

that I may usefully add to what has been said by my learned brother in his judgment. I agree in the order proposed. The appeal and the cross-objections fail and must be dismissed with costs.

Appeal dismissed.

APPELLATE CIVIL

*Before Mr. Justice Bisheshwar Nath Sricastava and
Mr. Justice E. M. Nanavutty*

1933
March, 23

SITLA BAKHSH SINGH AND OTHERS (PLAINTIFFS-APPELLANTS) v. JANG BAHADUR SINGH AND OTHERS (DEFENDANTS-RESPONDENTS)*

Registration Act (IX of 1908), section 17—Compromise, given effect to by Revenue Court—Revenue Court proceedings and order, if require registration.

If a compromise has been accepted by the Revenue Court and embodied in its order, no question of registration under section 17 of the Indian Registration Act arises. Where, therefore, the Revenue Court by its proceedings gives effect to this compromise, the proceedings and order of the Revenue Court do not require registration. *Ram Gopal v. Tulshi Ram* (1), and *Musammatt Bhagwan Dei v. Shib Singh* (2), referred to. *Satrohan Lal and another v. Nageshwar Prasad and others* (3), *Tej Bahadur Khan v. Nakko Khan* (4), *Mahabir v. Dwarka* (5), *Sital Singh v. Gajendra Bahadur Singh* (6), *Balbhaddar Singh v. Shamsher Singh* (7), and *Triloki Nath v. Ram Manorath and others* (8), relied on.

Messrs. *Radha Krishna Srivastava* and *S. N. Srivastava*, for the appellants.

Messrs. *Hyder Husain* and *Badri Prasad Gupta*, for the respondents.

*First Civil Appeal No. 41 of 1932, against the decree of Babu Gauri Shankar Varma, Subordinate Judge of Sitapur, dated the 21st of March, 1932.

(1) (1928) 26 A. L. J., 952.

(2) (1930) A. I. R., All., 341.

(3) (1916) 19 O. C., 75.

(4) (1926) 3 O. W. N., 993.

(5) (1927) I. L. R., 2 Luck., 632.

(6) (1928) I. L. R., 4 Luck., 57.

(7) (1928) 6 O. W. N., 109.

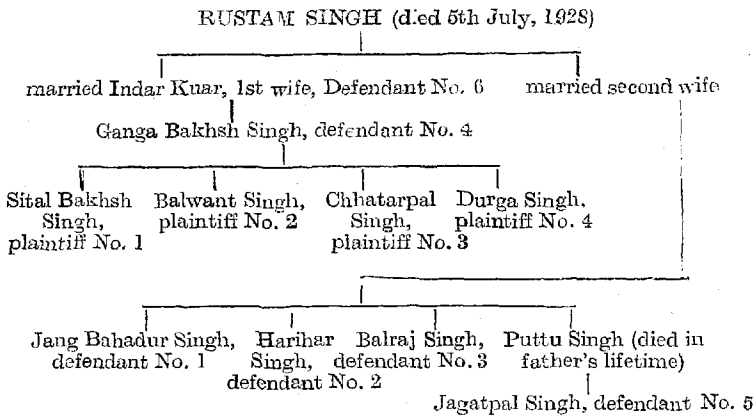
(8) (1931) I. L. R., 7 Luck., 32.

SRIVASTAVA and NANAVUTTY, JJ.:—This is an appeal from a judgment and decree of the learned Subordinate Judge of Sitapur, dated the 21st of March, 1932, dismissing the plaintiffs' suit with costs.

1933

SITLA
BAKHSR
SINGH
JANG
BAHADUR
SINGH

The following pedigree will serve to elucidate the relationship between the parties :



It is admitted by the parties that till the death of Rustam Singh all the sons and grandson were joint and formed a joint co-parcenary body owning all the properties involved in the present suit. It is also admitted that all the properties in suit are ancestral property. On the death of Rustam Singh the compromise (exhibit 1) was effected on the 4th of August, 1928, whereby Ganga Bakhsh Singh (defendant No. 4) and father of the plaintiffs got a six annas nine pies share and Thakurain Indar Kuar (defendant No. 6) got the remaining nine annas three pies share for her lifetime without any power of alienation, and it was settled by the compromise that after her demise mutation in respect of this nine annas three pies share would be made in the names of defendants Nos. 1, 2, 3 and 5 in equal shares. The plaintiffs were no parties to this compromise (exhibit 1). Their contention in the present suit is that the compromise is invalid and adversely affects their interest, as, under the family custom set up by them, their father (defendant No. 4)

1933

SITLA
BAKSH
SINGHJANG
BAHADUR
SINGHSrivastava
and Nana-
vally, J.J.

should have got an eight annas share instead of merely getting a six annas nine pies share as entered in the compromise.

Upon the pleadings of the parties the learned Subordinate Judge framed the following issues :

(1) Are the plaintiffs and their father, defendant No. 4, entitled to eight annas of the property in suit under any custom of the family as alleged in paragraph 6 of the plaint?

(2) Is the *sulenama* or compromise dated the 4th August, 1928, not binding on the plaintiffs as alleged by them in paragraphs 8 and 9 or is it a family settlement and hence binding on the plaintiffs?

The trial court found issue No. 1 in favour of the plaintiffs and the first portion of issue No. 2 against the plaintiffs and the second portion of it in favour of the defendants, and accordingly dismissed the plaintiffs' suit.

