

State should be considered when granting partition, but the question was not decided. A good deal may be said on both sides, but the arguments used by my learned colleague seem to me conclusive, and I, therefore, concur in the decision at which he has arrived.

As regards the details of the moveable property liable to partition, no sufficient reasons were shown for interfering with the judgment of the Subordinate Judge.

We must, therefore, confirm the decree of the Subordinate Judge, and direct that the costs of this appeal be paid by appellant, excepting the costs of the cross-objections, which must be borne by the respondent.

Decree confirmed.

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18 B. 389.**

18 B. 394.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

**RANCHORDAS NATHUBHAI AND OTHERS (Original Plaintiffs),
Applicants v. BHAGUBHAI PARMANANDAS AND OTHERS (Original
Defendants), Opponents.* [11th July, 1893.]**

Succession Certificate Act (VII of 1889)—Landlord and tenant—Suit for rent.

A certain firm mortgaged with possession its immoveable property to two other firms trading jointly, who let out the property to the mortgagor firm. Afterwards some of the partners of the mortgagee firms having died, the surviving partners and the sons of the deceased brought a suit against the mortgagor firm to recover rent which accrued due after the deaths of the deceased partners. The Judge held that the plaintiffs could not proceed with the suit without a certificate under the Succession Certificate Act (VII of 1889).

Held, reversing the order, that as the rent sued upon became due after the deaths of the deceased partners, it formed no part of their estates at the time of their respective deaths, and no certificate was, therefore, necessary under the Succession Certificate Act (VII of 1889).

[R., 36 C. 936 (942) = 16 C.L.J. 180 = 13 C.W.N. 966.]

[395] APPLICATION under the High Court's extraordinary jurisdiction (s. 622 of the Civil Procedure Code, Act XIV of 1882) against the decision of Rao Bahadur M. N. Nanavati, First Class Subordinate Judge of Surat.

Suit to recover arrears of rent.

In 1885 the defendants' firm through its manager mortgaged certain premises to two firms which traded together in partnership. Of these two firms, Chunilal Dwarkadas and Fatechand Hirachand were the proprietors. On the day of the mortgage the mortgagee firms leased the mortgaged property to the mortgagor firm, agreeing to take rent by two instalments per year. Fatechand died on the 5th January, 1888, and Chunilal on the 1st January, 1889. In the year 1892 the plaintiffs, who were then the partners of the mortgagee firm, and the sons of the deceased Chunilal and Fatechand brought a suit against the proprietors of the mortgagor firm to recover rent which was due from April, 1889.

The Subordinate Judge held that the plaintiffs could not proceed with the suit without a certificate under the Succession Certificate Act (VII of

* Application No. 224 of 1892 under extraordinary jurisdiction.

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1889), on the ground that the partnership of the plaintiffs was a partnership by contract and not a family partnership, and directed them to produce the certificate within a particular time.

The plaintiffs applied under the extraordinary jurisdiction, and obtained a *rule nisi* calling on the defendants to show cause why the order of the Subordinate Judge should not be set aside on the ground that he was wrong in holding that a certificate under the Succession Certificate Act was necessary for the maintenance of the suit.

Kalabhai Lallubhai appeared for the plaintiffs in support of the rule.—On the deaths of Chunilal and Fatechand their interest in the mortgaged property survived to their sons, and, therefore, no succession certificate was necessary. Further, our claim is in respect of rent, which accrued due after the deaths of Chunilal and Fatechand. We do not seek to recover rent which became due during their lifetime, and if we had done so, a succession certificate would have been necessary.

[396] There was no appearance for the opponents (defendants) to show cause.

ORDER.

SARGENT, C.J.—As the rent sued upon became due after the deaths of Chunilal and Fatechand it formed no part of their estates at the time of their respective deaths, and, therefore, no certificate was necessary under the Act of 1889. We must, therefore, make the rule absolute and reverse the decree of the Court below and send back the case for trial.

Order reversed and case sent back.

18 B. 396.

APPELLATE CIVIL.

Before Sir Charles Sargent, Kt., Chief Justice, and Mr. Justice Telang.

SHRIDHAR BALLAL KELKAR (*Original Plaintiff*), *Appellant v.*
CHINTAMAN SADASHIV MEHENDALE AND ANOTHER (*Original*
Defendants), *Respondents.** [12th July, 1893.]

Registration—Registration Act (III of 1877), s. 17, cl. (h)—Sale—Construction—Document creating a right to obtain another document.

By an unregistered writing, dated 17th April, 1889, A. agreed to sell to B. certain landed property on his (B's.) paying off the mortgage-debt due upon it and a further sum of Rs. 1,500. The agreement also stated that B. had on that day paid A. the Rs. 1,500 and might pay off the mortgage-debt at any time he liked, and that A. would execute a valid deed of sale. In a suit brought by A. upon the agreement the lower Court held that the agreement was an agreement of the equity of redemption and required registration, and that being unregistered, the plaintiff's claim based on it could not be maintained. On second appeal,

Held, following *Chunilal Panalal v. Bomanji* (1) that the agreement did not require registration.

SECOND appeal from the decision of A. D. Pollen, District Judge of Poona.

The plaintiff sued for a declaration that a deed of sale, dated the 28th January, 1890, of two houses in Poona executed by defendant No. 1 to

* Second Appeal, No. 43 of 1892.

(1) 7 B. 310.