

APPELLATE CIVIL.*Before Young C. J. and Rangi Lal J.***GHULAM MOHAMMAD (PLAINTIFF) Appellant***versus***SARKHRU AND ANOTHER (DEFENDANTS)****Respondents.**

1934

June 29.

Civil Appeal No. 1142 of 1933.

Indian Registration Act, XVI of 1908, Section 17 (1) (c) : Receipt of money due on four oral mortgages—whether requires registration.

Held, that a receipt which recites four oral mortgages and records the receipt of the consideration for all these mortgages on the date of the execution of the document, requires registration, under the provisions of Section 17 (1) (c) of the Indian Registration Act, to be admissible in evidence.

Venkayyar v. Vankata-Subbayar (1), dissented from.

Ram Chand v. Chatar Singh (2), *Sher Khan v. Muzaffar Khan* (3), and *Abdul Rahman v. Kirpa Ram* (4), followed.

Ram Datt v. Ram Chand (5), and *Rampat Singh v. Mangal* (6), overruled.

Second Appeal from the decree of Mr. P. R. B. May, District Judge, Mianwali, dated 2nd June, 1933, reversing that of Lala Tara Chand, Subordinate Judge, 4th Class, Mianwali, dated 14th July, 1932, and dismissing the plaintiff's suit.

NAWAL KISHORE, for Appellant.

MOHSIN SHAH, for Respondents.

The order, dated 1st February, 1934, referring the case to a Division Bench.

JAI LAL J.—The only question in this case is whether the document, Exhibit P. 1, required regis- JAI LAL J.

(1) (1881) I. L. R. 3 Mad. 53.

(4) 1928 A. I. R. (Lah.) 51.

(2) 73 P. L. R. 1910.

(5) 1925 A. I. R. (Lah.) 348.

(3) (1920) I. L. R. 1 Lah. 25.

(6) 1926 A. I. R. (Lah.) 220.

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tration. The appellant's counsel concedes that if the document be held to be inadmissible in evidence for want of registration, then he has no case in this appeal. There seems to be a conflict between the view taken by me in *Ranpat Singh v. Mangal* (1) and by Dalip Singh J. in *Abdul Rahman v. Kirpa Ram* (2). It is, therefore, desirable that this case should be heard by a Division Bench. I accordingly send it to a Division Bench.

The judgment of the Division Bench was delivered by—

YOUNG C. J.—This is a second appeal from the decision of the learned District Judge of Mianwali. The only question in the case is whether a certain receipt, which is Exhibit P. 1, required registration. The matter came first of all before a learned Single Judge of this Court and as there was a difference of opinion existing he has referred it to a Division Bench.

The document in question is a receipt and recites four oral mortgages which were said to have been entered into previously; it records the receipt of the consideration for all these mortgages on the date of the execution of the receipt. The learned Judge in the Court below came to the conclusion that this document required to be registered under section 17, clause (1) (c) of the Indian Registration Act. As it was not registered he refused to admit it as evidence.

The document in question records the receipt of the money due upon these four oral mortgages. It is clear that the money due upon the mortgages can only

(1) 1926 A. I. R. (Lah.) 220.

(2) 1928 A. I. R. (Lah.) 51.

be properly described as the consideration of those mortgages. The words of section 17 (1) (c) are as follows :—

“ Non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title, or interest ”—that is, any right, title or interest in the immovable property.

Such instruments under this Act require registration. The important words in this clause are “ the payment of any consideration on account of the creation.....of any such right.” When the oral transactions alluded to in the document were entered into, the consideration was agreed between the mortgagor and the mortgagee. It does not appear to us to matter whether that consideration was paid at the time or paid later. Any document which acknowledges the receipt of that consideration clearly comes under the terms of section 17 (1) (c). Counsel for the appellant, however, relies upon the case of *Venkayyar v. Venkata-Subbayar* (1). In that case a Bench of the Madras High Court decided that a receipt acknowledging part-payment of a sum due under a hypothecation bond did not require registration under section 17 (1) (c) of the Registration Act. The actual words of the judgment relating to the bond were :—“ Now a mere receipt does not acknowledge the receipt or payment of a consideration. A consideration imports something given or done or forborne on account of something to be given or done or forborne on the other side. The payment of money due, which a receipt acknowledges, is not a payment

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on account of anything to be given, done or forborne by the person to whom it is paid. It simply extinguishes *pro tanto* the debt due." In other words the learned Judges thought that the record of the receipt of the consideration must be included in the document creating the right if registration is to be enforced. With great respect we consider that the learned Judges have misconceived the terms of section 17 (1) (c). If they were right in this conclusion section 17 (1) (c) would be unnecessary for section 17 (1) (b) would cover such a document. Section 17 (1) (b) refers to 'other non-testamentary instruments which purport or operate to create, declare.....whether in present or in future, any right, title interest.....to or in immovable property.' If the document recorded the consideration in the form suggested by the learned Judges it would be the actual document creating the right, title or interest in immovable property and therefore it would be registrable under section 17 (1) (b). It is clear, therefore, that section 17 (1) (c) must be very much wider than the definition given to it in the Madras decision. In our opinion section 17 (1) (c) is perfectly clear and the simple meaning of it is that any document which records the receipt of money due on a mortgage, or on any other instrument indicated in section 17 (1) (b), comes within it.

This view is supported by the authorities of this Court reported in the case of *Ram Chand v. Chatar Singh and others* (1), *Sher Khan v. Muzaffar Khan* (2) and recently in *Abdul Rahman v. Kirpa Ram* (3). All of these are decisions by Single Judges of this Court. On the other hand there are two decisions to

(1) 73 P. L. R. 1910. (2) (1920) I. L. R. 1 Lah. 25.

(3) 1928 A. I. R. (Lah.) 51.

the contrary also by learned Single Judges of this Court, *Ram Datt v. Ram Chand* (1) and *Ranpat Singh v. Mangal* (2). In both these cases, however, section 17 (1) (c) is not set out and the actual words of the section do not appear to have been considered. In any event we overrule these two decisions. The appeal is dismissed with costs.

A. N. C

Appeal dismissed.

CIVIL REFERENCE.

Before Addison and Sale JJ.

PIONEER SPORTS, LIMITED, SIALKOT
(ASSEESSEE) Petitioner.

versus

COMMISSIONER OF INCOME-TAX, PUNJAB—
Respondent.

Civil Reference No. 30 of 1933.

Indian Income-tax Act, XI of 1922, Sections 13 proviso, and 66 : Law point—question whether Income-tax Officer was justified in making an arbitrary assessment under the proviso—Reference to High Court.

The Assessee Company filed a return accompanied by copies of the balance sheet, trading and profit and loss account. The Income-tax Officer considered that the profits shown by the Company were not reasonable and computed the profits under the proviso to section 13. He held that a trading account based on an inventory not supported by a stock book could only be accepted if it disclosed a reasonable rate of profit. It appeared that the Company never had a stock book.

Held, that though the Income-tax Officer is the sole arbiter for determining under the proviso to Section 13 how the profits are to be computed, it is a question of law into

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