
(1879) 11 AHC CK 0006

Allahabad High Court

Case No: None

Surja Prasad

APPELLANT

Vs

Bhawani Sahai

RESPONDENT

Date of Decision: Nov. 17, 1879

Citation: (1880) ILR (All) 481

Hon'ble Judges: Robert Stuart, C.J; Spankie, J

Bench: Division Bench

Final Decision: Dismissed

Judgement

Robert Stuart, C.J.

It is unnecessary to consider the findings of the. lower Courts in this case, as the objection taken on the ground of the suleh-nama not having been registered is fatal to the plaintiff's claim, and the appeal must therefore be dismissed with costs. There is also an objection that the document does not bear any stamp. The Judge suggests that it might still be stamped u/s 17 of the Stamp Act then in operation, X of 1862, but I do not observe that any offer of this kind was made by the plaintiff, and it need not be considered, seeing that the compromise cannot be looked at on account of its non-registration, the value covered by it being considerably more than Rs. 100. I must, however, guard myself against being supposed to acquiesce in the extraordinary and repugnant opinion recorded by the Judge respecting the effect of the Suleh-nama on the plaintiff's claim. He finds that this instrument should have been registered, and not having been so it cannot be read in evidence, and yet at the same time he proceeds to argue upon its contents, calling it a new agreement which the plaintiff had violated and that the defendants are therefore free from their liability. I must therefore take care to confine myself to his decretal order by which he upholds the Munsif's decree dismissing the suit, and I would dismiss the present appeal with costs.

Spankie, J.

2. The plaintiff obtained a decree on the 4th August 1865, against Bhika Rai for money. The house and property of the judgment-debtor were attached in execution of the decree. The defendant Bhawani Sahai and Brij Lal, deceased, and Mithu Lal, cousin of Bhika Rai, objected that the house was their property. An arrangement was effected on the 30th July 1866, with the decree-holder, and a compromise filed in which the defendant and Brij Lal undertook that the money should be paid in one year, or in default to pay it [sic, see this fully set out at p. 482 supra] and they hypothecated the property that had been attached, in which they had privately become the purchasers of the shares of the judgment-debtor and Mithu Lal his cousin, as collateral security for the debt. The present suit is to recover Rs. 159-7-3 principal and interest, the amount of the decree, by sale of the property attached, and which was subsequently hypothecated in the compromise. The defendant Bhawani Sahai, for himself and as heir of Brij Lal deceased, contended that the suit was barred by lapse of time; that the property hypothecated was worth more than Rs. 100, but the instrument was not registered and not properly stamped; that after the compromise plaintiff continued to execute his decree against the judgment-debtor and received Rs. 50, thus acting in opposition to the terms of the compromise, which therefore became inoperative. The first Court held that there was an hypothecation of the property in the compromise, and that the deed was inadequately stamped, and to such an hypothecation no liability was attached: the defendant might have been personally liable, but more than twelve years had elapsed from the date of the compromise: the claim also was barred by the three years limitation as the hypothecation was a nullity. The suit was dismissed. The lower Appellate Court noticed that in 1877, when plaintiff took out execution against the defendant, the Court held that defendant the judgment-debtor had been absolved from liability under the decree by the compromise, and the order was affirmed in appeal, and the plaintiff referred to the Civil Court. The Judge holds that it was not barred because plaintiff had prosecuted his claim with all due diligence in the execution department: the deed however was not properly stamped: but there was no reason to suppose that fraud was intended, and the plaintiff was therefore permitted to make good the value: but the deed required to be registered and being unregistered could not be received. The Judge also held that the plaintiff could not sue on the compromise, because he himself had endeavoured to obtain the amount of his decree in execution after the compromise had been executed; he therefore dismissed the appeal.

3. It is contended in second appeal that, as defendant undertook to pay the money under the deed of compromise in 1866, he could not be released from his liability by the act of plaintiff in realising a portion of the decree from the judgment-debtor. Looking at all the circumstances of the case, and having regard to the fact that the money received by the decree-holder after the compromise had been executed, is said to be deducted from the amount now due from the parties who effected the compromise, we should not have been disposed to hold the respondent free from

