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raiyats could be tried in the Civil Court the question of the plaintiffs' rights against them could not be determined in the present suit. The learned Judge should have contented himself with dismissing the suit but he ordered the plaint to be returned for presentation in the proper Court. This could not be done as the suit was not framed as one for the ejectment of *raiyats*. It was nevertheless rightly dismissed and in that respect his decree should be affirmed. Subject to this modification of the Subordinate Judge's order the appeal is dismissed with costs to the respondents who have appeared.

FOSTER, J.—I agree.

Order modified.

APPELLATE CIVIL.

Before Dawson Miller, C. J. and Foster, J.

C. J. SMITH

1923.

May, 31.

v.

A. KINNEY, OFFICIAL TRUSTEE OF BENGAL.*

Limitation Act, 1908 (*Act IX of* 1908), *Schedule I, Articles* 115 *and* 120—*Suit between lessor and lessee regarding mineral rights—Suit compromised and royalty fixed—Suit to recover royalty, limitation for.*

Where a dispute between the proprietor of certain land and his lessee, with regard to the mineral rights, was settled by a decree in terms of a written compromise entered into by the parties to the suit, under which the lessees were liable to pay to the proprietor a specified royalty on the amount of coal raised, *held*, that a suit for recovery of the royalty was governed by Article 115 of the Limitation Act, 1908, as being a suit based upon the agreement of compromise which was an unregistered contract, and not by Article 120.

Kusodhaj Bhakta v. *Brojo Mohan Bhakta*(1), followed.

* First Appeals Nos. 181 and 182 of 1920, from a decision of Baba Brajendra Kumar Ghosh, Subordinate Judge of Dhanbad, dated the 22nd June, 1920.

(1) (1914-15) 19 Cal. W. N. 1228.

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C. J. SMITH v. A. KINNEY, OFFICIAL TRUSTEE OF BENGAL.

Appeal by the plaintiff.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C. J.

Noresh Chandra Sinha and *Achalendra Nath Das*, for the appellant.

Siva Nandan Rai and *J. Prasad*, for the respondent.

DAWSON MILLER, C.J.—The question for determination in these appeals is whether the three years' period of limitation under Article 115 of the Limitation Act applies or whether the six years' period provided either by Article 116 or Article 120 is the proper period. The suit was instituted by the plaintiff on the 11th January, 1919, claiming royalty or commission in respect of certain mining lands in *mauza* Kasunda of which he holds the proprietary interest. The royalty claimed was from the beginning of 1914 up to the date of the suit.

The learned Subordinate Judge before whom the case came for trial decided that the proper Article to apply was Article 115 which provides for:

"Compensation for the breach of any contract, express or implied, not in writing registered and not herein specially provided for."

From that decision the plaintiff has appealed and contends that the present suit is not one for compensation for breach of an unregistered contract but is one either for enforcement of the terms of a decree, in which case he contends it is governed by Article 120, or for enforcement of a registered document. The mining rights in *mauza* Kasunda originally belonged to the Raja of Jharia. The *mauza* was, before the year 1907, in possession of a tenure-holder, one Kenaram Sircar, who had granted a mining lease to two persons named Ashutosh Rai and Gadadhar Rai. They in turn had granted a sub-lease of the mining

rights to the late Mr. J. Chater whose estate is now represented by the defendant in this suit. In 1907 questions arose as to whether the tenure-holder had any interest in the mining rights of the village and a suit was instituted by the Raja as *zamindar* claiming that he alone was entitled to the mining rights on the ground that they had not passed to the tenure-holder under the terms of the instrument granting his interest, and he sought to regain possession of the mining rights and to have the leases set aside. The parties to that suit, in addition to the Raja and Kenaram Sircar, included the original lessees Ashutosh Rai and Gadadhar Rai and Mr. Chater the sub-lessee from them. That suit was in fact compromised and in the result a decree was passed on the 25th April, 1907, the effect of which was that possession was to remain with the lessees of the tenure-holder and their sub-lessees they continuing to pay the tenure-holder the royalties originally agreed to between them but they were also to pay to the Raja of Jharia an additional royalty. In the case of Mr. Chater he was to pay to the Raja six pies per ton on all steam coal raised and two annas per ton on all hard coke manufactured out of the coal raised. It appears that from 1914 up to January 1919, when the present suit was instituted, no royalty had been paid to the plaintiff by Mr. Chater's administrators and when the suit was instituted the claim was met by the objection that no more than three years' royalty could be recovered owing to the law of limitation. The compromise which was entered into and given effect to by the decree of 1907 was contained in a written document and is referred to in the decree itself as the *solenama* and it was in accordance with the terms of that *solenama* that the decree was passed. In the trial Court it was not contended that the present claim was based upon a registered document. In fact in paragraph 6 of the plaint the suit is based upon the fact that by the terms of the *solenama* the administrator of Mr. Chater's estate had agreed to pay the increased royalty claimed and the only question

