

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

PRABHURAM HAZRA (PLAINTIFF) v. T.M. ROBINSON, MANAGER,
ON PART OF THE BENGAL COAL COMPANY, AND ANOTHER (DEFENDANTS).*

1869
April 28

Refusal to register—Effect of Execution of Deed required by Law to be registered—Joining Causes of Action.

The owner of a share in a talook granted a se-patni patta thereof to the plaintiff, but before registration granted a se-patni to the Bengal Coal Company. In a suit against the owner and the Company for possession of the se-patni talook, for damages caused by the refusal to register, and also for compelling registration of the se patni patta, *Held*, that three distinct causes of action were improperly joined; that the suit was not maintainable in a Civil Court, as the plaintiff's title rested upon an unregistered deed; that there was no cause of action as against the company to enforce registration of the patta; and that a distinct stipulation is not necessary to bind a person to cause registration of a deed required by law to be registered, but he virtually agrees to do so when he executes a contract, which by the law in force requires registration.

Baboo *Tarak Nath Sen* and *Kali Prasanna Dutt* for appellant.

Mr. G. C. Paul and *Babu Amar Nath Bose* for respondents.

JACKSON, J.—The plaintiff in this case, named Prabhuram Hazra, sues the first defendant Durgamani Debi, and the Bengal Coal Company, on the following allegations: He states that the first defendant granted him, on the 4th Aswin 1274, for a consideration of 99 rupees, a se-patni of her one-anna share in the talook consisting of five mauzas, and promised to effect registration of that se-patni patta within a reasonable time; but that afterwards, upon the evil counsels of the plaintiff's enemies, the Bengal Coal Company, and in league with one Kali Prasanna Misser, who is said to be a servant of the same Company, the defendant put off and finally refused to carry out the registration; and that afterwards the Bengal Coal Company well knowing that the plaintiff had obtained a previous se-patni from the first defendant, entered into a further contract of se-patni with her, whereby the plaintiff's rights were in various ways affected, and that plaintiff consequently sued for three things, namely: first, for the possession of the se-patni talook in question, which was valued at 93 rupees and 5 annas, being twenty times the annual value of the proceeds of the talook, and 99 rupees, the selling price of the talook; secondly, for the damages caused by the refusal to register, which is stated at 3 rupees; and, thirdly, as I understand, to compel registration of the plaintiff's patta.

The suit was dismissed by the Moonsiff, and the order of dismissal was affirmed, on appeal, by the Subordinate Judge.

The plaintiff appeals specially, contending that the Courts below were wrong in holding this suit not to be maintainable. He contends this is so,

* Special Appeals, Nos. 3116 and 3117 of 1868, from the decrees of the Subordinate Judge of Zilla Beerbhoom, dated the 19th August 1868, affirming the decrees of the Moonsiff of Oukhra, dated the 24th February 1868.

1869

PRABHURAM
HAZRA
v.
T. M. ROBIN-
SON

because his allegation is that from the fraud of the Bengal Coal Company and his vendor, the registration of his kabala was not effected; and, secondly, because the plaintiff had been put into possession of the disputed talook, and then ousted through the fraud of his vendor and the managers of the Bengal Coal Company.

It seems to me quite clear that the plaintiff has improperly joined in his plaint three distinct causes of action in respect of which the first defendant and the Bengal Coal Company could not be jointly sued; also, that the first cause of action, namely for the possession of this property, is one which could not be maintained in a Civil Court against either of the defendants, inasmuch as the plaintiff's title rested entirely upon an unregistered patta; and it has been expressly held in *Sheikh Rahmatulla v. Sheikh Sariutulla Kagchi* (1) that such a suit cannot be maintained. The third cause of action for the registration of the patta is one which, doubtless, would be maintainable against the party who was bound to register, namely against the first defendant, but would not be maintainable against both. There remains only the common cause of action, namely, that for damages, and that is one not cognizable in the Court of the Moonsiff where the suit was brought, but in the Court of Small Causes. I am very far from agreeing in the reasons which I find in the judgment of the Subordinate Judge. He states, "the plaintiff alleges in his plaint that defendant No. 1 let out the disputed property to the plaintiff in se-patni," "and having granted a patta delivered possession to him, and that it was also stipulated that he would wish the said patta to be registered in due time." I should have been at a loss to know where that allegation of the plaintiff had been found, if I did not find it repeated in the grounds of special appeal. It is quite clear, however, that the real ground on which the suit for possession was necessarily dismissed, is, that on the authority of the decision in *Sheikh Rahmatulla v. Sheikh Sariutulla Kagchi* (1) a suit based upon an unregistered title could not be maintained.

