

## APPEAL FROM ORIGINAL CIVIL.

Before Mr. Justice Shadī Lal and Mr. Justice Broadway.

BISHESHAR LAL (PLAINTIFF)—*Appellant*,

*versus*

*Mussammāt* BHURI (DEFENDANT)—*Respondent*.

Civil Appeal No. 316 of 1917.

*Registration—unregistered deed of relinquishment of real and personal estate for a joint consideration—oral evidence of an agreement preceding the written document—whether admissible in evidence—Indian Evidence Act, I of 1872, section 91.*

The plaintiff-appellant sued defendant-respondent, the widow of Basanta, deceased, as next heir, for possession of the property left by the deceased on the grounds that she had forfeited her rights to a life estate owing to her unchastity. The defendant contended *inter alia* that the plaintiff had waived his claim to succeed to the property left by Basanta, and in support of this plea put forward a document, by which the plaintiff gave up all his rights in Basanta's property, real and personal, on the condition that defendant paid a sum of Rs. 1,000 to a *gowshala*. The execution of this document was admitted, but not its contents.

*Held*, that the document was inadmissible in evidence for want of registration notwithstanding that its execution had been admitted.

*Satyesh Chunder v. Dhunpul Singh* (1); and *Chedambaraam Chetty v. Karunalyavalangapully Taver* (2), distinguished.

*Held also*, that section 91 of the Evidence Act rendered inadmissible oral evidence to prove that there was an oral agreement of relinquishment preceding the written document.

*Held further*, that as the consideration could not be apporioned between the real and personal estate relinquished by the deed, the latter could not be admitted into evidence even in respect of the personal estate.

*Bevan Petman v. Ganesh Das* (3), followed, *Muhammad Bahsh v. Mussammāt Amir Begum* (4), and *Sri Pusapati v. Sri Raja Vatsawaya* (5), distinguished.

(1) (1896) I. L. R. 24 Cal. 20.

(2) (1867) 3 Mad. H. C. R. 342.

(3) 49 P. R. 1916.

(4) 23 P. R. 1918.

(5) (1918) 47 Indian Cases 533 (573, 574).

*First appeal from the decree of E. R. Anderson Esquire, Subordinate Judge, 1st Class, Hissar, dated the 22nd December 1916, dismissing plaintiff's claim.*

NANAK CHAND, for Appellant.

NAND LAL, for Respondent.

The judgment of the Court was delivered by --

BROADWAY, J.—A goldsmith named Basanta died leaving two widows, *Mussammatt Bhuri* and *Mussammatt Daya Kaur*, the latter of whom was a minor. Proceedings were taken under the Guardians and Wards Act for the appointment of a guardian to look after the share inherited by *Mussammatt Daya Kaur* in her husband's estate. These proceedings were still pending when the plaintiff *Basheshar Lal* instituted a suit, as a reversioner of the deceased *Basanta*, claiming to be entitled to possession of *Mussammatt Bhuri's* share in the property on the ground that she had forfeited her rights in her husband's estate owing to her unchastity. *Mussammatt Daya Kaur* died, while *Basheshar Lal's* case was still pending and thereupon *Basheshar Lal* amended his plaint claiming possession from *Mussammatt Bhuri* of the entire estate, real and personal, left by *Basanta*.

*Mussammatt Bhuri* contested the suit on various grounds, one of them being that the plaintiff had waived his claim to succeed to the property left by *Basanta*. This matter was put in issue as issue No. 3. The other issues arising out of the pleadings were not disposed of by the learned Subordinate Judge who found against the plaintiff on the third issue and dismissed his suit. He has thereupon come up to this Court through Mr. *Nanak Chand*, Pandit, and we have heard Mr. *Nand Lal* for the respondents.

In support of the plea of waiver *Mussammatt Bhuri* put forward a document, exhibit D. 2, which she said was an agreement entered into by the plaintiff at the instance of a *Panchayat* by which he gave up all his rights in *Basanta's* property, real and personal, on the condition that she, *Mussammatt Bhuri*, paid a sum of Rs. 1,000 to the *gowshala*. Objection was taken to the admission of this document on the ground that it required registration and had not been registered.

1920

BISHESHAR LAL  
v.  
Musst. BHURI.

1920

BISHESHAR LAL  
v.  
Musst. BHURI.

*Mussammatt* Bhuri put forward this document in Court in the course of her statement and, without deciding whether it was admissible or not, the learned Subordinate Judge questioned Basheshar Lal as to whether he had executed it and recorded a note that the execution had been admitted (page 33 of the printed book). At the conclusion of the case the learned Subordinate Judge held that this document required registration and, therefore, was inadmissible in evidence. He, however, held that apart from this document there was oral evidence on the record which proved that the plaintiff had agreed to relinquish his claim to Basanta's property, and that having regard to the fact that plaintiff had admitted execution of the agreement he saw no reason to discredit the oral evidence. We have read the document, and after giving due weight to Mr. Nand Lal's arguments we hold that the decision of the learned Subordinate Judge was correct, and that this document is inadmissible in evidence for want of registration. The oral evidence consists of the statements of Bhana (page 34) and Ladhu (page 36 of the printed book). We have been taken through the statements of these witnesses by counsel on both sides and are unable to say that their evidence can be regarded by itself, as sufficient to prove the alleged agreement. It was contended by Mr. Nand Lal that inasmuch as the plaintiff had admitted the execution of this document the question of registration was of no importance, and we were referred to *Satyesh Chander v. Dhunpul Singh* (1) and *Chedambaraam Chetty v. Karunalyavalangapuly Taver* (2). In those cases, however, it was not only the execution of the documents concerned that was established, but their contents had been admitted. Mr. Nand Lal then contended that oral evidence was admissible to prove the contents of the document inasmuch as the evidence showed that the agreement had been arrived at orally and quite apart from the document in question. We are, however, unable to accept this contention. Almost every transaction, which is reduced to writing, is preceded by an oral agreement and we think that in this case section 91 of the Indian Evidence Act renders inadmissible the oral evidence referred to.

(1) (1896) I. L. R. 24 Cal. 20.

(2) (1867) 3 Mad. H. C. R. 342.

Again Mr. Nand Lal contended that as the bulk of the property left by the deceased Basanta was movable, the document was admissible in so far as it related to it and our attention was drawn to *Muhammad Bakhsh v. Mussammat Amir Begam* (1) and *Sri Pusapati v. Sri Raja Vatsavaya* (2). The former ruling has no bearing on the present case and the second does not afford any assistance. The agreement put forward is to the effect that the plaintiff relinquished his claim to the entire property left by Basanta in consideration of *Mussammat Bhuri* paying to the *gowshala* a sum of Rs. 1,000. We think that it may be presumed that the relinquishment of his claim to the personal estate was not made without taking the real estate into account. This consideration cannot, we think, be apportioned between the real and personal estate. *Bevan-Petman v. Ganesh Das* (3), referred to by Mr. Nanak Chand is, therefore, in point, and we hold that the document is inadmissible for any purpose whatsoever. The decision of the case being based on inadmissible evidence must be and is set aside.

We accordingly accept this appeal and remand the case to the Court below for disposal of the remaining issues. The costs in this Court will follow the event. Stamp on appeal will be refunded.

*Appeal accepted.*

1920

BISHESHAR LAL  
v.  
Mussat. BHURI.

(1) 23 P. R. 1918.

(2) (1918) 47 Indian Cases 563 (573, 57)

(3) 49 P. R. 1916.