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DAWSON MILLER, C. J.

which the learned Judge had to consider was whether the present suit was one for compensation for the breach of a contract within Article 115 or whether it was one not covered by that Article but one which fell within Article 120. The view which the learned Judge took was that this *solenama* which was in itself an agreement and contained the terms afterwards expressed in the decree was none the less an agreement which formed the basis of the present suit merely because it had been given effect to by a subsequent decree and, in my opinion, that decision was perfectly right. In fact the matter has been considered by the High Court at Calcutta in the case of *Kusodhaj Bhakta* v. *Brojo Mohan Bhakta* (1). That decision laid down no rule but merely confirmed what, for many years, has been the law and the effect of the decision of the learned Chief Justice, Sir Lawrence Jenkins, is concisely stated in the head-note, thus: "It is well settled that a contract of parties is none the less a contract because there is super-added to it the command of the Judge. It is still a contract of the parties." And it is further pointed out in that case that there is no analogy between such a decree, that is a decree giving effect to a compromise agreement between the parties, and a decree obtained upon contest, and had this been the only question for decision in this appeal there would have been no question, to my mind, but that the appeals should be dismissed.

In the course of the hearing, however, upon looking at the compromise decree it was discovered that there was a reference to a registered agreement as well as the *solenama* and the decree was stated to be made in accordance with the registered agreement and the *solenama*. We, therefore, thought it necessary in order to be in a position to decide this case, to see the registered agreement there referred to because just as an agreement does not cease to be an agreement

(1) (1914-15) 19 Cal. W. N. 1288.

because it is subsequently confirmed by a decree so it occurred to us that if that agreement were a registered agreement then the case would fall under Article 116 and not under Article 115 of the Limitation Act. On looking at the registered agreement, however, which was entered into between the parties before the compromise was effected and before the decree was passed, it appears that it was an agreement between the Raja, to whose interest the plaintiff has now succeeded, and Mr. Chater's administrators, but it was not a contract which was given effect to by the compromise. It was in fact merely an executory contract and the only force and effect of it, had it been necessary to carry it out, would have been that in the event of the suit being compromised as contemplated in that agreement the lessees would have been entitled to obtain and the Raja would have been bound to grant a fresh *patta*, to the lessees, containing certain terms as to payment of royalty, that is to say the royalty that was to be paid under the fresh *patta* was to be increased by two annas per ton on steam coal and half an anna per ton on coke. It seems therefore clear that this executory contract was merely subsidiary to the final agreement come to under the *solenama* which was not only between these parties but between all the parties to that suit. As a matter of fact the *patta* which might have been exacted under that agreement after the suit was compromised was never in fact granted nor was it ever demanded although, had such a *patta* been demanded, there can be no doubt that the proprietor would have been bound by the terms of that contract to grant it. But as the suit was subsequently compromised one can only suppose that the parties on either side thought that their interests were sufficiently protected by the decree of the Court which was at that time passed. In my opinion these appeals fail and must be dismissed as in the view I take the suit was one based upon a breach of contract not registered under Article 115 of the Limitation Act. There are in this case two appeals,

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one being against the preliminary decree and the other against the final decree. They are both dismissed but the respondents will be entitled only to one set of costs.

FOSTER, J.—I agree.

Appeals dismissed.

APPELLATE CIVIL.

Before Dawson Miller, C. J and Kulwant Sahay, J.

1923.

May, 23.

TATA IRON AND STEEL, Co., LTD.

v.

BAIDYANATH LAIK.*

Civil Procedure Code, 1908 (*Act V of* 1908), *Order* XXI, *rule* 1(2)—*Assignment of decree—notice not given to judgment-debtor—Deposit of decretal amount by judgment-debtor—no notice to decree-holder or assignee, effect of.*

Where a judgment-debtor deposits the decretal amount in court before receiving notice that the decree has been assigned by the decree-holder to a third person, the decree is satisfied and neither the assignee nor the decree-holder is entitled to execute the decree further with respect to the amount deposited although notice of the deposit was not given to the decree-holder or assignee until after the assignment.

Appeal by the judgment-debtors.

The facts of the case material to this report are stated in the judgment of Dawson Miller, C.J.

Siva Narayan Bose, for the appellants.

Bimola Charan Sinha, for the respondents.

DAWSON MILLER, C. J.—In this case Maheshwar Ghosal obtained a decree for money on the 21st February, 1921, against the Tata Iron and Steel Co., Ltd., who are the appellants before us in this appeal.

* Miscellaneous Appeal No. 206 of 1922, from an order of W. H. Boyce, Esq., District Judge of Manbhum-Sambalpur, dated the 3rd July, 1922, reversing an order of Babu Ashotosh Mukharji, Subordinate Judge of Manbhum, dated the 19th December, 1921