

◆[APPELLATE CIVIL JURISDICTION.]

Special Appeal No. 285 of 1875.

SHANKAR RAMCHANDRA (ORIGINAL PLAINTIFF, SPECIAL APPELLANT), v.
 VISHNU ANANT (ORIGINAL DEFENDANT, SPECIAL RESPONDENT).

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 Dec. 14.

Registration—Act XX. of 1866, Sections 17 and 18—Deed of partition.

Section 17 of Act XX. of 1866 extends to a deed of partition, and this is not prevented by such an instrument being enumerated in Section 18 amongst those which are optionally registrable.

THIS was a special appeal from the decision of E. Hosking, Assistant Judge of the district of Poona, in Appeal No. 51 of 1875, on the Poona District Court File, reversing the decree of the Subordinate Judge of Junnar in Original Suit No. 287 of 1875.

The plaintiff, Shankar, sued the defendant to enforce partition and for the removal of obstruction to the plaintiff's building a wall and using the water of a well. In support of his claim the plaintiff produced a deed of partition dated 7th January 1865.

The defendant admitted the fact of the deed of partition having been executed, but contended that it had not the effect stated by the plaintiff and had not been acted on, each party having used the property to which it related as suited his convenience in opposition to its terms; and that the deed, not having been registered, was inadmissible in evidence.

The Subordinate Judge awarded the claim; but the Assistant Judge, in appeal, held that the partition deed was invalid for want of registration, and that no secondary evidence could be given in proof of its terms. Being also of opinion that the defendant's admission was insufficient for basing upon it a decree in the plaintiff's favour, the Assistant Judge rejected the claim.

The special appeal was heard by WEST and NA'NA'BHA'I HARIDA'S, JJ.

Mánekshá Jehángírshá for the appellant.—The only question in this case is whether the deed of partition requires registration. The document bears date the 7th of January 1865, and relates to immoveable property of the value of more than Rs. 100, and is, therefore, one within the scope of Act XX. of 1866. I say first

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that, supposing an instrument of partition to be such a document as declares any right, title or interest, and, therefore, presumably falling within the provisions of Section 17 of the Act which treats of instruments of which the registration is compulsory, yet the operation of this section is excluded by the enactment of Section 18, which enumerates documents voluntarily registrable. In the earlier section there is no mention of an instrument of partition by name; while in the subsequent section it is specifically mentioned.

[WEST, J.—Section 17 is the more stringent rule, within which a deed of partition may be included by construction though not by special mention; and it is possible to give effect to the two sections by reading the term “instrument of partition” in Section 18 as one relating to moveable property.]

The various documents enumerated in Section 18 do not all refer to moveable property, and the way in which the Legislature has punctuated that section does not authorize such a reading. My second ground of objection is that a deed of partition neither creates nor declares any interest. It is only a memorandum or record of rights which had already been existing in a general way.

Bahiravnáth Mangesh for the respondent was not called on to reply.

WEST, J., in delivering the judgment of the Court, said:—The appellant urges that the deed of partition, on which he sues, is excluded from the operation of Section 17 of Act XX. of 1866 by being amongst those enumerated in Section 18, Art. 7, as optionally registrable. We do not think that an instrument, to which one of the terms in that article may be applicable, is freed by that circumstance from the necessity of registration under Section 17, if such necessity otherwise exists. If the instrument is one properly falling under Section 17, apart from the provisions of Section 18, Art. 7, it ranks amongst the documents before provided for; and the specific provision, imposing a necessity for registration, is not superseded by a general provision for optional registration which is satisfied by applying it to instruments such as those affecting only moveable property not included within the scope of Section 17. The more specific rule, regard being had to the purpose of the Act, is that in Section 17

which applies only to some kinds of deeds, while that in Section 18 applies to deeds of partition generally. The provision for optional registration in the latter is not superseded, but supplemented or qualified by that in the former, unless the latter provision is to be read as extending only to cases not already provided for. When enactments are apparently opposed "it is a cardinal principle in the interpretation of a statute" that the one must, if possible, be read as a qualification of the other, so that some effect, furthering the intention of the Legislature, may be given to each—see per James, L.J., in *Ebbs v. Boulnois* (1) and per Lush, J., in *Reg. v. Hulme* (2); but here when Section 18 says that instruments of partition may be registered, there is nothing really opposed to that provision in another which says that in particular cases they must be registered.

It is said, however, that the instrument in this case is not one that can be fairly deemed to fall within the rules of Section 17, taken by themselves. It does not perhaps create an interest in immoveable property. As to that the Hindu lawyers have expressed different views. But, if it does not create an interest, it seems to us that it at least declares an interest in immoveable property, and that is sufficient, if the value of the property exceeds Rs. 100, to make registration indispensable. In England a partition is made effective by mutual conveyances [Williams Real Prop. 129], and it seems impossible to say that an instrument of partition which is sued on, as producing the same results, does not even declare an interest. Here the plaintiff has himself valued his interest under it at more than Rs. 100, and thus the document, not having been registered, could not be admitted in evidence. Its terms and the relations thence arising are not so admitted in the defendant's written statement as to have made all proof of the document superfluous, and we must therefore confirm the decree of the Assistant Judge with costs.

Decree confirmed.

(1) L. R. 10 Ch. Ap. 479; see p. 484.

(2) L. R. 5 Q. B. 377; see p. 388.

NOTE.—An opinion to the opposite effect is expressed in 6 Mad. High Court rulings p. ix.

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