

1933.

TIKAIT
RUP RAI
RAI
v.
TIKAIT
PERMANAND
RAI.
MACPHER-
SON, J.

has no right whatsoever to a share in the jagir and his suit for partition entirely fails, the property not being governed by the ordinary Mitakshara law.

Mr. S. M. Mullick appearing for the respondent was not called upon but after judgment was delivered he referred to the decision in *Lal Gajendra Nath Sahi Deo v. Lal Mathurlal Nath Sahi Deo*(¹). This and the other decisions are not unknown to us but indeed decisions of the courts are entirely superfluous in respect of this extremely well-known custom which it would be ludicrous to question.

I would dismiss the appeal with costs.

AGARWALA, J.—I agree.

Appeal dismissed.

FULL BENCH.

Before Wort, A. C. J., Kulwant Sahay and Fazl Ali, JJ.

DOMOO KHAN

v.

AGHA ARSHAD KHAN.*

Promissory note—advance of loan independent of the terms of note—suit based on original contract—promissory note inadmissible—plaintiff, whether entitled to succeed.

When a cause of action for money is once complete in itself whether for goods sold, or for money lent, or for any other claim, and the debtor then gives a bill or note to the creditor for payment of the money at a future time, the creditor, if the bill or note is not paid at maturity, may always, as a rule, sue for the original consideration, provided that he has not endorsed or lost or parted with the bill or note.

Sheikh Akbar v. Sheikh Khan(²), followed.

* Civil Revision no. 530 of 1932, against a decision of Babu R. C. Mitra, Small Cause Court Judge of Gaya, dated the 26th August, 1932.

(1) (1916) 1 Pat. L. J. 109.

(2) (1881) I. L. R. 7 Cal. 256.

1933.

August, 16,
16, 17.

Dhaneswar Sahu v. Ramrup Gir⁽¹⁾ and *Abdul Muhammad Khan v. Mahananda Upadhyaya*⁽²⁾, referred to.

1933.

Application in revision by the defendant.

The facts of the case material to this report will appear from the judgment of Wort, A. C. J.

DOMOO
KHAN
v.
AGHA
ARSHAD
KHAN.

The case originally came on for hearing before Macpherson and Agarwala, JJ. who recorded the following order :

" In our opinion this case should be decided by a Full Bench to which therefore we refer it. Place before the Hon'ble the Chief Justice ".

On this reference

Khurshaid Husnain (with him *H. R. Kazmi*), for the appellant relied on *Radhakant Shaha v. Abhoy Churn Mitter*⁽³⁾, *Chotalal Sahu v. Gumari Chaudhry*⁽⁴⁾, *Nazir Khan v. Ram Mohan*⁽⁵⁾, *Muthu Sastrigal v. Visvanatha*⁽⁶⁾, *Guru Sahu v. Tangi Krishnamma*⁽⁷⁾, *Dula Meah v. Maulvi Abdul Ruhman*⁽⁸⁾, *Ram Bahadur v. Dusuri Ram*⁽⁹⁾, *Cutter v. Powell*⁽¹⁰⁾, *Newlove v. Shrewsbury*⁽¹¹⁾ and *Jardine v. Payne*⁽¹²⁾.

Sarjoo Prasad, for the respondent, referred to *Golap Chand Marwaree v. Thakurani Mohokoom Kooaree*⁽¹³⁾, *Sheikh Akbar v. Sheikh Khan*⁽¹⁴⁾, *Pramathnath Dey v. Dwarka Nath Dey*⁽¹⁵⁾,

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- (1) (1928) I. L. R. 7 Pat. 845.
 - (2) (1931) I. L. R. 11 Pat. 135.
 - (3) (1882) I. L. R. 8 Cal. 721.
 - (4) (1925) 7 Pat. L. T. 589.
 - (5) (1930) I. L. R. 53 All. 114, F. B.
 - (6) (1913) I. L. R. 38 Mad. 660.
 - (7) (1932) A. I. R. (Mad.) 687.
 - (8) (1923) 28 Cal. W. N. 70.
 - (9) (1912) 17 Cal. L. J. 399.
 - (10) (1795) 2 Sm. L. C. 1, 6.
 - (11) (1888) 21 Q. B. D. 41.
 - (12) (1831) 109 E. R. 933.
 - (13) (1878) I. L. R. 3 Cal. 314.
 - (14) (1881) I. L. R. 7 Cal. 256.
 - (15) (1896) I. L. R. 23 Cal. 851.

1933.

DOMOO
KHAN
v.
AGHA
ARSHAD
KHAN.

Dhaneswar Sahu v. Ramrup Gir⁽¹⁾, *Abdul Muham-
mad Khan v. Mahananda Upadhyaya*⁽²⁾, *Brijbhusan
Pande v. Ramjanam Kuer*⁽³⁾, *Main Baksh v.
Bodhiya*⁽⁴⁾, *Rai Saheb Suraj Lal v. Anant Lal*⁽⁵⁾,
Ram Narain Sahu v. Lachmi Prasad Sahu⁽⁶⁾, *Kunwar
Bahadur v. Suraj Baksh*⁽⁷⁾, *Ram Raghbir Lal v.
United Reineries*⁽⁸⁾ and *Farr v. Price*⁽⁹⁾.

