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MISRI LAL

v.
MOZHAR
HOSSAIN.

the plaintiff relies is not valid under the Transfer of Property Act. We are of opinion that the Transfer of Property Act does not deal with a mortgage of this kind. Future indigo crops that may be grown upon a certain plot of land belonging to the mortgagor were mortgaged. A mortgage of this kind does not come within the purview of the Transfer of Property Act. Neither can it be called a pledge of specific moveable property. It is a mortgage of moveable property that may come into existence in future. Such a transaction as this is neither governed by the Transfer of Property Act nor by the Contract Act. The transaction in question is in the nature of an agreement to mortgage moveable property that may come into existence in future. We see no reason to hold that it is not valid. It has been recognized in Courts of Justice in this country; see *Lala-Tilockdhari Lal v. Furlong* (1).

We dismiss the appeal with costs.

K. C. M.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Grant.

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May 27.

SAJIBULLAH SIRKAR (DEFENDANT) v. HAZI KHOSH MOHAMED
SIRKAR (PLAINTIFF).*

Registration Act, ss. 73, 76, and 77—Suit for registration of document.

An application having been made under s. 73 of the Registration Act, the Registrar passed the following order: "All the parties have not appeared, the appeal is struck off. It, however, seems to me that the order of the Sub-Registrar was quite correct." *Held*, that the mere fact of the applicant not having adduced any evidence before the Registrar did not make his order one not refusing registration within the meaning of s. 76; nor was the applicant precluded on that ground alone from pursuing his remedy under s. 77 by a civil suit.

THE suit, out of which this appeal arises, was brought under s. 77 of the Registration Act for obtaining a decree directing the registration of a document alleged to have been executed by the defendant in favor of the plaintiff. The registration of this

* Appeal from Appellate Decree No. 144 of 1886, against the decree of C. A. Kelly, Esq., Judge of Dinagepore, dated the 6th of October 1885, reversing the decree of Baboo Sudhangsu Bhusan Roy, Munsiff of Dinagepore, dated the 1st of August 1885.

document was refused by the Sub-Registrar under s. 73. Within 30 days of the order of refusal by the Sub-Registrar an application was made to the Registrar to whom the said Sub-Registrar was subordinate, in order to establish the applicant's right to have the document registered. The applicant, however, did not appear before the Registrar on the date appointed for holding the enquiry into the question whether the document was executed or not, and no evidence having been offered by either party, the application was refused. The plaintiff then, within the time mentioned in s. 77, instituted this suit. The Munsiff was of opinion that the plaintiff was not entitled to institute it under the provisions of s. 77, inasmuch as he had not adduced any evidence before the Registrar to establish the facts required by law to be established. The District Judge being of a contrary opinion, and finding that the document was executed, awarded a decree against the defendant.

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The defendant appealed to the High Court.

Baboo *Josoda Nundun Pramanick* for the appellant.

Baboo *Gurudas Banerjee* for the respondent.

The judgment of the Court (MITTER and GRANT, JJ.) after stating the facts as above, proceeded as follows:—

In this second appeal it is contended on behalf of the defendant appellant that the Munsiff's view of s. 77 is correct. Section 77 says, omitting the parts which are not material to the question before us, that where a Registrar refuses to order a document to be registered under s. 76, any person claiming under such document may, within 30 days after the making of the order of refusal, institute in the Civil Court a suit for a decree directing the document to be registered. The question therefore is whether there was a refusal by the Registrar to order the document to be registered under s. 76. We are of opinion that the mere fact of the applicant not having adduced any evidence before the Registrar does not make his order one not refusing registration within the meaning of s. 76. The absence of evidence to establish the execution of the deed cannot be a test with reference to the question whether there is or not a refusal under s. 76, because there may be cases in which the applicant,

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after taking all the steps available to him, may fail to compel the attendance of his witnesses, and it would be unreasonable to hold in a case of that description that the applicant was not entitled to the remedy by civil suit under s. 77. It seems to us that where it is found that the application was a *bonâ fide* application under s. 73, and where it does not appear that the applicant abandoned his application, he would not be precluded from pursuing his remedy under s. 77 by a civil suit merely on the ground that no evidence having been adduced by him before the Registrar, the Registrar refused registration.

We therefore agree with the District Judge in the view he has taken of the provisions of s. 77. The appeal will be dismissed with costs.

K. C. M.

Appeal dismissed.

Before Mr. Justice Mitter and Mr. Justice Grant.

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 May 31.

HURO CHUNDER ROY (DEFENDANT) v. SURNAMYOI (PLAINTIFF).^{*}
Limitation Act, s. 5—Discretion of Court—Appeal out of time, admission of.

Section 5 of the Limitation Act gives a discretion to a Court to admit an appeal filed out of time.

A valued his suit at Rs. 18,000, which was reduced to less than Rs. 5,000 by the Court of first instance at Rajshahye. A decree, dated the 20th December 1883, was given against the defendant, who applied for copies on the 3rd of February, and the decree was ready on the 7th. The defendant was apparently under the impression that the appeal would lie to the High Court; but on the 16th of March a letter was despatched by his Calcutta agent informing him that he was mistaken and that the appeal lay to the District Judge. This letter reached Rajshahye on the 17th, and the appeal was filed on the 23rd of March.

Held, that under the circumstances the Court might admit the appeal in the exercise of its discretion under s 5 of the Limitation Act.

THIS suit, which was instituted in the Court of the Subordinate Judge of Rajshahye, was one for khas possession of certain mouzahs and valued at Rs. 18,000. The Court decreed the claim, but upon the objection of the defendant reduced the value to

* Appeal from Appellate Decree No. 238 of 1886, against the decree of F. J. G. Campbell, Esq., Judge of Rajshahye, dated the 5th of October 1885, affirming the decree of Baboo Promotho Nauth Mookerjee, Subordinate Judge of that district, dated the 20th of December 1885.