is enjoined by law to decide disputes regarding entries of names by means of an inquiry into the question of possession and when he is unable to satisfy himself as to which party is in possession he shall ascertain by a summary inquiry who is the person best entitled to the property and shall put such person in possession—vide section 40 of the United Provinces Land Revenue Act, 1901. Such being the function of an officer seized of a mutation case and such being the nature of the proceedings relating thereto it is difficult to hold that such an officer is not a “court”.

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The conclusion that the proceedings of the mutation case and the order therein do not require registration can also be supported on another ground and it is this that they are not “instruments” which alone are required by law to be compulsorily registered under clauses (a), (b) and (c) of section 17(1) of the Indian Registration Act, 1908.

We therefore allow this appeal, set aside the decree of the learned Subordinate Judge, dated the 2nd of June, 1930, and as the appeal before him was decided on a preliminary point we remand the record of the case to him with directions that the appeal be restored to its original number in the register of appeals of his court and decided according to law. Costs here and hitherto incurred will abide the event.

Appeal allowed.