APPELLATE CIVIL.

Before Mukerji and Mitter JJ.

SURENDRA NATH RATH

v.

SAMBHUNATH DOBEY.*

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June 9.

Hindu Law—Joint-family property—Mitakshara—Suit for declaration of Brahmottar nishkar rights—Ancient sanad—Evidence Act (I of 1872), s. 90—Presumption of genuineness—Rent suit—Solenama—Settlement record.

The powers of a *Mitakshara* father who is the *karta* of the family to bind his infant sons with regard to the disposal or management of joint-family properties rest upon an implied consent on the part of all members and a presumption that what is done is for the benefit of the family. As such these powers are much wider than those of other *kartas* of such families.

Sahu Ramchandra v. *Bhupsingh* (1) referred to.

In a suit for rent of certain land against the father alone he being the *karta* of the family and the recorded tenant, a *solenama* entered into by him with the landlords stipulating to pay a lower rent than that entered in the Settlement record would be construed as for the benefit of the sons and binding on the family. The mere fact that the father did not disclose in his written statement that he was but the *karta* and averred that he came to be entitled to the property on the death of his father would not indicate that he was acting adversely to the interests of the other members of the family.

In recording a compromise in a suit a Court is not called upon to investigate whether the compromise would affect others who were not parties to the suit, but would confine its attention to the parties actually before it.

* Appeal from Appellate Decree, No. 54 of 1925, against the decree of P. E. Cammiade, District Judge of Midnapore, dated Aug. 26, 1924, affirming the decree of Charu Chandra Basu, Munsif, Jhargram, dated March 31, 1924.

(1) (1917) I. L. R. 39 All. 437.

The presumption of genuineness with regard to a document more than thirty years old is discretionary and the Court may require such a document to be proved in the ordinary manner.

Shafiq-un-nissa v. *Shaban Ali Khan* (1) referred to.

SECOND APPEAL by the plaintiffs.

In 1918 a suit for rent was brought by the father of defendants Nos. 1 to 8 against defendant No. 9 the recorded tenant of certain lands. Defendant No. 9 is the father of the plaintiffs. In that suit defendant No. 9 entered into a *solenama* agreeing to pay a rent of Rs. 5 a year. A decree was then passed in terms of the *solenama*. The record-of-rights bore the name of defendant No. 9 as tenant of Bholanath the father of the other defendants, and in the year 1308 B. S. corresponding to 1901-02 the defendant No. 9 had executed a *chitta* and a *jamabandi* in which a rent of Rs. 8-15-6 and a cess of annas 4-6 had been shown as payable in respect of this land to the landlords.

In the present suit instituted on the 24th April 1923 the plaintiffs the minor sons of defendant No. 9 with their mother as their next friend sued the defendants Nos. 1 to 8 the heirs of Bholanath and defendant No. 9 their father alleging that the land in question belonged to their grandfather and that as they were governed by the *Mitakshara* School of Hindu Law, their father defendant No. 9 was not entitled to file the *solenama* which was *mala fide* fraudulent and collusive, and as such not binding on the plaintiffs. They further alleged that they held the land in *Brahmottar nishkar* right originally conferred on their grandfather Govinda Rath by one Govinda Pati by virtue of a *sanad* of 1272 B. S. (corresponding to 1865-66 A. D.) and prayed for a declaration to that effect.

(1) (1904) I. L. R 26 All. 581.

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The defence of the principal defendants was mainly that the plaintiffs and defendant No. 9 were a family governed by the *Dayabhaga* School of Hindu Law, that the *sanad* is an impossibility and must be a fictitious document, that the plaintiffs are not *nishkardars*, that the *solenama* is a *bona fide* and binding transaction and that the plaintiffs have no right to bring this suit, the defendant No. 9 being still alive.

The first Court dismissed the plaintiffs' suit holding that the plaintiffs and defendant No. 9 were governed by the *Dayabhaga* School of Hindu Law and that there being no collusion or fraud the *solenama* which was a *bona fide* document was binding on the plaintiffs.

On an appeal by the plaintiffs the District Judge held that the plaintiffs were governed by the *Mitakshara* School of Hindu Law but that the lands were not rent-free as claimed and that the compromise entered into by the defendant No. 9 with Bholanath in the rent suit was binding on the plaintiffs who were benefited thereby inasmuch as the rent was thereby reduced to Rs 5. He accordingly dismissed the appeal.

The plaintiffs thereupon appealed.

