

1939
 RAGHUNATH
 SINGH
 v.
 SUBEDAR
 SINGH

Ziaul
 Hasan
 and
 Yorke, JJ.

We may observe that equity is also on the side of the decree-holder respondent. As the compromise itself contemplated that a final decree would have to be prepared, the decree-holders were not unjustified in applying for preparation of the final decree in the first instance. Moreover, the judgment-debtors who objected to the application for preparation of the final decree should not in our opinion be allowed now to turn round and object to the application for execution on the ground of limitation.

We therefore dismiss the appeal with *ex parte* costs as the respondent has not appeared before us.

Appeal dismissed.

REVISIONAL CIVIL

*Before Mr. Justice G. H. Thomas, Chief Judge and
 Mr. Justice R. L. Yorke*

ZAMAN KHAN (PLAINTIFF APPLICANT) v. GANGA
 AND ANOTHER (DEFENDANTS OPPOSITE-PARTIES)*

Limitation Act (IX of 1908), section 20—Payment by debtor—Endorsement of payment on bond not specifying whether it was towards principal or interest—Oral evidence to prove that payment was towards interest, admissibility of.

Where the endorsement of payment on the back of a bond does not specify whether the payment is towards principal or interest, then oral evidence to prove that the payment was towards interest is inadmissible under sections 91 and 92 of the Evidence Act. *Pearey Lal v. Muhammad Yusuf* (1), and *Hem Chandra Biswas v. Purnu Chandra Mukherji* (2), distinguished. *Udeypal Singh v. Lakshmi Chand* (3), referred to.

Mr. K. N. Tandon, for the applicant.

Mr. B. K. Dhaon, for the opposite-party.

THOMAS, C.J., and YORKE, J.:—This is an application in revision against the judgment and decree of the

*Section 25 Application No. 123 of 1936, for revision of order of Mr. G. M. Frank Agarwal, Munsif (as Judge of Small Cause Court), Bahraich, dated the 27th October, 1936.

(1) (1937) A.I.R., All., 640.

(2) (1927) I.L.R., 44 Cal., 567.

(3) (1935) All., L.J., 1029.

learned Munsif of Bahraich exercising Small Cause Court powers dated the 27th October, 1936.

The plaintiff brought the suit to recover a sum of Rs.81 on the basis of a bond dated the 16th March, 1930, on the allegation that the defendant no. 2, paid Rs.12 on account of interest on the 15th April, 1934, which payment was endorsed on the back of the bond. The plaintiff's suit related to the balance of principal and interest due on the bond. The defendant denied the payment of Rs.12 and further pleaded that the suit was barred by limitation.

The trial court relying on the Full Bench decision of the Allahabad High Court reported in *Udeypal Singh v. Lakshmi Chand* (1) dismissed the suit holding that it was barred by limitation.

This application was heard along with section 25 Application no. 89 of 1936, and the question of law involved in this application is the same as that involved in application no. 89 of 1936. We are of opinion that the question of law decided by the learned Munsif for the reasons given by us in section 25 application no. 89 of 1936 is correct.

There was an additional argument advanced in this case, namely that the trial court was wrong in not allowing the applicant to produce oral evidence in this case.

It appears that on the 5th October, 1936, the applicant filed an application before the learned Munsif praying that he may be permitted to examine certain witnesses to prove the fact that the payment was made towards the interest. The learned Munsif dismissed the application holding that the oral evidence to prove such payment was not admissible.

The learned counsel for the applicant has relied on *Pearey Lal v. Muhammad Yusuf* (2) and *Hem Chandra Biswas v. Purna Chandra Mukherji* (3).

(1) (1935) All. L.J., 1029.

(2) (1937) A.I.R., All., 640.

(3) (1917) I.L.R., 44 Cal., 567.

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In the Allahabad case referred to above it was held that sections 91 and 92 of the Evidence Act do not preclude evidence being given to show that at the time when the payment was made the debtor expressly stated that it should be appropriated towards interest. If therefore it is proved on evidence that the payment was towards interest such endorsement saves limitation. We have carefully considered this decision. It appears that in this case oral evidence had been produced without any objection in the trial court and no objection as to its admissibility or non-admissibility was raised in the High Court.

In the case reported in *Hem Chandra Biswas v. Puran Chandra Mukherji* (1) it was held that where payments are made towards a debt, but there is nothing to show whether they had been made in respect of principal or interest, the court is entitled to find out on the evidence for what purpose the payments were made. No question of oral evidence was involved in this case.

Section 91 of the Indian Evidence Act lays down that "when the terms of a contract . . . have been reduced to the form of a document, and in all cases in which any matter is required by law to be reduced to the form of a document, no evidence shall be given in proof of the terms of such contract . . . or of such matter except the document itself . . ."

Section 92 of the same Act lays down that "when the terms of any such contract . . . or any matter required by law to be reduced to the form of a document, have been proved according to the last section, no evidence of any oral agreement or statement shall be admitted, as between the parties to any such instrument . . . for the purpose of contradicting, varying, adding to, or subtracting from its terms."

We are therefore of opinion that the trial court was right in rejecting the plaintiff's application of the 5th October, 1936.

(1) (1927) I.L.R., 44 Cal., 567.

We accordingly dismiss the application with costs.

Application dismissed.

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APPELLATE CIVIL

Before Mr. Justice A. H. deB. Hamilton

RAJA SYED MOHAMMAD SAADAT ALI KHAN (APPELLANT)
v. KHAN BAHADUR RAJA MOHAMMAD AMIR AHMAD KHAN
AND ANOTHER (RESPONDENTS)*

1939
March,
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Lease of land for planting grove—Lessee not given power of sale or mortgage but no right of re-entry provided—Sale of grove in execution of decree against lessee—Auction purchaser entering into possession by acquiescence of lessee—Landlord, whether can recover possession from auction purchaser.

Where land was given for planting a grove on condition that the lessee shall have no power of sale or mortgage but no right of re-entry was reserved to the lessor and the grove was sold in execution of a decree against the grove-holder and possession passed to the auction purchaser, *held*, that the lessor was entitled to recover possession from the auction purchaser under the general custom prevailing in Oudh that abandonment entitled the landlord to recover possession of the grove and the lessee's acquiescence in the sale and relinquishing of possession amounted to abandonment.

Mr. *M. H. Qidwai*, for the appellant.

Mr. *Ali Zaheer*, for the respondent no. 1.

HAMILTON, J.:—This is an appeal by a defendant against an appellate decision of the first Civil Judge of Kheri who himself dismissed an appeal against a decision of the Additional Munsif of Kheri.

The facts are that the taluqdar of Mahmudabad gave some land to one Hazari Lal, father of defendant no. 2, for starting a grove and a document was executed on the 20th June, 1877, by Hazari Lal to the effect that on his application the taluqdar on the 1st November, 1876, had given him land to start a grove on certain conditions which included that the ownership of the

*Second Civil Appeal No. 376, of 1936, against the order of S. Khurshed Husain, 1st Civil Judge of Kheri, dated the 17th July, 1936.