

Judge's Court, to refund the money obtained by him in execution from the Small Cause Court. Such an order could only be made if it was necessary for the ends of justice or to prevent the abuse of the process of the Court. We do not think that it can be said to have been necessary for either purpose because the opponent had already a decree which he was entitled to execute in the First Class Subordinate Judge's Court. We, therefore, set aside the order with costs.

1909.

GANESH
NARAYAN
v.
PURUSHOT-
TAM
GANGADHAR.

Order set aside.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

KRISHNA TANHAJI (ORIGINAL DEFENDANT), APPELLANT, v. ABA SHETTI PATIL (ORIGINAL PLAINTIFF), RESPONDENT.*

1909.

July 13.

Transfer of Property Act (IV of 1882), section 5A—Sale—Compromise—Land worth less than Rs. 100—Registration of deed, or delivery of possession not necessary.

The terms of a compromise affecting a claim to land of the value of less than Rs. 100 were reduced to writing. The document was not registered, nor was the transaction accompanied by delivery of possession. The material provisions of the deed were as follows :—

“ You and we are co-sharers. In your and our land, Survey No. 20, there is a well. Therein you and we have a joint share. Partition is to be made including it. After the said (survey) number is divided, we shall give 9 *pands* more from our share and both of us should put up a *bandh* (embankment) in the middle of the well, and possession and enjoyment should be carried on according to our respective shares. According to this condition we should not cause obstruction to each other. One who will act in contravention of this agreement will be able to reimburse loss which may be caused.”

The lower appellate Court regarded the transaction as a sale which under the provisions of the Transfer of Property Act (IV of 1882) required delivery of possession in order to validate it.

Held, that the terms of the deed did not bring the transaction within the category of a sale, as defined in the Transfer of Property Act (IV of 1882).

* Second Appeal N. 934 of 1908.

1909.

KRISHNA
TANHAJI
v.
ABA SRI TRI
PATIL.

Held, further, that the document in question merely embodied a compromise between the parties and was in effect an acknowledgment of existing rights; and that therefore no delivery of possession was necessary.

Rani Mewa Kuwar v. Rani Hulas Kuwar⁽¹⁾, followed.

SECOND appeal from the decision of B. C. Kennedy, District Judge of Násik, modifying the decree passed by R. K. Bal, Subordinate Judge of Sinnar.

The plaintiff sued to recover from the defendant a certain piece of land, alleging that it was his ancestral land and had been unlawfully occupied by the defendant.

The defendant pleaded ownership and long possession.

On the 4th August 1902, the parties had entered into an agreement, which ran as follows:—

“You and we are co-sharers. In your and our land, Survey No. 20, there is a well. Therein you and we have a joint share. Partition is to be made including it. After the said (survey) number is divided, we shall give you 9 *pands* more from our share and both of us should put up a *bandh* (embankment) in the middle of the well and possession and enjoyment should be carried on according to our respective shares. According to this condition we should not cause obstruction to each other. One who will act in contravention of this agreement will be able to reimburse loss which may be caused. We have passed this agreement of our free will and pleasure.”

This document was not registered, nor was it accompanied by delivery of possession. The value of the land affected by the compromise was less than Rs. 100.

The Subordinate Judge found that the plaintiff had been owner of the land in dispute but that he had given a portion of it to defendant in pursuance of a compromise. He decreed the plaintiff's claim to the lands excepting the portion of it covered by the compromise.

On appeal, the District Judge held that the document was ineffectual as it was not registered and was not accompanied by actual delivery. He therefore awarded plaintiff's claim in full.

The defendant appealed to the High Court.

(1) (1874) L. R. 1 I. A. 157 at p. 166.

R. S. Pandit, with *Manubhai Nanabhai*, for the appellant.—The transaction does not amount to a “sale” as defined by section 54 of the Transfer of Property Act. No “price” has been paid for the land: see *Thiruvengidachariar v. Ranganatha Aiyangar*⁽¹⁾. It is only a compromise. It is based on the assumption of an antecedent title and is acknowledgment of the same: *Rani Mewa Kuwar v. Rani Hulas Kuwar*⁽²⁾.

Delivery of possession is, therefore, not essential to make the transaction valid. The land being worth less than Rs. 100 the document need not be registered.

D. A. Khare, for the respondent.—The words in the deed are:—“he shall give you 9 *pands* more from our share.” There being thus no consideration the transaction is a gift. If there is consideration it may amount to an exchange. The transaction cannot stand as the document is neither registered nor accompanied by delivery of possession.

CHANDAVARKAR, J.—The document (exhibit 29) which embodies the terms of a compromise between the parties has been apparently treated by the learned District Judge as a sale, which under the provisions of the Transfer of Property Act requires a delivery of possession in order to validate it. But the terms of the deed do not bring the transaction within the category of a sale, as defined in that Act. The document in question merely embodied a compromise between the parties, and, as held by the Privy Council in *Rani Mewa Kuwar v. Rani Hulas Kuwar*⁽²⁾, the nature of a compromise is that it is an acknowledgment of the existing rights of the parties. No delivery of possession was necessary in this case in order to give effect to the compromise. That being the only point argued here, we reverse the District Judge’s decree and restore that of the Subordinate Judge with costs both of the second appeal and the appeal in the lower Court on the respondent.

Decree reversed.

R. R.

(1) (1903) 13 Mad. L. J. R. 500.

(2) (1874) L. R. 1 I. A. 157 at p. 166.

1909.
KRISHNA
TANHAJI
c.
ABA SHETTI
PATIL.