1935

NAUBAT RAI
v.
CHUNI LAL

Ganesh Das, were joint and this state of affairs has continued. There is no doubt, therefore, that the decision of the Court below is correct and that Chuni Lal is entitled to a declaration that he has a 1/6th share in the property mentioned in the decree of the trial Judge. The appeal of Naubat Rai must, therefore, fail and is dismissed with costs.

There is no force in the appeal of Chuni Lal as to costs and it was not seriously pressed. It also is dismissed, but there will be no order as to costs of it.

P. S.

Appeal dismissed.

APPELLATE CIVIL.

Before Addison and Din Mohammad JJ.

1935

Feb. 14.

MOHAMMAD QASIM, DECEASED (THROUGH HIS REPRESENTATIVES) AND ANOTHER (DEFENDANTS) Appellants

versus

MST. RUQIA BEGUM (PLAINTIFF) Respondent.

Civil Appeal No. 1351 of 1930.

Indian Registration Act, XVI of 1908, sections 17, 49 : Unregistered document affecting immovable property and also containing a covenant for payment of dower — whether the document can be used for proving the covenant as to payment of dower.

By an unregistered contract of marriage the plaintiff was given in lieu of prompt dower amounting to Rs.10,000 certain ornaments and four items of immovable property, and the husband expressly agreed to pay the Rs.10,000 dower. In the present suit by the wife for recovery of Rs.10,000 as her dower, it was contended by the defendants that the document, not being registered, could not be used for any purpose whatsoever.

Held that, although the declaration relating to the rights in immovable property made the document compulsorily

1935

MOHAMMAD QASIM v. MST. RUQIA BEGUM.

registrable under section 17 of the Indian Registration Act, according to section 49, the only effect of non-registration would be that the document shall not affect any immovable property covered by it, and as the plaintiff only sought to enforce the covenant for payment of dower and that covenant was separable from the declaration about the immovable property, the document, though unregistered, could be used for the purpose of proving the covenant.

Thandavan v. *Valliamma* (1), *Hanmant Apparao Deshapande* v. *Ramabai Hanmant Meghashyam* (2), *Perumal Ammal* v. *Perumal Naicker* (3), *Davindar Singh* v. *Lachhmi Devi* (4), and *Bishop of Chester* v. *John Freland* (5), relied upon.

Bisheshar Lal v. *Mst. Bhuri* (6), *and Bevan-Petman* v. *Ganesh Das* (7), distinguished.

First Appeal from the decree of Faqir Sayed *Said-ud-Din, Senior Subordinate Judge, Ludhiana, dated 17th June, 1930, decreeing the claim.*

NAND LAL and KHURSHAID ZAMAN, for Appellants.

BARKAT ALI and MOHAMMAD AMIN, for Respondent.

The judgment of the Court was delivered by—

ADDISON J.—On the 30th March, 1923, the plaintiff-respondent, *Mussammat* Ruqia Begum was married to Mohammad Qasim, son of *Hakim* Mohammad Alam of Ludhiana. The contract of marriage was incorporated in a document which was admittedly written at the time when the marriage was solemnized. Sometime after, the relations of husband and wife became strained and they parted.

On the 13th August, 1929, the plaintiff instituted the present suit both against her husband and his

(1) (1892) I. L. R. 15 Mad. 336.
(2) (1919) 51 I. C. 954.
(3) (1921) I. L. R. 44 Mad. 196.
(4) (1931) I. L. R. 12 Lah. 239.
(5) Ley 79.
(6) (1920) I. L. R. 1 Lah. 436.
(7) 49 P. R. 1916.

father for recovery of Rs.10,000 on account of her prompt dower. She alleged that her husband was the principal debtor and his father had stood surety for him. She based her claim on the document mentioned above.

The defendants pleaded that the deed in question was inadmissible in evidence for want of registration, that it had been executed under undue influence, that the sum mentioned therein was merely nominal, that the real amount which the parties had fixed by mutual consent was Rs.1,000 only and that the suit was barred by time.

The Senior Subordinate Judge decided all these points against the defendants and decreed the suit. Both the defendants appealed, but Mohammad Qasim has since died leaving Mohammad Alam alone to contest this liability.

Counsel for the appellant has strenuously contended that besides the document there was no legal proof on record that Rs.10,000 had been fixed as prompt dower, that the document being unregistered could not be used for any purpose whatsoever by virtue of section 49 of the Registration Act, that no oral evidence could be led to prove the contents of the document and that the Court below had erred in relying on it for the purpose of determining the amount of dower. He has cited *Bisheshar Lal* v. *Mst. Bhuri* (1) and *Bevan-Petman* v. *Ganesh Das* (2), in support of his contention. Neither of these authorities is, however, applicable to the facts of the present case.

