

Court either that it is not one with which we can now deal or that it takes them by surprise. We therefore enter in this preliminary point which in my judgment, for the reasons already given above, succeeds.

This appeal must be allowed, the decree passed in the Court below must be set aside, and the suit dismissed. The Respondents Nos. 4 (a), 4 (b), 4 (c) and 4 (d) must pay fifteen gold mohurs for the Appellants' advocates' fee in this Court; and each party must pay its own costs in the Court below and of the proceedings consequent upon the decree there, as the point upon which we allow this appeal was not argued before Ba U J.

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APPELLATE CIVIL.

Before Mr. Justice Baguley, and Mr. Justice Mosely.

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Interest, reduction of—Agreement by unregistered instrument—Mortgage of immovable property by registered instrument—Evidence of reduction—Mortgagee's "interest in immovable property"—Registration Act, ss. 17 (1) (b), 49.

An unregistered document setting out a subsequent agreement to reduce the rate of interest contained in a registered instrument of mortgage of immovable property cannot be received in evidence. A document which reduces the mortgagee's right to receive interest at the rate given in a registered mortgage of immovable property affects his "interest in immovable property" within s. 17 of the Registration Act.

Maung Ba Kyaw v. Nantigram Jaganath, I.L.R. 13 Ran. 22; *Sadar-ul-din Ahmad v. Chajju*, I.L.R. 31 All. 13; *Sayid Abdillah Khan v. Husain*, 40 I.A. 31; *Tika Ram v. Deputy Commissioner of Bara Banki*, 26 I.A. 97, considered.

Doctor for the appellants.

Jaganathan for the respondent.

* Civil First Appeal No. 118 of 1937 from the judgment of the District Court of Myaungmya in Civil Suit No. 10 of 1935.

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BAGULEY, J.—This appeal arises out of a suit brought on a mortgage by the Official Assignee as receiver in insolvency of the estate of V.E.R.M.V. Ramanathan Chettyar. The mortgage was created by a registered deed. The first and second defendants put in an evasive defence to the effect that they had not borrowed Rs. 15,000, and they denied the validity of the registration and its attestation. As a matter of fact, the Rs. 15,000 was the balance of the purchase money of certain land. The written statements of the remaining defendants admits execution of the mortgage deed, but pleads certain payments and also an agreement that the rate of interest was reduced from the figure Rs. 1-10-0 per cent mentioned in the mortgage deed to annas 12 per cent. They prayed that a decree for Rs. 8,337-8-0 might be passed instead of for the Rs. 24,000 claimed. Issues were framed with regard to the attestation and registration of the mortgage deed, with regard to the payments alleged to have been made by the defendants and denied by the plaintiff, and with regard to the rate of interest for which the defendants were liable. The learned Judge found against the defendants on all points; hence the present appeal.

The points argued in the appeal were with regard to the fact of the payments alleged by the defendants and with regard to the agreement said to have been made by the mortgagee to reduce the rate of interest. No other points were argued before us.

The question of the payments alleged is, of course, purely a matter of fact, the burden of proving the payments lying upon the defendants; and a very heavy burden lay upon them in view of the fact that they produced no account books, no receipts for any payments, and no endorsements on any documents.

[His Lordship held on the evidence that the defendants had not proved the payments.]

Turning now to the more interesting part of the case, the defence produced Exhibit 2, an unregistered document on a one-rupee stamp paper, which sets out that the five debtors had borrowed Rs. 15,000 from the V.E.R.M.V. firm under registered deed and had failed to pay any interest, and in consequence of that the creditor agreed and received Rs. 2,250 in full satisfaction of the interest due up to the date of the document, and from that date forward interest to be at the rate of annas 12 per cent per month, Rs. 7,500 and interest due thereon at the rate of 12 annas per cent per mensem to be repaid in *Tagu*, 1295, as first instalment, and the remaining Rs. 7,500 and interest due thereon to be paid in *Tagu*, 1296. It was also agreed, should there be any breach of the above terms, that the creditor may take steps to recover the principal and interest due, which he was entitled to enjoy. On this agreement a case is sought to be made out that the interest due on the mortgage was reduced to twelve annas per cent per month. It is an agreement in writing, but not registered. The trial Judge, following *Maung Ba Kyaw v. Nanigram Jaganath* (1), held that the agreement was inadmissible in evidence owing to lack of registration. This is a single Judge ruling and, therefore, not binding upon us, and it was argued that the authorities relied upon in that ruling do not support it. In the ruling the authorities are not analysed. The facts in that case were that a suit was brought for interest on a registered mortgage deed, the defendants pleaded a verbal agreement subsequent to the date of the mortgage, by which the time for

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repayment was extended and a certain mode of repayment was agreed upon. The judgment goes on :

"On behalf of the applicants it is urged that, because this agreement was not by a registered document, evidence thereof is inadmissible and it cannot be proved, and this contention must, in my opinion, prevail."

