

Hakumat Rai
v.
Khushi Ram

the Act can be passed and if passed can be executed by the civil Courts.

Mahajan, J.

For the reasons given above, I set aside the order of the Courts below and allow this appeal. The decree-holder will be entitled to take out execution and obtain possession of the premises from the judgment-debtor.

In the circumstances of the case, however, I would leave the parties to bear their own costs throughout.

R. S.

APPELLATE CIVIL

Before Shamsheer Bahadur, J.

MST. BHAGWANI,—Appellant.

versus

LAKHI RAM AND ANOTHER,—Respondents.

Execution Second Appeal No. 38 of 1959.

1959
Aug., 11th

Code of Civil Procedure (V of 1908)—Order 21 Rule 2—Adjustment of the decree—Whether must be a completed contract—Agreement to adjust the decree on the fulfilment of a future condition—Whether an “adjustment”—Indian Registration Act (XVI of 1908)—Section 17(2)(vi)—Order on application under Order 21 Rule 2 C.P.C.—Whether requires registration.

Held, that an adjustment within the meaning of rule 2 of Order 21 of the Code of Civil Procedure must be a completed Contract which immediately extinguishes and takes the place of the original decree. If there is only an agreement to adjust the decree on the fulfilment of a future condition, there is no adjustment of the decree. When the performance on the part of the judgment-debtor of an agreement is yet to be done and his obligation remains in

the realm of promise, it is destructive of the plea of adjustment.

Held, that if a compromise amounts to an adjustment within the meaning of Order 21, rule 2 of the Code of Civil Procedure, it is exempt from registration under clause (vi) of sub-section (2) of Section 17 of the Indian Registration Act. An order passed by the executing court on an application made for adjustment falls clearly within the exception.

Oudh Commercial Bank Ltd., Fyzabad v. Thakurian Bind Basni Kuer and others (1); *Udham Singh v. Atma Singh* (2); *S.T.R.M. Chettyar Firm v. Andathal* (3), relied upon; *Ziladar Singh v. Brij Lal Singh* (4) and *Channappa Girimallappa Jolad v. Shankardas Vishnudas Darbar and others* (5), distinguished.

Execution Second appeal from the order of Sh. Chetan Dass Jain, Additional District Judge, Gurgaon, dated the 7th October, 1958, affirming that of Shri H. S. Ahluwalia, Sub-Judge, III Class, Palwal, dated the 18th March, 1958, dismissing the application for execution.

J. N. SETH, for Appellant.

DALIP SINGH, for Respondents.

JUDGMENT

SHAMSHER BAHADUR, J.—This judgment will dispose of two Execution Second Appeals Nos. 38 and 39 of 1959, preferred by Mst. Bhagwani against Lakhi Ram, etc., and Mohar Singh, respectively.

Shamsher
Bahadur, J.

These appeals arise out of two pre-emption suits filed by Shrimati Bhagwani and compromised on 6th of June, 1957. In the suit brought against Lakhi Ram and Ram Sarup for possession of 44 *kanals* and 19 *marlas* of land, a decree was granted on payment of Rs. 5,100, out of which a sum of Rs. 4,400 was to be retained by her for payment to

(1) A.I.R. 1939 P.C. 80

(2) I.L.R. 1941 Lah. 383

(3) A.I.R. 1936 Rang. 289

(4) A.I.R. 1937 All. 513

(5) A.I.R. 1942 Bom. 282

Mst. Bhagwani
v.
Lakhi Ram
and another

Shamsher
Bahadur, J.

prior mortgagees and the balance of Rs. 700 was to be deposited for the vendees by 30th of June, 1957. The second suit for possession of 27 *kanals* and 7 *marlas* of land against Mohar Singh was likewise compromised on payment of a sum of Rs. 4,000 of which a sum of Rs. 3,600 was to be retained by her for the prior mortgagees and the balance was to be paid to the vendee by 30th of June, 1957. The payments in both these suits were made by Bhagwani on the due date.

On 12th of July, 1957, two separate applications were presented by both the judgment-debtors to the Court of the Subordinate Judge Palwal, which had passed the decrees of 6th of June, 1957, under section 47 of the Civil Procedure Code. It was stated in these applications that after the deposits had been made by Bhagwani, a compromise was made between the parties in the presence of the Panchayat. In the application presented by Lakhi Ram and Ram Sarup it was stated that a sum of Rs. 600 had been paid to Bhagwani in cash and there was a promise to transfer one *killa* of land free of charge after it had been redeemed from the mortgagees. In Mohar Singh's suit, it was stated that a sum of Rs. 60 in cash had been given to her and a *killa* in Square No. 19/20 was promised to be given free of charge. In return for these payments in cash and promises of land she was to relinquish her claims in the pre-emption decrees obtained by her on 6th of June, 1957. Mst. Bhagwani made a statement on the same day before the Court on 12th of July, 1957, accepting these terms and the Court thereupon recorded compromises in the following terms:—

“In view of the statement of the decreeholder and the judgment-debtors, entry of complete satisfaction should be

made in the register. The compromise should also be entered there."