Babu Tarakeshwar Pal Chowdhuri and *Babu Jnan Chandra Roy*, for the appellants. In the rent suit the defendant No. 9 was not described as the *karta* of the joint family and he claimed the property as his personal property inherited by him from his father. It must be shown that the suit was brought against him in a representative capacity. See *Sheo Shankar Ram and others* v. *Musammat Jaddo Kunwar and others* (1).

(1) (1914) 18 C. W. N. 968, 970 ; I. L. R. 36 All. 383 (P. C.).

Sec 90 of the Evidence Act does not prove the authority of the person who has made the grant the genuineness whereof is presumed by the Court under the provisions of that section. See *Kashi Nath Pal and others* v. *Jagat Kishore Acharya Chowdhury and others* (1).

Mr. Nanda Lal Bhattacharjee, *Babu Manmohan Bannerjee* and *Babu Anil Chandra Datta*, for the respondents. A decree passed upon a compromise against the *karta* of a Hindu joint family is binding upon the minor members of his family. See *Kalipada Das and another* v. *Raja Sati Prasad Garga Bahadur and another* (2).

MUKERJI J. This appeal arises out of a suit which was instituted by the plaintiffs for certain declarations, namely that the plaintiffs have got Brahmottar Nishkar right to the plaint lands, that the defendants Nos. 1 to 8 are not the landlords of the plaintiffs, and further that the *solenama* and the *solenama*-decree that were respectively filed and passed in suit No. 958 of 1918 were not binding on the plaintiffs and for other reliefs. The suit has been dismissed by both Courts below and the plaintiffs have thereupon preferred the second appeal to this Court. Shortly stated the facts which led to this litigation are as follows :—

The plaintiffs are the sons of the defendant No. 9 in the suit. The plaintiffs' case is that they belonged to a family governed by the *Mitakshara* School of Law; that the defendants Nos. 1 to 8 instituted a rent suit being suit No. 958 of 1918 against their father, the defendant No. 9 and in that suit the defendant No. 9 filed a *solenama* and a decree was ultimately passed on the basis of that *solenama*. The plaintiffs' case

(1) (1915) 20 C. W. N. 643 (2) (1922) 36 C. L. J. 234.

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is that the defendant No. 9 did not in that suit disclose that he and the plaintiffs were members of a family governed by the *Mitakshara* School of Law but that on the other hand the defendant No. 9 in his written statement asserted his exclusive title to the lands which formed the subject matter of the suit and although the lands were in point of fact the plaintiffs' Brahmotter Nishkar lands the defendant No. 9 ultimately filed a *solenama* in collusion with the defendants Nos. 1 to 8 and acting under their influence, agreeing to pay rent for the lands at the rate of Rs. 5 per year. The plaintiffs' case, shortly stated, is that this *solenama* is not binding on them and that they are entitled to the declarations which they sought for in the present suit.

The defence of the defendants Nos. 1 to 8 was that the lands are not *brahmotter nishkar* lands but are lands paying rents and have been recorded as such in the settlement records. As regards the *solenama* their case was that it was not vitiated by collusion or undue influence as alleged on behalf of the plaintiffs and furthermore that it was a *bona fide* and binding document.

The Court of first instance held that the family was governed by the *Dayabhaga* School of Law and that the defendant No. 9, the father, had acted perfectly *bona fide* in the matter of *solenama*, that as a matter of fact the lands were rent-paying and that accordingly the plaintiffs' suit should fail. The learned District Judge has affirmed the decision of the trial Court. He has held, however, that the family is governed by the Mitakshara School of Law, but that in the matter of the compromise that was entered into by the defendant No. 9 with the plaintiffs in suit No. 958 of 1918 the said defendant acted perfectly *bona fide* and that the said compromise had greatly benefited

the other members of the family including the appellants. He has held that the document of 1272 upon which the plaintiffs relied for the purpose of establishing their *nishkar brahmottar* right to the property was not genuine and that the plaintiffs had accordingly failed to prove that they had any such right. He has held that on the other hand the respondents proved a *chitta* and a *jamabandi* which contained the signature of the appellants' father and which showed that the lands were held under the said defendants and that the annual rental of the tenancy was Rs. 8-15-6 exclusive of cesses. He has further observed that inasmuch as by the compromise decree the rental of the tenancy was reduced to Rs. 5 the compromise was to be considered as being beneficial to the plaintiffs. He has characterised the suit as not being a *bona fide* one and has observed that the defendant No. 9 who is the *Karta* of the family has kept himself in the back ground and has put forward his minor sons to institute the present suit only in order to get rid of the *solenama* and the decree in the suit No. 958 of 1918.

