

that the Legislature seems to have done is to firstly define what 'manufacture' means, and secondly to put an Explanation to clarify what perhaps it originally thought it to be and now finds to be doubtful. If by way of abundant caution the Legislature amends an Act to explain things we cannot conclude from that that what was in the unamended Act did not cover what is given in the Explanation. No case was cited to support that when the Legislature amends to clarify things it necessarily means that what was in the original Act did not include what is given in the Explanation.

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I am of the opinion therefore that the petitioners are covered by the Schedule of the unamended Act and the opposite party has rightly called upon them to submit statements under the provisions of that Act. This petition is therefore dismissed and the rule is discharged with costs. Counsel fee Rs. 150.

DULAT, J. I agree.

Dulat, J.

APPELLATE CIVIL

Before Kapur, J.

MANSA RAM AND OTHERS,—*Defendants-Appellants*

versus

NATHU AND OTHERS,—*Plaintiffs-Respondents*

Regular Second Appeal No. 720 of 1950

Res judicata—Unregistered compromise successfully pleaded as bar to the maintaining of earlier proceedings—Compromise challenged in later proceedings and sought to be ruled out of evidence as inadmissible for want of registration—Whether objection on the score of want of registration barred by res judicata.

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S gifted his entire estate to M. N sued to set aside the gift and got a declaratory decree on 31st January, 1936, with regard to the ancestral property. On 3rd April, 1936, N and M entered into a compromise. N took out execution for costs in utter disregard of the compromise. M pleaded the compromise as bar to the execution. On 17th April, 1939 N and M agreed to be bound by the compromise and the application for execution was dismissed. On 1st October, 1947, N sued for possession of $\frac{1}{2}$ of the property on the basis of the compromise. Defendants pleaded that the compromise was inadmissible in evidence for want of registration and did not bind them having been entered by fraud and mis-representation. Trial Court dismissed the suit but on appeal the District Judge decreed the suit. Defendants went up in second appeal to the High Court.

Held, that the plaintiff took out execution against M and he pleaded the agreement as a bar and succeeded. If he is allowed to raise the question of registration now it will really amount to approbation and reprobation and besides registration not raised in previous proceedings would operate as *res judicata*.

Gangaprasad and others v. Mst. Banaspati (1), relied upon; *Narayana v. Subramanian* (2), distinguished.

Second Appeal from the decree of *Shri Chhakan Lal*, District Judge, Hoshiarpur, dated the 20th day of June, 1950, reversing that of *Shri Sham Lal*, Senior Sub-Judge, Kangra at Dharamsala dated the 30th July, 1949, and regarding the plaintiffs-appellants a decree for half a share in the entire property left by *Sobha* and *Govind* excepting the two *Khasra* Nos. 72 and 19 and half a share in a residential site got by *Mansa* under the agreements P. 1 and P. 2...The plaintiffs-appellants to get their costs throughout.

K. C. NAYAR, for Appellants.

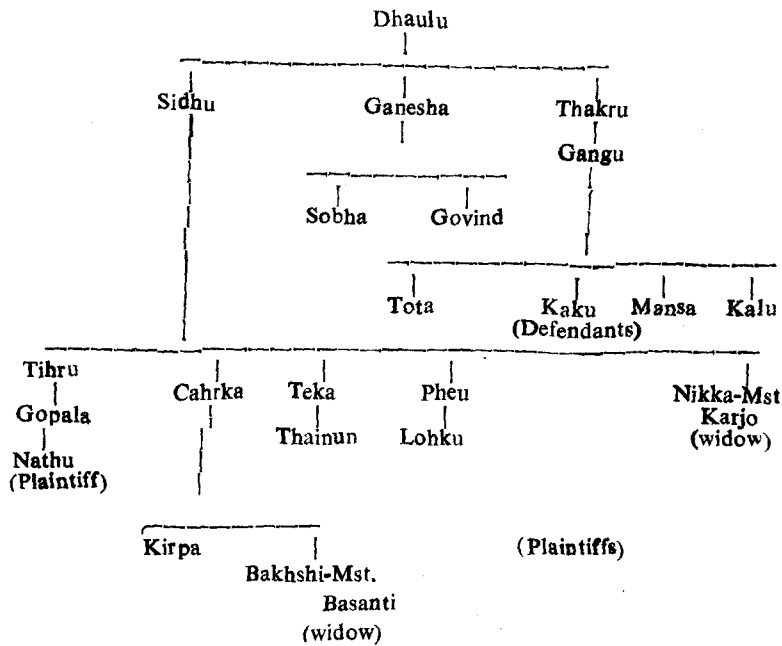
D. K. MAHAJAN, for Respondents.

JUDGMENT

Kapur, J. This appeal is brought by the defendants against an appellate decree of the District Judge of Hoshiarpur modifying the decree of the trial Court.

(1) I.L.R. 1937 Nag. 6
(2) A.I.R. 1937 Mad. 254

The following pedigree-table will assist in understanding the case :—



Sobha made a gift of the whole of his estate somewhere before 1936 in favour of Mansa. Nathu in the line of Sidhu brought a suit to have the gift set aside and on the 31st January 1936 obtained a decree in respect of certain *Khasra* numbers which were ancestral and the suit in regard to the rest of the property was dismissed. This was some portion of the property in Tika Harnam and the whole of the property in Tika Bhadlahar. On the 3rd April 1936 Nathu and Mansa entered into a compromise contained in Exhibits P. 1 and P. 2 by which Mansa agreed to take 2 *kanals* 10 *marlas* of land in Tika Bhadlahar and the residential site and Mansa relinquished his claim with regard to the rest of the property which was to be divided amongst the heirs of Sobha according to ancestral shares and Nathu agreed to forego his costs.