Dissatisfied with the judgment and decree of the lower court, the plaintiffs have filed the present appeal.

The sole point urged for determination in this appeal is whether the finding of the lower court, that the compromise (exhibit 1) did not require registration because it did not create or declare any new right but only recognized a pre-existing right, is correct or not. This view of the matter, which has been accepted by the learned Subordinate Judge, receives corroboration from a judgment of the late Court of the Judicial Commissioner of Oudh reported in *Satrohan Lal and another v. Nageshwar Prasad and others* (1), in which it was held that transactions in the nature of family arrangements or settlements are binding on the parties and must be enforced, and that in order to decide whether a petition by way of compromise presented to a Revenue Court in the course of mutation proceedings requires

(1) (1916) 19 O. C., 75.

registration or not, one must consider the situation of the parties at the time when the document was presented and deduce from surrounding circumstances what the parties intended by laying the petition before the Court; and that if the compromise purported to be nothing more than an admission or acknowledgment of title already in existence, it did not require registration, but, on the other hand, if it amounted to a declaration of respective interests of the parties in the property not merely *in presenti* but *in futuro*, then the document was one, the registration of which was compulsory under section 17 of the Registration Act, and it was further held that the word "declare" occurring in section 17 of the Indian Registration Act implied a declaration of will and not of a mere statement of fact. The view set forth in the ruling quoted above has been subsequently followed by this Court in *Tej Bahadur Khan v. Nakko Khan* (1), *Mahabir v. Dwarika* (2), *Sital Singh v. Gajendra Bahadur Singh* (3) and in *Balbhaddar Singh v. Shamsher Singh* (4). The learned counsel for the appellants challenges the correctness of this view and relies upon a full bench ruling of the Allahabad High Court reported in *Ram Gopal v. Tulshi Ram* (5), in which it was held that a binding family arrangement dealing with immovable property of the value of Rs.100 and upwards could be effected by an oral agreement, but that where the terms of such an oral agreement had been reduced to the form of a document, within the meaning of section 91 of the Evidence Act, no evidence in proof thereof was admissible except the document itself, and that such a document could not be admissible in evidence under section 49 of the Registration Act if it was not registered. He also relied upon a ruling reported in *Musammat Bhagwan Dei v. Shib Singh* (6). On the other hand the learned

1933

SITLA
BAHSE
SINGH
v
JANG
BAHADUR
SINGH

*Srivastava -
and Nana
vutty, J.J.*

(1) (1926) 3 O. W. N., 993.

(3) (1928) I.L.R., 4 Luck., 57.

(5) (1928) 26 A.L.J., 952.

(2) (1927) I.L.R., 2 Luck., 662.

(4) (1928) 6 O.W.N., 109.

(6) (1930) A.I.R., All. 341.

1933

SITLA
BAHSH
SINGH
v.
JANG
BAHADUR
SINGH

*Srivastava
and Nana-
vutty, J.J.*

counsel for the defendants respondents supports the view of this Court laid down in the rulings reported in Volumes III, IV, V and VI of the Oudh Weekly Notes, referred to above, and further puts forward another consideration based upon a ruling reported in *Triloki Nath v. Ram Manorath and others* (1), in which it was held that the proceedings of a mutation case and the order thereon did not require registration inasmuch as they were not "instruments" which alone were required by law to be compulsorily registered under clauses (a), (b) and (c) of section 17, sub-clause (1) of the Indian Registration Act of 1908.

It was contended on behalf of the defendants-respondents by their learned counsel that in any event the compromise (exhibit 1) having been accepted by the Revenue Court and embodied in its order, no question of registration under section 17 of the Indian Registration Act arises in the present case.

We think that there is no force in this appeal and that it must fail on the last ground urged by the learned counsel for the defendants-respondents, without going into the other questions raised by the learned counsel for the plaintiffs-appellants.

In paragraph 5 of their plaint, the plaintiffs-appellants alleged that after the death of Rustam Singh a compromise was effected on the 4th of August, 1928, amongst the defendants Nos. 1 to 3 and defendant No. 6 and defendant No. 4 in respect of the immoveable property specified in the list attached which formed part of the plaint, and by virtue of this compromise mutation in respect of six annas nine pies share was effected in the name of defendant No. 4 and of the remaining nine annas three pies share in each village was made in favour of defendant No. 6, and possession was delivered accordingly. This paragraph 5 of the plaint was admitted by the defendants in their written

(1) (1931) L. L. R., 7 Luck., 32.

statement, and it clearly implies an admission that the compromise (exhibit 1) was embodied and given effect to by the court. In view of this statement in paragraph 5 of the plaint it is hardly open to the plaintiffs now to urge that exhibit 1, the compromise, required registration, when they themselves admit that it was embodied in an order of the Revenue Court and that it was given effect to by the Revenue Court ordering mutation in accordance with the terms of the compromise.

We may note here that the learned Counsel for the plaintiffs-appellants did not challenge the finding of the lower court that exhibit 1 evidenced a family settlement and that it was a record of a family settlement. His only contention was that exhibit 1 required registration and as it was not registered it was not admissible in evidence. We hold that as the Revenue Court by its proceedings gave effect to this compromise, the proceedings and order of the Revenue Court did not require registration.

The result is that the appeal fails and we dismiss it with costs.

Appeal dismissed.

1933

SITLA
BAKESH
SINGH
JANG
BAHADUR
SINGH

*Srivastava
and Nana-
vally, JJ.*