

rests and in case of default the interest was to be added to the principal and interest and compound interest. The rate of interest in the bond, exhibit A21, in favour of Bhagwan Din was Rs.2 per cent. per mensem with six-monthly rests and in case of default the interest was to be added to the principal and interest and compound interest was to continue. The rate of interest in the mortgage-deed in dispute, that is exhibit 2, is Re.1-4 per cent. per mensem with six-monthly rests of 15 per cent. per annum which is lower than the rate of interest stipulated in the bonds of Hari Prasad and Bhagwan Din. Under the circumstances we are not prepared to interfere with the rate of interest. The appellants can seek their remedy under the United Provinces Agriculturists' Relief Act.

We accordingly dismiss the appeal with costs.

Appeal dismissed.

APPELLATE CIVIL

Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge

AUDHESH SINGH AND OTHERS (PLAINTIFFS-APPELLANTS) v. MUSA-SAMMAT SIRTAJI KUAR AND OTHERS (DEFENDANTS-RESPONDENTS)*

1937
April 13

Family arrangement, essential elements of—Arrangement neither bona fide nor final—Person vitally concerned in dispute not party to compromise—Settlement, if valid family arrangement—Registration, if necessary for family arrangement.

The essence of a family arrangement lies in an adjustment of conflicting claims *bona fide* made and recognized on both sides with the object of putting an end to a controversy. It is not, however, essential that all members of the family need be party to a family settlement.

Where an agreement is made between some of the disputants to share the spoils or the benefits of the litigation amongst themselves in specified shares in case any of them was successful against the principal disputant who claimed exclusive right

*Second Civil Appeal No. 176 of 1935, against the decree of Pandit Kishen Lal Kaul, Civil Judge of Sultanpur, dated the 23rd of February, 1935, upholding the decree of Babu Bishambhar Nath Chaudhri, Munsif of Amethi at Sultanpur, dated the 30th of May, 1934.

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to the property and is not a party to the compromise, the settlement cannot be said to be *bona fide* one and cannot in any sense be regarded as final and the agreement does not satisfy the essentials of a family arrangement. *Mahabir v. Dwarka* (1), followed.

Where a document is a record of a family arrangement it is not liable to compulsory registration because it is based upon a recognition of a pre-existing right. But where there can be no question of recognition of any pre-existing right, nor does the transaction satisfy the necessary requirements of a family settlement, it cannot be enforced for want of registration. *Bhagat v. Madho Prasad* (2), referred to.

Mr. *M. Wasim*, for the appellants.

Messrs. *Ali Zaheer* and *Ghulam Hasan*, for the respondents.

SRIVASTAVA, C.J.:—This is a second appeal by the plaintiffs who have been unsuccessful in both the lower courts. The facts of the case are that one Beni Madho Singh died leaving a widow Bhagwant Kuar who succeeded to his property as a Hindu widow. On the 29th of March, 1927, she executed a deed of gift in respect of a portion of the property which she had inherited from her husband in favour of Audhesh Singh, plaintiff No. 1, who was the son of her deceased daughter Sarju Dei. Shortly after this on the 31st of May, 1927, she executed a will bequeathing also the rest of her husband's property to the same Audhesh Singh. Audhesh Singh made an application for mutation on the basis of the deed of gift, dated the 29th of March, 1927. During the pendency of the application Bhagwant Kuar died and then Audhesh Singh made an application for mutation on foot of the will, dated the 31st of May, 1927. Thereupon a number of persons who were collateral relations of Beni Madho Singh filed objections. Two of these objectors were Kandhai Singh, father of defendant No. 2 and grandfather of defendants Nos. 3 and 4 and Pirthi Singh, husband of defendant No. 1, the

(1) (1927) I.L.R., 2 Luck., 662.

(2) (1934) 11 O.W.N., 1071.

nearest collaterals of Beni Madho Singh. The other objectors were Kalap Nath Singh, plaintiff No. 2, Suraj Nath Singh, plaintiff No. 3, Ram Naresh Singh, defendant No. 8, Hakim Singh, defendant No. 5 and Kunwar Bahadur Singh, defendant No. 4, who were all remote collaterals. In the course of mutation proceedings a compromise was arrived at between Audhesh Singh and all the aforesaid objectors with the exception of Kandhai Singh. The terms of this compromise were reduced to writing and embodied in an application, dated the 16th of July, 1928 (exhibit 7) which was presented to the mutation court. The substance of the compromise was that in case all or any of the parties to the agreement were found entitled to the property in dispute then they will divide the property amongst themselves in accordance with the shares as specified in the agreement. The revenue courts ultimately held that Pirthi Singh and Kandhai Singh, the nearest collaterals of Beni Madho Singh, were alone entitled to mutation and ordered mutation in their favour in equal shares. They refused to give effect to the compromise exhibit 7 in the mutation proceedings.