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Nathu in spite of his agreement foregoing the costs took out execution of his decree in regard to costs in 1939 and Mansa pleaded as a bar Exhibits P. 1 and P. 2 and on the 17th April 1939 parties agreed to be bound by the terms of the agreements P. 1 and P. 2 and the application for execution was dismissed.

Nathu then brought the present suit along with other descendants of Sidhu for possession of one-half of the property. Both Sobha and Govind are dead. Defendants pleaded that Mansa had been adopted by Sobha, that no agreements had been entered into and at any rate they were inadmissible in evidence for want of registration and that Mansa was induced to enter into these agreements by fraud and misrepresentation. The learned District Judge has found that no fraud and misrepresentation has been proved and the plea of registration is barred by *res judicata*.

Mr. Karam Chand Nayar has contended that the decision in regard to *res judicata* is erroneous because the agreements did require registration and any concession on that point could not operate as *res judicata*. He has relied on a judgment of the Madras High Court in *Narayana v. Subramanian* (1), where it was held that there can be no *res judicata* laying down a wrong rule of law between parties for future guidance and also the decision must be confined to the matter to which it has been applied at the time of the former decision. In my view, this judgment is distinguishable because there the principle was sought to be made applicable to new areas which had not been planted with cocoanut at the time of the former suit and in respect of which no claim for enhanced rent was or could be made in the former suit and it

(1) A.I.R. 1937 Mad. 254

was observed by the Full Bench that the principle of *res judicata* is to be confined only to matters which actually existed at the time of the former decision. The circumstances in this case are wholly different. The present plaintiff took out execution against Mansa and he pleaded the agreements as a bar and succeeded. If he is allowed to raise the question of registration now, it will really amount to approbation and reprobation and besides registration not raised in the previous proceedings would operate as *res judicata* and I would only refer to a judgment of Bose, J., in *Gangaprasad and others v. Mst. Banaspati* (1), where the question is discussed. It was there argued that a party could question the validity of an award on the ground that it had not been registered and Bose, J., thought that this question was also barred by the rule of constructive *res judicata*. This plea of bar on account of registration is therefore not available to the defendants.

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It is then submitted that the parties in the present case are different. I do not see how that is going to affect the merits of this case. If Exhibits P. 1 and P. 2 are inadmissible in evidence then the only person who benefits by it is Mansa and not his brothers and as between him and Nathu the question is barred by *res judicata* and therefore the property becomes available to everybody in accordance with ancestral shares.

Mr. Nayar then raised the question that the previous agreement was entered into by fraud and misrepresentation because Mansa was not getting any benefit under the agreement. He was getting 2 *kanals* 10 *marlas* of land out of the property which he had already obtained under the *ex parte* decree plus the site of a house. Sitting in second

(1) I.L.R. 1937 Nag. 6 at p. 12

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appeal it is difficult for me to go into the question because we do not know what the consideration for entering into the agreement was. It might have been the settlement of claims between members of a family. These were questions which could have been determined by the District Judge and his finding is that no fraud has been proved. I would therefore dismiss this appeal but leave the parties to bear their own costs in this Court and in the Courts below.

APPELLATE CIVIL

Before Harnam Singh and Kapur, JJ.

SHRI SHAM LAL,—Plaintiff-Appellant

versus

SHRI OM PARKASH AND OTHERS,—Respondents

Regular First Appeal No. 139 of 1953

1954

Nov., 19th

Court Fees Act (VII of 1870) as amended by Court Fees (Amendment) Act (Punjab Act XXXI of 1953)—Suit filed before amendment—Appeal filed after amendment—Court Fee payable—Whether under the Act as amended—Sections 7(iv), 7(iv)(c) and proviso to section 7(iv)(c)—Whether applicable to appeals.

Held, that when there is a change in the law as to court-fee between the date of the suit and the date on which an appeal arising from that suit is filed the law in force at the latter date would govern the court-fee payable on the appeal.

Held, that court-fee payable on appeal in cases falling under section 7(iv)(c) does not depend upon the court-fee leviable on the plaint. The proviso to section 7(iv)(c), added by Punjab Act XXXI of 1953, is applicable to appeals.

Held, that section 7(iv) of the Court Fees Act implies the applicability of the provisions of the Act to appeals. When the subject-matter in dispute in an appeal is not different from the subject-matter in dispute in the suit in the trial court the appeal will be governed for purposes of court-fee by the same provisions as the suit. In case there is no difference in the nature of the relief in dispute the subject-matter need not be considered to be different and the appeal will be governed for purposes of court-fee by the same provision as if applicable to the suit though the amount of court-fee leviable in appeal may be different.

First appeal from the decree of Shri Jasmer Singh, Subordinate Judge, 1st Class, District Jullundur, dated the 30th March, 1953, dismissing the suit with costs.

S. D. BAHRI, for Appellants.

S. M. SIKRI, Advocate-General, for Respondents.