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HEMANTA KUMARI DEBI v. BROJENDRO KISHORE ROY CHOWDHRY.

arrears of revenue not paid by the owner of the 4-annas share, and the District Judge appears to have been in error in treating that as a decree passed in favour of the owner of the 4-annas share. The Government was in a different position from that in which the owner of the 4-annas share would be, and there is no evidence in the case upon which the District Judge could found his judgment reversing the decree of the first Court, and deciding that this compromise was not beneficial to the adopted son, an infant at the time it was made. When the judgments come to be looked at, it appears that he has reversed the decree of the first Court in the absence of any evidence—certainly in the absence of any evidence upon which he might reasonably come to the conclusion that the deed of compromise was not for the benefit of the adopted son. This appears to be a case in which under the provision of the law that there is a second appeal where there has been a substantial error or defect in the procedure of the Lower Court, the High Court was right in reversing the decree of the District Judge and leaving, as it did, the decree of the first Court—which held that the deed of compromise was a binding one, and therefore the suit for the enhancement of rent ought to be dismissed—to stand.

Their Lordships will therefore humbly advise Her Majesty to dismiss this appeal, and to affirm the decree of the High Court. The appellant will pay the costs.

Appeal dismissed.

Solicitors for the appellant: Messrs. *T. L. Wilson & Co.*
Solicitors for the respondent: Messrs. *Neish & Howell.*

C. B.

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*P.C.** 1890. *March* 12 *and* 13.

RAM LAL (PLAINTIFF) *v.* MEHDI HUSAIN AND OTHERS (DEFENDANTS).

[On appeal from the Court of the Judicial Commissioner of Oudh.]

Privy Council, practice of—Findings of fact—Concurrent findings by two Courts.

The usual course of not disturbing concurrent findings of fact may be followed, notwithstanding that a part of the evidence in the suit has not

Present: LORD MACNAGHTEN, SIR B. PEACOCK, and SIR R. COUCH.

been considered by the Lower Court, when both Courts, have arrived at the same result (1).

In this case, however, the whole of the evidence having been brought to their notice, the Judicial Committee expressed their opinion that the Appellate Court below could not have decided otherwise than as it had decided.

APPEAL from two decrees (13th April 1886) of the Judicial Commissioner varying, upon cross appeals, a decree (18th March 1885) of the District Judge of Lucknow.

This suit was brought by the appellant to obtain a decree against the first respondent, Ram Lal, and the second respondent, the Nawab Kulsuman Nissa Begum, deceased, pending these proceedings, and now represented on this record by Ashgar Husain and by Aga Jani, a minor under the guardianship of the latter. The claim was for Rs. 41,043, made up, in part, of principal Rs. 25,000, and interest due on a bond dated 13th September 1883, (alleged to have been advanced for the Begum to her agent Saiyid Mehdi Husain), and in part of a sum of Rs. 9,020 consisting of advances alleged to have been made at different times between 25th September 1883 and 25th December 1883. Part of the evidence relating to the latter sum, to which alone this appeal related, was a receipt said to have been signed by the Saiyid on 26th December 1883. The Judicial Commissioner made a decree against both the defendants for Rs. 25,734.

Mr. *J. D. Mayne* for the appellant.

Mr. *R. V. Doyne* and Mr. *A. J. David* for the respondent, Saiyid Mehdi Husain.

Mr. *T. H. Cowie, Q.C.*, and Mr. *J. H. A. Branson* for the respondents, Ashgar Husain and Aga Jani.

For the appellant it was argued that upon the evidence the decree should have been for the amount claimed.

For the respondents, both the agent and the representatives of the principal, Counsel argued in support of the judgment of the Appellate Court below.

Mr. *J. D. Mayne* was heard in reply.

Their Lordships' judgment was delivered by :—

LORD MACNAGHTEN :—The suit in which this appeal is brought was instituted by the appellant, Ram Lal, as plaintiff, to recover

(1) As to the rule regarding such a concurrence, *see Krishnan* v. *Sridevi*, I. L. R., 12 Mad., 512.

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moneys alleged to have been advanced by him to the first respondent, Saiyid Mehdi Husain, as agent for a lady who has died during the progress of the litigation, and who is now represented by the last two respondents. A sum of about Rs. 30,000 was claimed as due on a bond dated the 13th and registered on the 19th September 1883. A further sum of about Rs. 9,000 was claimed as having been advanced in various amounts between the 20th September 1883 and the 25th December in that year.

The lower Court allowed the whole amount claimed as due on the bond. The Judicial Commissioner disallowed Rs. 4,000. That disallowance forms one of the grounds of appeal.

In support of his claim to the Rs. 9,000 the appellant relied, first, on oral evidence of a promise to repay the amount; both Courts rejected this evidence. Secondly, he relied on certain accounts which he produced; both Courts rejected those accounts. Thirdly, he relied on an alleged receipt purporting to be signed by Mehdi Husain, and to be dated the 26th December 1883. The respondent on oath denied that the signature was his. The lower Court rejected this receipt for want of a stamp. The Judicial Commissioner remanded the case for further evidence as to the genuineness of the document. When the case came back he rejected the alleged receipt on the merits. And so the claim failed in both Courts.