The present suit was instituted by the plaintiffs to enforce the compromise exhibit 7, dated the 16th July, 1928, against the representatives of Pirthi Singh and Kandhai Singh who had died before the institution of the suit. Subsequently the plaintiffs abandoned their claim against the representatives of Kandhai Singh who was no party to the agreement exhibit 7 and confined their claim to the share of Pirthi Singh who was a party to the compromise. Their case is that the aforesaid compromise constitutes a family settlement which is binding on the parties and should be enforced as such. Both the lower courts have dismissed the claim holding that the agreement in question could not be regarded as a family settlement and that it could not be given effect to because it had not been registered.

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I am of opinion that the decision of the courts below is correct and must be upheld. As already stated Kandhai Singh was no party to the settlement in question. It is to be noted that he was admittedly one of the nearest reversioners. It is also not disputed that he was the principal contesting claimant in the mutation court. He in common with the other collaterals denied the right of Audhesh Singh on the ground that daughters and their sons were excluded from inheritance by family custom and that the widow had no right to make a transfer which could be effective after her death. He further denied the right of Pirthi Singh who was related to Beni Madho Singh in the same degree as himself on the ground that Pirthi Singh was not the legitimate son of his father. As regards the other collaterals who were to get a share under the terms of exhibit 7 they were admittedly remote collaterals and had no right under the Hindu Law to any share in the presence of the nearest collaterals Kandhai Singh and Pirthi Singh. Thus there can be no doubt that Kandhai Singh who was vitally concerned in the dispute and claimed exclusive right to the property not being a party to the compromise the settlement cannot in any sense be regarded as final. It is also clear that in so far as it relates to the shares given to the remote collaterals it cannot be regarded as an agreement in recognition of any antecedent rights. The bare narration of the facts of the case as stated above shows clearly that it was merely an agreement between some of the disputants in the mutation court to share the spoils or the benefits of the litigation amongst themselves in specified shares in case any of them was successful against Kandhai Singh. In the circumstances it appears to me that it lacks also the qualification of being a *bona fide* settlement. In *Mahabir v. Dwarka* (1), it was held that the essence of a family arrangement lies in an adjustment of conflicting claims *bona fide* made and recognised on

(1) (1927) I.L.R., 2 Luck., 662.

both sides with the object of putting an end to a controversy. The arrangement in the present case was neither *bona fide* nor did it put an end to the controversy. It is true that it is not essential that all members of the family need be party to a family settlement. But in the present case the situation was such that Kandhai Singh was a necessary party and there could be no final adjustment of the dispute in his absence.

In *Bhagat v. Madho Prasad* (1) to which one of us was a party it was held that where a document is a record of a family arrangement it is not liable to compulsory registration because it is based upon a recognition of a pre-existing right. In the present case there can be no question of recognition of any pre-existing right, nor does the transaction satisfy the necessary requirements of a family settlement. It cannot therefore be enforced for want of registration. The result therefore is that the appeal fails and is dismissed with costs.

Appeal dismissed.

REVISIONAL CIVIL

*Before Mr. Justice Bisheshwar Nath Srivastava, Chief Judge
and Mr. Justice Ziaul Hasan*

BISHESHAR PANDE (APPLICANT) *v.* TIRLOKI PANDE
(OPPOSITE-PARTY)*

1937
April 14

Provincial Small Cause Courts Act (IX of 1887), sections 24 and 35—Suit filed in Small Cause Court—Transfer of Judge—Successor not having Small Cause Court powers to try suit—Munsif trying suit on regular side—Appeal from decree, if lies.

Where a Court of Small Causes ceases to have jurisdiction with respect to a case on account of the presiding officer's transfer and all proceedings in the case are under section 35 of the Provincial Small Cause Courts Act to be taken in the Court of Munsif, which is the Court in which the suit would have been filed

*Section 115 Application No. 120 of 1935, against the order of Babu Maheshwar Prasad Asthana, 2nd Additional Civil Judge of Fyzabad, dated the 17th of July, 1935, confirming the order of Syed Khadim Ali, Munsif of Akbarpur at Fyzabad, dated the 5th of January, 1935.

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*Srivastava,
C.J.*