The authorities named in support thereof are *Tika Ram v. Deputy Commissioner of Bara Banki* (1), *Sayid Abdullah Khan v. Sayid Basharat Husain* (2) and *Sadar-ud-din Ahmad v. Chajju* (3). Dealing with these cases seriatim, I note that in *Tika Ram's* case (1) the suit dealt with certain mortgages which had been created by registered deeds, the deeds stating that interest was to be 15 per cent per annum, and in each case the borrower gave an unregistered written promise to pay 6 per cent more. It was held that these unregistered written promises could not be proved in evidence because they varied the terms of the registered document, and if admitted would make the mortgage really carry interest at 21 per cent. This case is not one like *Maung Ba Kyaw v. Nanigram Jaganath* (4), where a subsequent agreement was sought to be proved. *Sayid Abdullah Khan v. Sayid Basharat Husain* (2) was a case in which there was a registered mortgage which provided that the mortgagee should be entitled to the profits of the mortgaged property in lieu of interest. In other words, the mortgage was an usufructuary mortgage. Four days after the mortgage had been executed the mortgagee leased the property back to the mortgagor at an annual rent of Rs. 4,200, which happened to be 6 per cent on the amount of the mortgage money. The mortgagor sought to prove that the mortgage was really one

(1) (1899) 26 I.A. 97.

(2) (1912) 40 I.A. 31.

(3) (1908) I.L.R. 31 All. 13.

(4) (1934) I.L.R. 13 Ran. 22.

carrying interest at 6 per cent and was not an usufructuary mortgage at all. It was held that the express and unambiguous stipulation could not be varied or contradicted by reference to preliminary negotiations, and it was also held that a written unregistered agreement made after the mortgagor had given up possession under the lease by the mortgagee as to the mode in which the rents and profits were to be dealt with, was inadmissible in evidence. This case is also not quite the same as the Rangoon case cited, because it really sought to put in evidence that the original mortgage had not been as set out in the original mortgage deed. *Sadar-ud-din Ahmad v. Chajju* (1) is a Full Bench ruling of the Allahabad High Court. In this case a registered mortgage was executed for a term of twenty-five years. After registration had been compulsorily effected, the mortgagees applied for a mutation of names and an outsider objected, claiming a share in the mortgaged property. Finally, some settlement was arrived at and the revenue authorities allowed mutation of names. Less than twenty-five years from the date of the mortgage the mortgagor sought to redeem it, and set up a compromise which had been arrived at during the mutation proceedings, whereby the third party became a mortgagor, his interest was mortgaged, and an alteration was made in regard to the terms on which redemption would be allowed. It was held that this compromise could not affect, modify or alter in any way the terms of the registered mortgage. This case is more in line with *Maung Ba Kyaw v. Nanigram Jaganath* (2).

In my opinion, however, the matter can really be settled from first principles and the actual wording of the Statute. Section 17 (1) (b) of the Registration Act

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says that among other documents which have got to be registered are

“other non-testamentary instruments which purport or operate to create, declare, assign, limit, or extinguish, whether in present or in future, any right, title, or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immoveable property”;

and unless such a document is registered, under section 49 of the Registration Act it will not affect any immovable property or confer any such power. When the V.E.R.M.V. firm got their mortgage executed and registered, they got an interest in immovable property, and one part of that interest was the right to receive interest at Rs. 1-8 per cent. The word interest here is used in two senses but this is unavoidable. Any document which reduced their right to receive interest at the rate given affects their “interest in immovable property.” The agreement to reduce the rate of interest was compulsorily registrable under section 17, and not having been registered it cannot be received in evidence.

For these reasons I think that the decision of the trial Court was quite correct and I would dismiss this appeal with costs.

MOSELY, J.—I agree.