liability under the deed. But what is termed the compromise is, in this case, much more than a mere compromise. It accepts the debt due by the judgment-debtor, and the defendant and Brij Lai, who had purchased the interests of the judgment-debtor and his cousin Mithu Lal in the property attached, agree to discharge the debt in a year, and they hypothecated the property that had been attached, and which was purchased by them, as security for the debt. Such an instrument is a "mortgage-deed," inasmuch as by it the defendant and his brother obliged themselves to pay money to the plaintiff, and it evidences a pledge of the property for securing the payment of the money. Under the Stamp Act in force in 1866 this instrument, being an obligation for the payment of money, would not have been admissible as a mere agreement, or as a razinama, if it had been necessary to bring a suit upon it, and the later Acts are not less stringent. The Immovable property pledged, it is not denied, is worth more than Rs. 100, and the instrument should have been registered, as the suit to enforce the lien is brought upon the deed itself, and the plaintiff seeks under it to bring to sale the property hypothecated therein and thereby to recover his money. He cannot therefore say that the deed is simply a recital of a compromise, and it is to be regarded as merely information given to the Court of an oral agreement between the parties for the adjustment of the proceedings in execution pending in Court. The case cited by plaintiff, *Ramdial v. Jhaunna Lal* H.C.R. N.W.P. 1871, p. 14, does not apply, as in that case it did not appear that the agreement referred to in the compromise was made in writing. The actual agreement had been orally made, and the document put into Court was simply a petition informing the Court of the arrangement arrived at by the parties. The plaintiff's pleader has put in several decisions of this Court which he argues rule the point in his favour, and are to the effect that such documents as that now before the Court need not be fully stamped or registered as bonds or mortgages. But I have very carefully gone into these cases and now refer to them in detail.

4. *Bhikam Ram v. Hanuman Prasad* R.A. 99 of 1875, decided 6th March 1876.--In this case the decree under the compromise dated 12th June 1866, gave a lien on the property to the decree-holder, and the claim before the Court was not to enforce the compromise but clearly to enforce the lien given by the decree. *Jiwan Singh v. Rampartab Singh* R.A. 54 of 1876, decided 9th November 1876.--In this case the sixth plea in appeal raised the point whether the transaction in dispute was valid, the deed not having been properly stamped and registered. It is doubtful whether the plea was pressed. It is certain that the judgment does not determine the point and that it is absolutely silent with regard to it. *Mukand Ram v. Cheda Singh* S.A. 688 of 1876, decided 8th November 1876.--In this case the petition put into Court was held not to be the agreement itself. It was filed in order to inform the Court that an oral agreement had been made and it asks for postponement of sale. The judgment proceeds upon the fact that the agreement itself (apart from the petition) had never been denied. *Bansidar v. Ahmad Hnsain Khan* R.A. 82 of 1876, decided 3rd May 1877

Bansidhar v. Muzaffar Hnsain Khan R.A. 42 of 1874, decided 24th August 1874.--In these cases there were several petitions asking for postponement of sale which were not alleged in the subsequent claim to have been the basis of that claim. The dispute arose out of the several agreements to pay high interest. When the cases came before the High Court the learned Judges ruled that the first Court had misunderstood the nature of the claim, which was not founded on the petitions, but on a separate oral agreement. There was no hypothecation whatever in those agreements or petitions. Bisharath Husain v. Imamunnissa R.A. 85 of 1876, decided 9th May, 1877.--In its judgment this Court expressly stated that it was satisfied that the document objected to was not a compromise, but simply a petition informing the Court regarding an arrangement at which the parties had arrived. This judgment cites, as ruling the point, the case of Ramdyal v. Jhaunna Lal H. C.B. N.W.P. 1871 p. 14 which I referred to above as cited by plaintiff's pleaders during the hearing, and which I have held inapplicable to the present case. It also cites for the same purpose the case of Bansidhar v. Ahmad Hnsain Khan R.A. 82 of 1876, decided 3rd May 1877 above referred to. The learned Judges lay it down that such a petition, not being the agreement itself, cannot be rejected as evidence of an arrangement between the parties simply because it was not sufficiently stamped and was not registered.

5. It will thus be seen that none of the rulings cited are applicable to this case in which the claim is based upon the hypothecation contained in the compromise. Here the document, put in in execution of a decree and not embodied in a decree charging the property, which property plaintiff seeks to sell in order to secure his money, is not relied upon as evidence of a distinctly separate parol evidence, but as the hypothecation itself. Such a document I hold to be one which must be sufficiently stamped, and if necessary, as it is here, registered. I would therefore on this ground dismiss the appeal and affirm the judgment with costs.