It was contended by the learned Counsel for the appellant that the case as regards the Rs. 9,000 does not fall within the ordinary rule applicable to two concurrent findings of fact, because the lower Court had not an opportunity of considering, and did not consider, the evidence as to the genuineness of the receipt of the 26th December 1883. Their Lordships are not prepared to hold, either in this particular case or as a general rule, that the mere fact that a part of the evidence in the suit has not been considered by the lower Court, prevents the ordinary rule from applying when both Courts have arrived at the same result. In the present case, however, as the whole of the evidence has been brought to their Lordships' notice, they think it right to add that in their opinion the Judicial Commissioner could not have come to any other conclusion.

When the case was remanded the appellant did not think proper or was unable to produce any evidence as to the genuineness of the receipt on which he relied; but for some reason or other the respondent, Mehdi Husain, called the appellant, and in cross-examination by his own pleader the appellant said that the receipt was signed by Mehdi Husain. There was no corroborative evidence on the point. The appellant, in regard to other statements of his, was held to be a person on whose uncorroborated testimony the Court could not safely depend. Under these circumstances, though it would have been more satisfactory if the Judicial Commissioner had referred to the appellant's assertion, their Lordships cannot say he was wrong in treating it as unworthy of notice.

As regards the Rs. 4,000, there are not two concurrent findings of fact. Here the position of the parties is reversed. The respondent, Mehdi Husain, relies on an acknowledgment or *rukka* which the appellant says is not genuine. The Judge of the lower Court decided against Mehdi Husain principally on two grounds. One was that the *rukka*, if genuine, ought to have been mentioned to the Registrar when the bond was registered; the other was that the respondent in another suit had made a statement with regard to the advance of the money which the learned Judge considered, "if not false, certainly to be misleading." Their Lordships cannot attach any significance either to the fact that the *rukka* was not mentioned to the Registrar, or to the statement in the other suit which appears to their Lordships not to be inconsistent with the respondent's present case.

Having listened to the evidence, their Lordships find themselves unable to dissent from the finding of the Judicial Commissioner. There is very great difficulty in determining, if it is possible to determine, on which side the truth lies in this part of the case; and the learned Counsel for the appellant has not satisfied them that the Judicial Commissioner was wrong.

In the result their Lordships will humbly advise Her Majesty that the appeal ought to be dismissed; the appellant will pay the costs of the appeal, but there will be only one set of costs between the respondents.

Appeal dismissed.

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RAM LAL v. MEDHI HUSAIN.

Solicitors for the appellant: Messrs. *Barrow & Rogers.*

Solicitors for the respondent, Saiyid Mehdi Husain: Messrs. *T. L. Wilson & Co.*

Solicitors for the respondents, Ashgar Husain and Aga Jani: Messrs. *Hore & Pattison.*

C. B.

APPELLATE CIVIL.

Before Mr. Justice Tottenham and Mr. Justice O'Kinealy.

1890. *March* 28.

DEBENDRA COOMAR ROY CHOWDHRY AND ANOTHER (DEFENDANTS NOS. 1 AND 2) *v.* BROJENDRA COOMAR ROY CHOWDHRY (PLAINTIFF) AND ANOTHER (DEFENDANT NO. 3).*

PROSUNNOMOYI DASI (DEFENDANT NO. 3) *v.* BROJENDRA COOMAR ROY CHOWDHRY (PLAINTIFF) AND OTHERS (DEFENDANTS NOS. 1 AND 2).*

Hindu Law—Will—Widow's share on partition—Right to deprive by Will a widow of her share on partition.

Under the Hindu Law in Bengal a person has the right to dispose of his property by will so as to deprive his widow of her share on partition.

Rhobunmoyee Dabea Chowdhrani v. *Ramkissore Acharj Chowdhry* (1) followed.

RAJ COOMAR ROY CHOWDHRY by his will dated 9th Magh 1281 (21st January 1875) gave, devised and bequeathed, subject to a provision for the maintenance of the worship of an idol and the performance of the Doorga Pooja and certain specific bequests therein mentioned, all his immoveable and moveable properties by the 4th clause in the following terms:—"My third son, Debendra Coomar, and my youngest son, Brojendra Coomar, and my two grandsons, Surendra Coomar and Jotindra Coomar, these four persons, shall be the real heirs to my moveable and immoveable properties, the moneys advanced as loans, the conveyances and horses, and all the properties and goods and chattels that I have." The testator appointed his sons Debendra Coomar and Brojendra Coomar executors of his will, and left the entire management of his estate in their hands during their lifetime. The name of his

* Appeals from original decrees Nos. 171 and 231 of 1888, against the decrees of Baboo Krishna Chunder Chatterjee, Subordinate Judge of 24-Pergunnahs, dated the 20th of July 1888.

(1) S. D. A. Rep., 1860, p. 485.