WORT, A. C. J.—This matter was referred to this Court by a Division Bench consisting of Mr. Justice Macpherson and Mr. Justice Agarwala and in the circumstances we have seisin of and must decide the whole case. It is an application in revision against the decision of a Small Cause Court Judge for the plaintiff for a sum of money lent. A hand-note had been given in the case which is inadmissible and it is said that the general question which comes to be determined is whether the learned Judge was right in allowing parole evidence of what is said to be a written contract. In my opinion no such question can arise in this case by reason of the terms of the judgment itself. We have heard an elaborate argument and a large number of cases have been cited on this question but from any view of the law it is not denied, nor can it be, that the statement of Sir Richard Garth in the case of *Sheikh Akbar v. Sheikh Khan*⁽¹⁰⁾ holds good. The statement is as follows:—
“When a cause of action for money is once complete in itself whether for goods sold, or for money lent, or for any other claim, and the debtor then gives a bill or note to the creditor for payment of the money at a future time, the creditor, if the bill or note is not paid at maturity, may always, as a rule, sue for the

- (1) (1928) I. L. R. 7 Pat. 845.
- (2) (1931) I. L. R. 11 Pat. 135.
- (3) (1931) 13 Pat. L. T. 506.
- (4) (1928) I. L. R. 50 All. 839, S. B.
- (5) (1920) 1 Pat. L. T. 203.
- (6) (1921) 2 Pat. L. T. 323.
- (7) (1932) I. L. R. 7 Luck. 666, F. B.
- (8) (1930) I. L. R. 9 Rang. 56.
- (9) (1800) 1 East, 55.
- (10) (1881) I. L. R. 7 Cal. 256.

original consideration, provided that he has not endorsed or lost or parted with the bill or note." Here the learned Judge has stated in the course of his judgment first

" This is a suit on an oral contract "

and later

" The factum of advance is a matter quite distinct from the terms of the handnote "

and then the learned Judge appears to rely on certain authorities of this Court. Later he says

" The plaintiff has proved that there was an independent contract to repay the advance."

That being so, as I have already indicated, on any view of the law no objection can be taken to the judgment of the learned Judge. The question of whether the case of *Dhaneswar Sahu v. Ramrup Gir*⁽¹⁾ which was followed in the case of *Abdul Muhammad Khan v. Mahananda Upadhyaya*⁽²⁾ was rightly decided does not arise. Any decision of this Court on that matter would be mere obiter. The case of *Dhaneswar Sahu v. Ramrup Gir*⁽¹⁾ appears to proceed on the statement of the law which I have quoted from Sir Richard Garth's judgment.

This disposes of the matter with the exception of one point. It was said by Mr. Khurshaid Husnain, first, that the learned Judge had taken an erroneous view of the law and, secondly, that there was no evidence to support his finding of fact as to there being an independent contract. The answer to the first is that there is nothing in the judgment to shew that the learned Judge misdirected himself, and as to the second this matter was not raised by the petitioner in his petition, and it will in any event have to be an exceptional case for this Court to investigate the evidence in the exercise of its revisional powers. So

(1) (1928) I. L. R. 7 Pat. 845.

(2) (1931) I. L. R. 11 Pat. 135.

1933.

DOMOO
KHAN
v.
AGHA
ARSHAD
KHAN.

WORT,
A. C. J.

1933.

DOMOO
KHAN
v.
AGHA
ARSHAD
KHAN.

far as the interest is concerned the decree will be varied by allowing interest at six per cent. only, from the date of the suit. The petition is rejected and the rule is discharged with costs. Hearing fee three gold mohurs.

KULWANT SAHAY, J.—I agree.

FAZL ALI, J.—I agree.

WORT,
A. C. J.

Rule discharged.

APPELLATE CIVIL.

Before Macpherson and Agarwala, JJ.

JAGARNATH SAHU

v.

BENI PRASAD.*

1933.

August, 17,
18.

Provincial Insolvency Act, 1920 (Act V of 1920), proviso to section 24(1), clause (a)—debtor, application for adjudication by—court, whether bound to accept the statement of petitioner—court, duty of, to investigate facts—prima facie proof of inability necessary.

Before adjudicating an applicant to be an insolvent the court is required to be satisfied that he is not in a position in fact to pay his debts.

The court is not bound to accept the statement of the petitioner, but is required to investigate the facts for itself; in other words, the duty of the court is to be satisfied *prima facie*, that is, after following the necessary procedure and making the necessary investigation, to come to a conclusion that the statement by the debtor is true.

Ganeshi Lal Sarawgi v. Sanehi Ram(1) and *Narayan Mistri v. Ram Das*(2), followed.

* Appeal from Original Order no. 179 of 1931, from an order of G. J. Monahan, Esq., I.C.S., Judicial Commissioner of Ranchi, dated the 16th of July, 1931.

(1) (1932) I. L. R. 12 Pat. 107.

(2) (1928) I. L. R. 7 Pat. 771.