1935

CHANDRA NATH v. DASRATH

Srivastava and Ziaul Hasan, JJ.

not only against the two ladies but also against Roshan Lal, Jagannath and Jugul Kishore or their representatives. Taking all these circumstances into consideration, we have no hesitation in accepting the sworn testimony of the plaintiff that the agreement was brought about on the intervention of Roshan Lal and at the desire of Roshan Lal and his two brothers. We have no doubt that all the three brothers consented to the agreement for payment of the annuity to the plaintiff generation after generation and attested exhibit 15 in token of their consent to the arrangement. We agree with the learned counsel for the respondents that mere attestation of a deed does not necessarily import consent—*Hari Kishen Bhagat* v. *Kashi Prasad Singh* (1), *Banga Chandra Dhur Biswas* v. *Jagat Kishore Chowdhuri* (2) and *Pandurang Krishnaji* v. *Markandeya Tukaram* (3). But it is recognized by their Lordships in these cases that it is possible that an attestation may take place in circumstances which would show that the witnesses did in fact know of the contents of the document. We think that the present case is one of this class. The unrebutted testimony of the plaintiff coupled with the other circumstances to which reference has been made above unmistakably lead to the inference that Roshan Lal and his brothers were fully aware of the contents of the document and that attestation of all the three brothers was obtained for the purpose of its evidencing their consent to the transaction. We regret that the learned Additional Subordinate Judge has entirely ignored this aspect of the case and has made no reference to it in his judgment. As a result of our finding it follows that the defendant No. 1 who has succeeded to the property in the right of his father Roshan Lal is estopped from questioning the agreements dated the 29th of August, 1905. We are therefore of opinion that he is bound by the agreement for payment

(1) (1914) L.R., 42 I.A., 64. (2) (1916) L.R., 43 I.A., 249.
(3) (1921) L.R., 49 I.A., 16.

1935

CHANDRA NATH v. DASRATH

of the annuity contained in exhibit 15. In view of this conclusion reached by us, it is not necessary to deal with the plaintiff's alternative plea based on his alleged title as an heir to Lau.

Srivastava and Ziaul Hasan, JJ.

The result therefore is that we allow the appeal with proportionate costs against defendant No. 1 and decree the plaintiff's claim for a declaration to the effect that defendant No. 1 is bound to pay Rs.65-12 annually to the plaintiff generation after generation and that the said amount shall remain a charge on the one-fourth share of the property which the defendant No. 1 has got after the death of Musammat Menda, in terms of the agreement contained in exhibit 15 dated the 29th of August, 1905. We make no order as to the costs of the defendants-respondents.

Appeal allowed.

APPELLATE CIVIL

Before Mr. Justice Ziaul Hasan

PHAKKAR (DEFENDANT-APPELLANT) *v.* PRAGI (PLAINTIFF-RESPONDENT)*

1935

January, 10

Evidence Act (I of 1872), section 35—United Provinces Land Revenue Act (III of 1901), section 33(2)—Specific Relief Act (I of 1877), section 9—Khasra Abadi—*Entry in* Khasra Abadi *admissibility of—Suit based on title—Neither party's title proved—Suit brought after 6 months of dispossession—Plaintiff, whether entitled to succeed on possessory title.*

In order that a document be admissible under section 35 of the Evidence Act, it is not necessary that a public servant should be compellable by legislative enactment to discharge the duty of preparing or keeping it. Therefore the *khasra* for the *abadi* of a village is admissible in evidence although section 33(2) of the Land Revenue Act does not provide for the preparation of such a *khasra*. *Devarapalli Ramalinga Reddi* v. *Srigiriraju*

*Second Civil Appeal No. 220 of 1933, against the decree of Dr. Choudhri Abdul Azim Siddiqi, Additional Subordinate Judge of Lucknow, dated the 29th of April, 1933, confirming the decree of S. Akhtar Ahsan, Munsif, Haveli, Lucknow, dated the 28th of October, 1932.