Subsequently Bhagwani apparently changed her mind and sought execution of the compromise decrees, dated 6th of June, 1957, by applications presented on 12th of August, 1957, stating therein that she had become owner of the lands on payment of the amounts which had been deposited by her in pursuance of these decrees. As for the compromise of 12th of July, 1957, Bhagwani made the allegation that it was illegal, void and ineffectual. The proceedings in both the execution applications were consolidated and the execution Court dismissed them on 18th of March, 1958. Bhagwani also failed in her appeals before the Additional District Judge, Gurgaon, and she has now come in appeal to this Court.

The contention of Mr. Jagan Nath Seth, on behalf of Bhagwani, is two-fold. In the first place it is urged that the compromise of 12th of July, 1957, is wholly ineffectual as it was made in an application under section 47 of the Civil Procedure Code when in fact no application for execution was pending. If the proceedings are to be regarded as an adjustment under rule 2 of Order 21 of the Civil Procedure Code, the order was ineffective for want of complete performance on behalf of the judgment-debtors as the land was still to be transferred. It was also pressed both before the executing Court and here that the compromises of 12th of July, 1957, were unenforceable for want of registration. Similar points had been urged before the Courts below but they did not find favour with them.

Though an executing Court is primarily concerned with the decree as is passed by the Court, there is no statutory restriction placed on the

Mst. Bhagwani
v.

Lakhi Ram
and another

Shamsher
Bahadur, J.

Mst. Bhagwani
v.
Lakhi Ram
and another

Shamsher
Bahadur, J.

parties to effect the discharge or satisfaction of such decree. The Court, when it was presented with the application of 12th of July, 1957, could not pass an order under section 47 of the Civil Procedure Code under which it purports to be. It is to be observed that under section 47, "all questions arising between the parties to the suit in which the decree was passed, or their representatives, and relating to the execution, discharge or satisfaction of the decree, shall be determined by the Court executing the decree and not by a separate suit". The subject-matter of the settlement which is embodied in the statements of the parties recorded on 12th of July, 1957, may reasonably be construed as a discharge or satisfaction of the decree of 6th of June, 1957. But as no execution proceedings were pending, the Court could not be regarded as one which was "executing the decree". The counsel for the respondents has contended that the substance and not the form of the application is to be seen and when the matter is examined in this light it seems plain that the application could and must indeed be deemed to have been under rule 2 of Order 21 of the Civil Procedure Code according to which if "the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty is to execute the decree, and the Court shall record the same accordingly". I am prepared to treat the proceedings emanating from the application made by the judgment-debtors on 12th of July, 1957, and culminating in the order of the Court on the same day as proceedings taken under rule 2 of Order 21 of the Civil Procedure Code.

This does not, however, resolve the basic difficulty of the judgment-debtors. It is to be

borne in mind that it is only after a decree is "otherwise discharged" that the Court can certify such adjustment. The lands which had to be transferred to the decree-holder-appellant under the compromises of 12th of July, 1957, were still with the judgment-debtors till the date of the order passed by the Additional District Judge of Gurgaon on 7th of October, 1958. As stated in the penultimate paragraph of the order of the learned Judge, "Shri Siri Ram, however, has assured me at the Bar that the judgment-debtors will fulfil their part of their contract by applying for redemption of the lands agreed to be given to the appellant and will thereafter deliver possession of that land to her". Thus the performance on the part of the judgment-debtors is yet to be done and this to my mind is destructive of the plea of adjustment. The appellant's counsel has relied very strongly on the Privy Council decision in *Oudh Commercial Bank, Ltd., Fyzabad v. Thakurain Bind Basni Kuer and others* (1), more especially, the observations of the Board at page 86 to the effect that where "the true effect of the agreement was to discharge the decree forthwith in consideration of certain promises by the debtor, then no doubt the Court will not have occasion to enforce the agreement in execution proceedings, but will leave the creditor to bring a separate suit upon the contract". In the instant case, the judgment-debtors had promised transfer of their lands to the decree-holder and in fact a portion of this land had to be redeemed before the decree-holder could become an effective owner. Not only were the terms of the original decrees of 6th of July, 1957, substantially varied and altered in the compromise of 12th July, but the obligations incurred by the judgment-debtors in return for

Mst. Bhagwani
v.
Lakhi Ram
and another
—
Shamsher
Bahadur, J.