In *Bisheshar Lal* v. *Mst. Bhuri* (1) the suit was for possession of the property left by the deceased on

(1) (1920) I. L. R. 1 Lah. 436. (2) 49 P. R. 1916.

1935

MOHAMMAD QASIM v. MST. RUQIA BEGUM.

the ground that his widow had forfeited her rights to a life estate on account of her unchastity. The defendant contended that the plaintiff had waived his claim to succeed to the property, and in support of this plea relied on a document by which the plaintiff gave up all his rights in the deceased'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. It was held by a Division Bench of this Court that "the document was inadmissible in evidence for want of registration notwithstanding that its execution had been admitted." It was also held 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." It was further held that "as the consideration could not be apportioned between the real and personal estate relinquished by the deed, the latter could not be admitted into evidence even in support of the personal estate."

Similarly, in *Bevan-Petman* v. *Ganesh Das* (1) the defendant had obtained from Government a lease of a coal mine for 15 years and in consideration of an advance of Rs.12,500 transferred to plaintiff one-half share in the lease and also certain movable property by a written document. This document was not registered. It was held that "as the written document embodied one transaction for one consideration and there was no separate or distinct transaction concerning the movable property it was not receivable in evidence, being unregistered, even in regard to the movable property." It was further held "that there was a clear difference between the use of a document

(1) 49 P. R. 1916.

for a collateral purpose and its use to establish directly title in a part of the property conveyed."

Now a perusal of the document before us appears to show that it is clearly divisible into three distinct parts. The opening passage is a mere recital of the fact that the *Nikah* between *Mussammat* Ruqia Begum and Mohammad Qasim has been performed on the authority of the bride's *vakil* in accordance with the sacred law of the parties and that the bride was being given in marriage in lieu of a prompt dower of Rs.10,000, ornaments worth Rs.2,500 and four items of immovable property described therein. This is followed by a separate agreement on the part of the husband to pay Rs.10,000 as dower, Rs.30 p.m. as *pan dan* expenses or pin-money and an undertaking on his behalf not to misappropriate the nuptial ornaments or the articles of dowry or usurp the immovable property mentioned above. The finishing touch is given by the father of the bridegroom who has made a personal covenant to indemnify the bride in case the dower or the *pan dan* expenses were not paid, and he has also added a declaration to the effect that his rights in the property mentioned above have been extinguished. It is no doubt true that any declaration relating to the creation of the plaintiff's rights in the immovable property or the extinction of the defendant's rights in any such property makes the document compulsorily registrable under section 17 of the Registration Act, but section 49 lays down in clear terms that the only effect of non-registration will be that the document shall not affect any immovable property covered by it or be received as evidence of any transaction affecting such property. As stated above, the plaintiff in this suit is merely seeking to enforce the covenant relating to dower and does not claim any

1935

MOHAMMAD QASIM v. MST. RUQIA BEGUM.

immovable property comprised in the document. This covenant stands altogether detached from all declarations regarding the immovable property and is clearly separable from them. In these circumstances, the principles of law enunciated in *Thandavan* v. *Valliamma* (1), *Hanmant Apparao Deshapande* v. *Ramabai Hanmant Meghashyam* (2), *Perumal Ammal* v. *Perumal Naicker* (3) and *Davindar Singh* v. *Lachhmi Devi* (4), will clearly apply.

In *Thandavan* v. *Valliamma* (1) an instrument had been executed which provided for the distribution of property, both movable and immovable as to which the parties had disputed. The document was not registered. One of the parties to this document sued the other party on the instrument in question to recover his agreed share of the movable property comprised in it. It was held by a Division Bench of the Madras High Court that "the unregistered instrument was admissible in evidence in support of the plaintiff's claim for the movable property." Reliance in that case was placed on the observation of Hutton J. in the *Bishop of Chester* v. *John Freland* (5), which may well be quoted here :—"When a good thing and a void thing are put together in the same grant, the law makes such construction that the grant shall be good for that which is good and void for that which is void." The learned Judges also quoted with approval the remarks made in a previous Madras judgment which were to the following effect :—"The new law has explicitly adopted the doctrine which the late Chief Justice of this Court believed to be derivable

(1) (1892) I. L. R. 15 Mad. 336. (3) (1921) I. L. R. 44 Mad. 196.
(2) (1919) 51 I. C. 954. (4) (1931) I. L. R. 12 Lah. 239.
(5) Ley 79.

from the old, namely, that the object of section 49 was solely to prevent instruments from being of legal force for any of the purposes which make registration compulsory under section 17."

