Privy Council Appeal No. 81 *of* 1918.
Bengal Appeal No. 24 *of* 1917.

Rani Hemanta Kumari Debi - - - - - *Appellant*

v.

The Midnapur Zemindari Company, Limited - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 1ST JULY, 1919.

Present at the Hearing:
VISCOUNT HALDANE.
LORD BUCKMASTER.
LORD DUNEDIN.

[*Delivered by* LORD BUCKMASTER.]

The real question on this appeal is whether an agreement made in writing between Robert Watson & Company, Limited, and the appellant, incorporated in a decree of the Subordinate Judge of Nadia but not registered, is admissible in evidence. The appellant contends that it is not, and the respondents assert that it is.

The determination of the question depends mainly upon the construction of the Registration Act of 1908, but before considering the terms of this statute it is desirable to state shortly the facts which have led up to the dispute. In 1895 the appellant instituted two suits in the Court of the Subordinate Judge of Nadia, the one against the Government (No. 72 of 1895) and the other against Robert Watson & Company, Limited, being No. 73 of 1895. The object of each of these suits was to obtain possession of land claimed by the appellant. The land had been diluviated owing to encroachments of the river Padma and had then subsequently reappeared and formed the areas which were the subject of controversy. The suit No. 73 of 1895 was compromised, the

terms of the compromise being that Robert Watson & Company, Limited, were to retain possession of the land they occupied, but that the ownership of the appellant was to be recognised and Watson & Company's possession was to be upon certain agreed terms as to payment of rent and otherwise. It was also provided that if in suit No. 72 the appellant succeeded in obtaining a decree against the Government, she should grant a *jote* settlement of the lands in such suit to Robert Watson & Company upon the same conditions as those agreed with regard to the land that was in their possession. This agreement was reduced into writing, a petition of compromise based upon it was filed by the appellant in suit No. 73, and on the 20th September, 1897, judgment was given in terms of the compromise and a decree was drawn up in pursuance of the judgment on the same date. This decree recites the claims in the suit and the petition for compromise and grants a decree in the terms of the compromise, which are then set out in full.

The appellant pursued her claim against the Government and the litigation proceeded through all the Courts until by His Majesty's Order in Council of the 4th April, 1906, the appellant was declared entitled to the land. Meanwhile, the rights of Messrs. Watson & Company had been sold to Messrs. Crawford & Gregson, and they, on the 3rd December, 1906, conveyed all their rights to the present respondents. The appellant refused, for various reasons which are not now material, to recognise the obligations into which she had entered by the compromise to grant a *jote* settlement of the lands the subject of suit No. 72, and the proceedings out of which this appeal has arisen were instituted by the respondents claiming specific performance of the agreement in this respect.

Apart from matters which need not now be considered, the appellant's defence rested upon the ground that the compromise could not be given in evidence, firstly because, treated as an ordinary contract, it had not been registered, and secondly, if it were regarded as a decree, the decree was inoperative in relation to the lands in dispute, as they did not relate to the suit in which the decree sanctioning the compromise had been made.

With regard to the first, the Registration Act of 1908 provides that "lease" includes an agreement to lease, and by section 17 enacts that leases must be registered, the penalty for non-registration being imposed by section 49, which provides that, if not registered, no document shall affect immovable property which it comprises or be received as evidence of any transaction affecting such property. If the document in question can be regarded as a lease within the meaning of this definition it could not be received in evidence. Their Lordships are of opinion that it cannot be so regarded. An "agreement for a lease," which a lease is by the statute declared to include, must, in their Lordships' opinion, be a document which effects an actual demise and operates as a lease. They think that Jenkins, C.J., in the case of *Panchanan Bose* v. *Chandi Charan Misra* (37 I.L.R. Cal. 808) correctly stated the interpretation of section 17 in this respect. The present agreement is an agreement that, upon the happening of a contingent event

at a date which was indeterminate and, having regard to the slow progress of Indian litigation, might be far distant, a lease would be granted. Until the happening of that event it was impossible to determine whether there would be any lease or not. Such an agreement does not, in their Lordships' opinion, satisfy the meaning of the phrase "agreement for a lease," which, in the context where it occurs and in the statute in which it is found, must in their opinion relate to some document that creates a present and immediate interest in the land. So far, therefore, as this decision depends upon the need for registration of the document as a lease, the Registration Act places no obstacle in the respondents' way. By section 17 (1) (b), however, it is also provided that other non-testamentary instruments which purport or operate to create, whether in present or in future, any right, title or interest, vested or contingent, of the value of Rs. 100 and upwards, to or in immovable property, need registration. But this is subject to the exception provided in sub-section (2) of section 17, which states that "Nothing in clauses (b) and (c) of sub-section (1) applies to," among other things, "any decree or order of a Court." If, therefore, the decree in the present case can be regarded as a decree within the meaning of that exception, there is nothing in the Registration Act to affect the matter. It is urged that it cannot be so regarded for this reason, that by section 375 of the Code of Civil Procedure (Act XIV. of 1882) it is provided :—

> "If a suit be adjusted wholly or in part by any lawful agreement or compromise, or if the defendant satisfy the plaintiff in respect to the whole or any part of the matter of the suit, such agreement, compromise or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final, so far as relates to so much of the subject-matter of the suit as is dealt with by the agreement, compromise or satisfaction."