(1) A.I.R. 1939 P.C. 80

Mst. Bhagwani
v.
Lakhi Ram
and another

Shamsher
Bahadur, J.

the decree-holder forsaking her rights in the original decree of the 6th of June, 1957, have not been fulfilled. In other words, the "obligations" of the judgment-debtors remained in the realm of promise and is attracted by the rule enunciated by the Privy Council in the case of *Oudh Commercial Bank* (1). In the Full Bench authority of the Punjab High Court, *Udham Singh v. Atma Singh* (2), it was held that an adjustment within the meaning of rule 2 of Order 21 of the Code of Civil Procedure must be a completed contract which immediately extinguishes and takes the place of the decree. If there is only an agreement to adjust the decree on the fulfilment of a future condition there is, in my opinion, no 'adjustment'. The compromise of 12th July, 1957, is at best an inchoate agreement inasmuch as the land had still to be transferred and further it had to be redeemed before an effective transference could take place. In *S. T. R. M, Chettyar Firm v. Andathal* (3), a Division Bench authority of the Rangoon High Court, a decree-holder had agreed that if the judgment-debtor transferred some land and paid a certain sum he would regard the decree as fully adjusted. Land was not transferred by the judgment-debtor nor was payment made and it was held that no adjustment of the decree could be said to have taken place within the meaning of rule 2 of Order 21 of the Code of Civil Procedure. Bhagwani changed her mind only a few days after her assent to the compromise had been recorded by the Court on 12th of July, 1957, and she made the present application for execution on 11/12th of August, 1957. These applications, in my view, are a complete answer to the case of 'adjustment' as the settlement envisaged in the proceedings of

(1) A.I.R. 1939 P.C. 80
(2) I.L.R. 1941 Lah. 383
(3) A.I.R. 1936 Rang. 289

12th July, 1957, does not fall within the scope of rule 2 of Order 21.

Mst. Bhagwani
v.
Lakhi Ram
and another

Shamsher
Bahadur, J.

The authorities cited on behalf of the respondents are *Ziladar Singh v. Brij Lal Singh* (1), and *Channappa Girimallappa Jolad v. Shankardas Vishnudas Darbar and others* (2). They do not, in my opinion, have any bearing on the question in issue in the present case. I would accordingly hold that the compromise of 12th of July, 1957, being not an adjustment could not provide a bar to the execution of the original decrees of 6th of June, 1957.

This would render unnecessary a decision of the question whether the compromise of 12th of July, 1957, is unenforceable for want of registration. It seems to me that if this compromise is an adjustment within the meaning of Order 21, rule 2 of the Civil Procedure Code, it would be exempt from registration under clause (vi) of sub-section (2) of section 17 of the Indian Registration Act, under which, "any decree or order of a Court except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding" is exempt from compulsory registration. An order passed by the executing Court on an application made for adjustment falls clearly within the exception and on this point I am inclined to agree with the conclusion of the Courts below.

As, however, the compromise of 12th of July, 1957, is not an adjustment, I would allow these appeals and direct that the execution applications

(1) A.I.R. 1937 All. 513

(2) A.I.R. 1942 Bom. 282

Mst. Bhagwani of Mst. Bhagwani should be dealt with in accordance with law. As the point raised in these appeals is debatable I would leave the parties to bear their own costs.

v.
Lakhi Ram
and another

Shamsher
Bahadur, J.

K. S. K.

CIVIL MISCELLANEOUS

Before Bhandari, C. J. and D. Falshaw, J.

GURKIRAT SINGH,—Appellant

versus

GURDIT SINGH AND OTHERS,—Respondents.

Supreme Court Application No. 132 of 1958.

1959
Aug., 12th

Constitution of India (1950)—Article 133—Single Judge setting aside the order of the Lower Court—Division Bench on appeal affirming the judgment of the Single Judge—Certificate for leave to appeal to the Supreme Court—When can be granted.

Held, that where on appeal under clause 10 of the Letters Patent a Division Bench affirms the decision of a Single Judge of the Court and an appeal is proposed to be taken to the Supreme Court, the judgment sought to be appealed against, namely, the judgment of the Division Bench is a judgment affirming the decision of the court below. A certificate for leave to appeal to the Supreme Court can be granted only if the appeal involves the decision of a substantial question of law.

Application under Article 133 (1) of the Constitution of India praying that a certificate of fitness for leave to appeal to the Supreme Court of India against the judgment passed by the Hon'ble Mr. Chief Justice A. N. Bhandari and Hon'ble Mr. Justice Chopra, dated the 31st July, 1958; in L. P. A. No. 53 of 1958, whereby the judgment of Hon'ble Mr. Justice A. N. Grover, dated the 7th February, 1958, reversing that of Shri Brijinder Singh, Sodhi,