The contentions that have been urged on behalf of the appellant in this appeal are mainly two. The first contention is to the effect that in considering the question of the genuineness or otherwise of the document of 1272 the Courts below have ignored the presumption which arises under section 90 of the Evidence Act from the fact that the documents purports to be more than 30 years old, and that if that presumption had been relied upon the said Courts would have been in a position to hold that the document was a genuine one. Now, as regards this contention it is sufficient to say that upon the plain language of section 90, the presumption that is referred to in that section is not one which it is

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obligatory on a Court to raise in favour of a person who desires to prove a document more than 30 years old, but that it is discretionary with the Court either to rely on that presumption or not. It is a presumption which the Court is not bound to make and notwithstanding that the elements mentioned in that section are satisfied the Court may require the document to be proved in the ordinary manner. If any authority is needed for this proposition, reference may be made to the case of *Shafiq-un-nissa* v. *Shaban Ali Khan* (1). Of course if the plaintiffs asked the Court to make a presumption in their favour in accordance with the provisions of this section, it would have been necessary for the Court to deal with that matter; but it appears from the judgment of the Courts below as well as from the record itself that in point of fact the plaintiffs did not rely upon this presumption but on the other hand adduced evidence in order to prove the genuineness of the document. The evidence so adduced has been disbelieved by the learned District Judge. In these circumstances the appellants can hardly complain if this presumption has not been referred to in the judgments of the Courts below.

The second contention of the appellants relates to the *solenama* and the *solenama* decree. The argument in the form in which it has been put forward before us is that the father, not having acted in the suit of 1918 on behalf of the members of the family but on his own behalf and on the other hand having asserted in that suit his own exclusive and absolute right to the lands which formed the subject matter of the suit, should be deemed to have acted adversely to the plaintiffs who were then and are now minors, and consequently the *solenama* and the *solenama* decree should be held to be not binding on the plaintiffs.

(1) (1904) I. L. R. 26 All. 581 (P. C.)

Charges of misrepresentation, collusion and undue influence were laid in respect of this *solenama* but the findings being against the plaintiffs on those points they need not be considered any further. Now if the lands were not *nishkar* and the defendants Nos. 1 to 8 are the landlords of the plaintiffs, as has been found by the learned District Judge, upon the view that the Sanad of 1272 upon which the plaintiffs relied is not genuine and the *jamabandi* of 1308 containing the signature of the plaintiffs' father is to be relied on and the settlement record stands as correct, there must be an end of the plaintiffs' case. In that event I do not think it will be at all advantageous to the plaintiffs to challenge the *solenama* and the *solenama* decree, as by them the rent that is noted in the *jamabandi*, viz., Rs. 8-5-6 has been reduced to Rs. 5. As however the question has been dealt with by the Courts below it is perhaps necessary to state our views with regard to it. It should be remembered that the defendant No. 9 was admittedly the *karta* of the family, and he was also the recorded tenant. The suit was instituted against him alone. The mere fact that he did not disclose in his written statement that he was but the *karta* of the family and that the members of the family were coparceners, but averred in the written statement that he came to be entitled to the property on the death of his father and suggested thereby that the family was governed by the Dayabhaga law does not indicate that he was acting adversely to the interest of the other members of the family. The appellants' argument is that if the defendant No. 9 had disclosed that there were minors concerned, the Court would not have allowed the compromise to be recorded unless it was satisfied that the compromise was beneficial to the minors This argument is not well founded, because the

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minors were not on the record as parties to the suit, and so long as the compromise was between the parties who were *sui juris* the Court would not be called upon to enter into the question whether the compromise might not affect parties who were not parties to the suit and who were not *sui juris*. The powers of a Mitakshara father who is the *Karta* of the family to bind his infant sons with regard to disposal or management of joint family properties as explained by the decision of the Judicial Committee in *Sahu Ram* v. *Bhup* (1) and other cases are wider than those of other *Kartas* of such families and rest upon an implied consent on the part of all the members and a presumption that what is done is for the benefit of the family. Nothing has been shown in the case to destroy that presumption. If the *solenama* be regarded as containing an admission of liability and if it be argued that the plaintiffs are not bound thereby as they do not derive their interest through the defendant No. 9 then the answer to that argument is that in the case of a *Mitakshara* father who is the Karta, an implied authority to make an admission for the benefit of his minor sons may very well be presumed. Such a presumption is quite in consonance with the authority of a *Mitakshara* father who is a *Karta*, as explained in the authoritative decisions. For these reasons I am of opinion that there is no substance in this contention as well.

The appeal accordingly fails and must be dismissed with costs.

MITTER J. I agree.

R. K. C.

(1) (1917) I. L. R. 39 All. 437 (P. C.)