

1927

MA SHWE
MRA PRU
AND ONE
v.
MAUNG BA
ON.
MAUNG BA,
J.

The learned District Judge in allowing the appeal has not expressly declared that the claim is to be allowed only in respect of half of the property.

The appeal is accordingly dismissed with costs, but I note that in the decree it should be clearly stated that the attachment is to be released only from half of the property.

APPELLATE CIVIL.

Before Mr. Justice Maung Ba.

U PO NYUN AND ONE

v.

MA PAN ME. *

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July 11.

Civil Procedure Code (Act V of 1908), O. 23, r. 3—Compromise decree, its contents.

An agreement or compromise arrived at between parties to a suit, in whole and not in part, is to be recorded, and the decree is then to confine its operation to so much of the subject-matter of the suit as is dealt with by the agreement. An effectual method would be for the decree to recite the whole of the agreement and then to conclude with an order relative to that part that was the subject-matter of the suit, or it could introduce the agreement in a schedule to the decree; but in either case, although the operative part of the decree would be properly confined to the actual subject-matter of the then existing litigation, the decree taken as a whole would include the agreement.

Hemanta Kumari Debi v. Midnapur Zamindari Co., 47 Cal. 485—referred to.

Kyaw Din—for Applicants.

Guha—for Respondent.

MAUNG BA, J.—This revision arises out of Civil Regular Suit No. 51A of 1926 of the District Court of Tharrawaddy. In that suit applicants, U Po Nyun and his second wife Ma Ohn, brought an action against his adopted daughter Ma Pan Me to have a deed of gift executed in her favour set aside on the

* Civil Revision No. 137 of 1927.

ground of fraud and misrepresentation. It appears that U Po Nyun had adopted Ma Pan Me, her sister Ma Pan Thwe and her brother Maung Po Hman, before he married the second wife ; that there were other suits between U Po Nyun, his two adopted children and grandchildren, Saw Thein and Than Mya ; that all these suits were compromised and that the terms were embodied in one agreement. So far as this suit is concerned, the agreement between the parties was that the suit should be dismissed without costs except that U Po Nyun was to have a decree for the pucca building and the granary, which were covered by the said deed of gift and also that the defendant, Ma Pan Me, as well as Maung Thu Daw, Maung Po U, Maung Saw Thein, and Ma Than Mya were to be allowed to live in the pucca building and store paddy in the granary. The agreement was signed by U Po Nyun and Ma Ohn on the one part and Maung Thu Daw, Ma Pan Me, Maung Po U and Maung Po Hman on the other.

The learned Judge did not write any judgment embodying the terms of that agreement but in his diary order dated the 9th December 1926 ordered that there would be a decree in terms of the agreement so far as it related to the suit. That order was followed by a decree, which ordered that the plaintiffs U Po Nyun and Ma Ohn were to be the owners of pucca building and granary ; that the registered deed of gift made in favour of Ma Pan Me was to stand except that the plaintiffs were to have the pucca building and the granary and further that the suit be dismissed without costs as regards the rest of their claim.

Ma Pan Me thought that this decree was not in accordance with the terms of the compromise and

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applied to the District Judge for an amendment of the decree. The learned Judge then ordered that Ma Ohn's name should be omitted and that the right of Ma Pan Me to live in the pucca house and store paddy in the granary should be mentioned.

As regards the first point about the inclusion of Ma Ohn's name, it may be pointed out that she was a party to the agreement of compromise and that she was a co-plaintiff in the suit. It may also be pointed out that, as second wife, she has an interest in the subject-matter according to Burmese Buddhist Law. Therefore the first part of the order is quite wrong. Her name should be included.

As regards the second point, the learned Judge was of opinion that this leave to live in the house and store paddy in the granary formed part of the consideration. He has overlooked the fact that U Po Nyun and Ma Ohn agreed to allow not only Ma Pan Me but also four others to have such a right. No doubt it is a matter of some difficulty in finding which matters relate to the suit and which matters do not relate to the suit within the meaning of Rule 3.

In *Hemanta Kumari Debi v. Midnapur Zamin-dari Co.* (1), their Lordships of the Privy Council indicated how that phrase "matters relating to the suit" should be interpreted. At page 495 their Lordships observe:— "The terms of this section need careful scrutiny. In the first place, it is plain that the agreement or compromise, 'in whole and not in part, is to be recorded, and the decree is then to confine its operation to so much of the subject-matter of the suit as is dealt with by the agreement. Their Lordships are not aware of the exact system by which documents are recorded the Courts in India, but a perfectly proper and effectual

method of carrying out the terms of this section would be for the decree to recite the whole of the agreement and then to conclude with an order relative to that part that was the subject of the suit, or it could introduce the agreement in a schedule to the decree ; but in either case, although the operative part of the decree would be properly confined to the [actual subject-matter of the then existing litigation, the decree taken as a whole would include the agreement."

In the present suit U Po Nyun and Ma Ohn sought to have the deed of gift, whereby U Po Nyun had given away all his immoveable property to Ma Pan Me, cancelled, alleging that his intention was to give her only 100 acres of land whereas the deed covered nearly 800 acres as well the house and granary. The effect of the agreement was that Ma Pan Me consented to have the deed cancelled so far as the house and granary were concerned. It is not quite correct to give a decree declaring that U Po Nyun is the owner of that property. The decree should be in favour of U Po Nyun and his wife to the effect that the suit be decreed so far as the house and granary are concerned. Therefore it is questionable whether the permission to live in the house and store paddy in the granary is a matter relating to the suit. It appears that Ma Pan Me and the other children have been living with U Po Nyun all the time. No doubt after this litigation the relationship between them must have become strained. However, this permission to Ma Pan Me and others to live in the house and store paddy in the granary is part of the agreement which can be enforced if necessary. There is a conflict of judicial opinion whether such enforcement can be done in execution or by a separate suit. The Court is informed that U Po Nyun has even filed a suit to get the dispute

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regarding the nature and extent of this permission settled. So far as this suit is concerned, this permission, which is in favour of several persons including Ma Pan Me, should be left out and not embodied in the decree.

I therefore set aside the amended decree of the District Court and direct that the first decree do stand.

The applicants are entitled to costs in this Court, three gold mohurs.

APPELLATE CIVIL.

Before Mr. Justice Heald and Mr. Justice Mya Bu.

S.R.M.M.A. CHETTYAR FIRM

v.

MA PWA MAY AND ONE.*

1927
 July 15.

Registration Act (XVI of 1908), s. 87—Whether registration valid if a bond is written on stamp of wrong kind.

Held, that registration of a mortgage bond was not invalidated by the fact that it was written on a stamp of the wrong kind.

Sarda Nath Bhattacharya v. Gabinda Chandra Das, 23 C.W.N. 534—followed.

Anklesaria—for Appellant.

Clark—for Respondents.

HEALD, J.—Respondent sued Po Saung and Ma Twe Mi, who had purported to mortgage certain oil wells to them, to recover the amount alleged to be due on the mortgage. The date of the mortgage bond was the 13th of March 1924, and the suit was instituted on the 10th of June 1924. The mortgagors confessed judgment, but the present appellant, who in a suit instituted on the 20th of March 1924

* Civil First Appeal No. 213 of 1926.