The terms of this section need careful scrutiny. In the first place, it is plain that the agreement or compromise, in whole and not in part, is to be recorded, and the decree is then to confine its operation to so much of the subject-matter of the suit as is dealt with by the agreement. Their Lordships are not aware of the exact system by which documents are recorded in the Courts in India, but a perfectly proper and effectual method of carrying out the terms of this section would be for the decree to recite the whole of the agreement and then to conclude with an order relative to that part that was the subject of the suit, or it could introduce the agreement in a schedule to the decree ; but in either case, although the operative part of the decree would be properly confined to the actual subject-matter of the then existing litigation, the decree taken as a whole would include the agreement. This in fact is what the decree did in the present case. It may be that as a decree it was incapable of being executed outside the lands of the suit, but that does not prevent it being received in evidence of its contents.

Turning now to the Registration Act of 1908, and considering the meaning of the word "decree" in section 17 (2) (vi), this must

be read in connection with the purpose of the statute, which is to provide a method of public registration of documents, and there is, therefore, no reason why a limit should be imposed upon the meaning of the word so as to confine it to the operative portion only of the decree.

This conclusion is in agreement with the view expressed by Lord Watson in *Pranal Annee* v. *Lakshmi Annee and others* (26 I.A. 101) on a point in close resemblance to that raised in the present appeal. In that case a suit was originally raised for possession of certain land, and certain other lands were expressly excluded from the ambit of the claim. That suit was compromised by two documents, the one being styled a *razinamah*, or agreement of compromise, and the other an agreement of union. The agreement of union, which related to the lands outside the suit as well as those within, was not registered and was not submitted to the Subordinate Judge before whom the litigation depended. The *razinamah* was produced in the suit on a petition asking:—"That a decree may be passed in accordance with the *razinamah* which they have presented under section 375 of the Civil Procedure Act, after settling." It contained, in the first place, a detailed description of the lands which were in controversy in the suit of 1885, and stated that the parties had agreed to share these lands in certain proportions. It also independently set out the effect of the agreement as to the lands outside the suit, and described them in a schedule named schedule D, but the order made did not include and had no reference to these lands. The parties acted upon the entire agreement, and in a subsequent dispute as to the lands outside the suit of 1885 the question arose as to whether the *razinamah* could be given in evidence. This Board decided that, so far as it was acted upon by the learned Judge, it was properly admissible, but that as the order made had not in fact referred to or narrated the terms of the compromise, the *razinamah* being unregistered could not be received in evidence. But in expressing the judgment of the Board upon this point Lord Watson made the following statement:—

> "If the parties, after agreeing to settle the suit of 1885 on the footing that they were each to take a half-share of the lands involved in that suit, and also a half-share of the lands now in dispute, had informed the learned Judge that these were the terms of the compromise, and had invited him, by reason of such compromise, to dispose of the conclusions of the suit of 1885, their Lordships see no reason to doubt that the order of the learned Judge, if it had referred to or narrated these terms of compromise, would have been judicial evidence, available to the appellant, that the respondents had agreed to transfer to her the moiety of land now in dispute. But their Lordships are unable to find that any such course was taken, either in the *razinamah* or in the judicial order which gave effect to it. The *razinamah* merely referred, by way of remark, to the lands now in dispute; and the Judge was only asked to give effect to a compromise which related to the lands then in dispute before him. This order, accordingly, merely concerns the latter, and has no reference whatever to the lands described in schedule D of the *razinamah*. So far as regarded these lands, the compromise was not submitted to the learned Judge, but was deliberately left by the parties to stand upon their unregistered agreement of union."

Section 375 and its effect were clearly under the consideration of the Board, and the judgment thus expressed showed that, merely regarding the question as a question of evidence and not as to the effect of the decree on lands outside the subject of the suit, such a document as that in the present case when incorporated in a decree was clearly admissible as judicial evidence. Though this judgment does not in terms refer to section 17 (2) (vi) of the Registration Act, it gives full effect to the opinion that their Lordships have formed as to its interpretation. The decree in the present case is a decree which makes no difference whatever in its language between one part and another part of the compromise; it incorporates the whole; and it is, in other words, a decree which, though affecting the lands in the suit as a decree, incorporates the whole of the agreement which led to the suit being compromised. For this reason their Lordships think that the registration of the agreement was unnecessary and that the decree is sufficient evidence of its terms.

The learned Subordinate Judge, before whom this matter was first heard, treated the decree as a nullity and based his judgment in favour of the respondents upon the view that, when once the agreement was held not to be a lease, there was nothing to compel its registration. He regarded the document as outside the provisions of section 17 (1) (b). Their Lordships are unable to take this view. They think the document did purport to create a contingent right or interest in immovable property, and they do not think that in treating the decree *pro tanto* as a nullity the learned Subordinate Judge has given effect to the difference between receiving the decree in evidence as a decree and executing its terms as against property outside the suit. Mr. Justice Beachcroft in the High Court took the view on this point which their Lordships think accurate, and they are of opinion for the reasons they have given that the appellant's contention cannot succeed.

The appellant further raised a question relating to the circumstances under which the document was executed. She said the agreement was come to upon the basis that Watson & Company should not assist the Government in their defence of the appellant's suit and that they did in fact render active assistance, and thereby rendered it inequitable on their part to ask specific performance of an arrangement which was only come to on the terms that such assistance should not be afforded. Upon this point it is important to observe, in the first place, that if this really were a term of the arrangement, it is not to be found in the agreement; and secondly, that, if it affects the contract, it must affect it *in toto*, and that it is impossible for the appellant, having accepted and received the advantage of the compromise so far as it related to the lands in the suit, now to resist its effect upon the other portion of the lands to which it related.

For these reasons their Lordships think that the appeal should be dismissed with costs, and they will humbly advise His Majesty accordingly.

In the Privy Council.

RANI HEMANTA KUMARI DEBI

v.

THE MIDNAPUR ZEMINDARI COMPANY,
LIMITED.

DELIVERED BY LORD BUCKMASTER.

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