On the question of registration, the Subordinate Judge states, that "on a reference to the se-patni patta adduced by the plaintiff in this Court, it does not appear that any stipulation was made therein to cause registration of the said patta; secondly, when the plaintiff's patta was produced in the office of the Registrar, and when the Registrar refused to register it, he should have preferred an appeal against that order in the District Court, agreeably to the provisions of section 84, Act XX. of 1866. And as he has not done so, I am of opinion that this Court is not competent to pass any order for registering the plaintiff's patta under the said section. If this were a suit for enforcing a contract, then it might have been tried on its merits agreeably to the aforesaid precedent, but this is not a suit of that description." I don't agree with the Subordinate Judge in thinking that the suit could not be maintained, because of the absence of any stipulation as to causing registration. The plaintiff alleged that the defendant promised

(1) 1 B. L. R., F. B., 53.

to register ; and when a man agrees to enter into a contract of purchase with another, and receives the purchase-money, and the contract is one which, under the law in force at the time, requires registration, he does, I apprehend, virtually agree that he will register that contract, and so enable the other party to reap all the advantages of it, and is therefore compellable to do so.

1869
PRABHURAM
HAZRA
v.
T. M. ROBIN-
SON.

Nor do I agree with the Subordinate Judge, that by reason of the plaintiff's omission to apply to the Civil Court under section 84 of the Registration Act, he was debarred from bringing a suit to enforce registration. But I think the Subordinate Judge has correctly observed that this was not a suit to enforce the specific performance of the defendants' contract. It is manifestly a suit, first, for possession of the land ; and secondly, for damages caused by the failure to register ; and I think the prayers for registration of the plaintiff's contract, and for the avoidance of the defendant's patta, were alike matters thrown in simply by the way, and were not the real objects of the suit contemplated by the plaintiff. I think therefore that this was a suit in which the plaintiff was not entitled to succeed, and that the decisions of the Courts below must be affirmed with costs.

MARKBY, J.—I am of the same opinion. I think that this suit has been properly divided into three distinct parts,—the claim for possession, the claim for damages arising out of the joint act of the two defendants in preventing registration of the plaintiff's patta, and the claim by the plaintiff to have his patta registered ; and I think it quite clear with regard to the first, from the decision in *Sheikh Rahmatulla v. Sheikh Sariutulla Kagchi* (1) that that part of the suit cannot be maintained. What I take the Full Bench to have laid down is this principle, that where a man seeks to establish any right which arises out of his title, that title must be complete ; that in cases falling within the Registration Act, the title cannot be complete as against a person who has subsequently registered his title until registration. I think that equally applies to the case before us, which is a suit for possession ; as to the case which was before the Full Bench, which was a suit for declaration of title.

That gets rid of the first part of the suit. Then as to the second, the claim for damages, it is quite clear, that that cannot be maintained, not because no such suit would lie, but if it lies at all, it lies in the Small Cause Court. The only remaining claim is that which asks for registration of the patta. I had very great doubts myself, whether that was intended as a claim for specific performance of this contract, which is the only suit I think the plaintiff could maintain in this case. And I find the Judge of the lower Court distinctly says, it was not so ; and it was distinctly admitted by one of the two pleaders who argued the case for the appellant, that it was not so intended. But even if it were otherwise, there is an insuperable difficulty against maintaining that suit, because it is a suit not against the Bengal Coal Company

(1) 1 B. L. R., F. B., 58.

1869

PRABHURAM
HAZRA

v.

T. M. ROBIN-
SON.

and the first defendant jointly but against the first defendant, the vendor alone; and therefore that part of the suit seems to me, if it were intended to be a suit for specific performance, not maintainable.

I would wish to add this, that I entirely agree with the observations which have fallen from my learned brother Jackson with reference to that part of the judgment of the lower Appellate Court, which says that the suit for registration of the patta could not lie, because there is no specific arrangement that registration should take place. That point does not arise, because this suit will not lie for other reasons. But I think it desirable to notice it, because it would be more mischievous if any such notion were to prevail. In every contract of purchase there is an implied contract that the seller will do everything that is necessary to complete the title of the buyer.

Before Mr. Justice Bayley and Mr. Justice Mitter

1869

May 7

CHANDI PRASAD NANDI (JUDGMENT-DEBTOR) v. RAGHUNATH
DHAR (DECREE-HOLDER) *

Computation of Time—Decree.

Held, that in calculating the period of three years from the date when effectual proceedings had last been taken to keep alive a decree, the period during which the decree had remained under attachment in execution of a decree against the judgment-creditor, should be deducted.

THIS was an application to execute a decree against the judgment-debtor. In June 1860, an application was made for execution, and warrant issued against the person of the judgment debtor, who was arrested, but subsequently released, as a special appeal was then pending from the decree then in execution. On the 27th September 1860, the case was struck off. In April 1862, a fresh application was made for execution, but the record was not received till 9th April 1862. In the meantime, that is, in November 1861, the decree had been placed under attachment, and this attachment continued till the 27th August 1863. As nothing was done pending the attachment, the case was struck off on the 20th April 1862. In June 1864 an application was made by the purchaser of the decree, stating that the decree had been sold, and praying that his name might be substituted in the place of the original decree-holder. In August 1864, such order was made, according to the prayer of the purchaser, and leave was given to proceed to execution. Nothing, however, was done, and the case was struck off on the 30th August 1864.

The present application was made in February 1865.

* Miscellaneous Special Appeal, No. 78 of 1869, from a decree of the Officiating Judge of Mymensing, dated the 1st December 1868, reversing a decree of the Sudder Ameen of that district, dated the 23rd November 1866.