In *Apparao Deshapande* v. *Ramabai Hanmant Meghashayam* (1), a Division Bench of the Bombay High Court, composed of Sir Basil Scott, C. J., and Mr. Justice Hayward, held that "the fact that a document relating to immovable and movable property was not registered, would not prevent the party entitled from suing on that document in respect of the movable property."

In *Perumal Ammal* v. *Perumal Naicker* (2), a Division Bench of the Madras High Court, composed of Sir John Wallis, C. J., and Mr. Justice Hughes, held that where there was a gift of immovables and movables, but the former failed owing to want of registration, the latter could nevertheless be held good.

In *Davindar Singh* v. *Lachhmi Devi* (3), it was held by a Division Bench of this Court that "an unregistered sale-deed, though inadmissible for proving any transaction affecting the immovable property which it purported to convey, could be received in evidence for the collateral purpose of proving an acknowledgment of debt."

We have no hestitation, therefore, in holding that the document in question could be used for the purpose of proving the amount of dower and the contract of guarantee entered into by the bride-groom's father relating thereto and that it has been rightly used for this purpose by the Court below.

(1) (1919) 51 I. C. 954. (2) (1921) I. L. R. 44 Mad. 196.
(3) (1931) I. L. R. 12 Lah. 239.

1935

MOHAMMAD QASIM v. MST. RUQIA BEGUM.

Counsel for the appellant has next urged that the deed of dower was executed under undue influence and the amount of Rs.10,000 was merely nominal, the real intention of the parties being to fix Rs.1,000 only. In support of his argument he has mainly relied on the testimony of Mazhar Hussain (D.W.1), Raza Hussain (D.W.2) and *Syed* Abdul (D.W.3) and the letters, Exhs.D.5, D.6 and D.9, written by these witnesses respectively to Mohammad Alam on the 29th March, 1923, along with Ex.D.7, written by Mohammad Ali who has since died and whose writing has been proved by Raza Hussain (D.W.2) and Ex.D.8 written by one Abdul Asghar, who has not been produced. We have perused the statements of these witnesses as well as the letters proved by them, but find no reason to differ from the conclusion arrived at by the Court below in this matter. These letters appear to us to be clearly an after-thought and a part of a design to defeat the plaintiff's claim. The story set out therein does not appeal to reason and is inconsistent with the statement made by Mohammad Alam himself. If, as alleged by him, a meeting of the *panchayat* had been held on the 29th March, 1923, to make the position of the parties clear about the amount of the plaintiff's dower, it is inconceivable that the matter would have been left in such an indefinite state or that no writing would have been secured from plaintiff's father, Mohammad Yasin himself or that Mohammad Alam would have contented himself merely with these epistles from the members of the *panchayat*. It is also unbelievable that every member of the *panchayat* would in these circumstances have written to Mohammad Alam a separate letter giving the result of his interview with Mohammad Yasin. These letters were obviously manufactured for the purpose of this case and are not entitled to any weight whatsoever.

1935

MOHAMMAD QASIM v. MST. RUQIA BEGUM.

We are satisfied that the plaintiff's claim is not open to attack on any ground taken by the defendants and accordingly maintain the decree of the Court below and dismiss this appeal with costs.

P. S.

Appeal dismissed.

APPELLATE CIVIL.

Before Dalip Singh and Bhide JJ.

1935

Feb. 14.

PUNJAB AND SIND BANK, LTD., LYALLPUR (PLAINTIFF) Appellant

versus

GANESH DAS-NATHU RAM AND OTHERS (DEFENDANTS) Respondents.

Civil Appeal No. 2208 of 1929.

Mortgage — Equitable — whether created by deposit of a 'copy' of the sale deed — or a copy of the jamabandi.

Held, per curiam, that in the absence of proof of the fact that the original sale deed was lost or was not available to the depositor at the time, a copy of the sale deed deposited with the creditor does not create an equitable mortgage.

Ex parte Broadbent (1), discussed.

Held, per Bhide J., that the documents to be deposited should be *original* documents by which the title to the property in question is conferred on the mortgagor or his predecessors-in-interest, as the deposit of these alone could justify an inference that the parties intended to create a lien on the property.

Held also, per curiam, that the deposit of a copy of the *jamabandi*, not being a document of title, is not sufficient to constitute an equitable mortgage.

Case-law, discussed.

Miscellaneous First Appeal from the final decree of Sardar *Inder Singh, Senior Subordinate Judge,*

(1) (1834) 3 L. J. (Bankruptcy) N. S. 95.