

claimed or paid on either side, the damages claimed against the insolvents' estate in this case must be subject to this deduction of the amounts due to that estate by the petitioning creditor. I would therefore modify the order of the learned Commissioner and allow the whole set off claimed. The appellant will have his costs here and in the Court below.

THE CHIEF JUSTICE.—I do not dissent from the grounds on which my learned brother bases his judgment, but I prefer to base my judgment on the ground stated by me.

*C. Vijayaragavalu Naidu*, Attorney, for appellant.

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AND  
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—  
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## APPELLATE CIVIL.

*Before Mr. Justice Miller and Mr. Justice Munro.*

KAMBINAYANI JAVVAJI TIMMAJI AMMA GARU AND  
ANOTHER (PLAINTIFF AND HER LEGAL REPRESENTATIVE), APPELLANTS,

v.

KAMBINAYANI JAVVAJI SUBBARAJU NAYANIVARU  
AND ANOTHER (DEFENDANTS), RESPONDENTS.\*

1909.  
December  
18, 17, 20,  
1910.  
February 1.

*Hindu Law—Widow, compromise by—When such compromise tantamount to alienation—Possession when adverse to reversioner.*

Where a widow, whose right to property is disputed, enters into a compromise with the disputant by which she merely undertakes to make no further claim to the property, such compromise does not amount to an alienation by the widow and the disputant does not hold the property under any title derived from her.

*Sheo Narain Singh v. Khurgo Koery and Sheo Nwain Singh v. Bishen Prasad Singh*, [(1882) (10 C.L.R., 337)], dissented from.

*Rudha Mohan Dhas v. Ram Das Dey*, [(1889) (3 B.L.R., 362)], referred to.

The possession of the disputant under the above circumstances was adverse to the reversioner.

In considering whether possession is adverse to the reversioner, it must be seen whether it is based on a title derived from the widow as representative of the separate estate or on one which leaves no separate estate to be represented.

APPEAL against the decree of K. C. Manavedan Raja, District Judge of North Arcot, in Original Suit No. 9 of 1903.

The facts of the case are sufficiently stated in the judgment.

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The main question of law involved in the case was stated and discussed in the judgment of the lower Court as follows:—

“The defendant’s vakil does not seriously dispute the proposition that, if there is an alienation by a widow subsequent to the decree and it is not binding on the reversioner, the reversioner’s remedy is by a suit. He contends that there was no alienation in the present case; that a compromise and an alienation are essentially different; that the circumstances under which Exhibit XLI was brought into existence absolutely preclude the supposition that any rights were conveyed by Madamma or acquired by the first defendant’s father; and that the execution of Exhibit XLI and the entering up of satisfaction, if fraudulent and not binding on the plaintiff, are questions relating to execution, discharge or satisfaction of the decree, and are therefore such as can be raised and determined in the execution proceedings and not by a suit.

The main points, then, which have to be decided in connection with issues 6, 7 and 8 are whether a compromise is necessarily an alienation, and whether Madamma can be said to have alienated the properties under Exhibit XLI to the first defendant’s father. It may be mentioned that, if these points are found in favour of the plaintiff, issues 2 and 3 will also have to be found for the plaintiff; because plaintiff will have had a fresh cause of action in consequence of the alienation by the widow. Again, a transfer by the widow implies a delivery in the first instance to her and a re-delivery by her to the first defendant’s father. There would thus be an interruption in the defendant’s possession and the subsequent possession will not be adverse to plaintiff.

A compromise is an adjustment of claims by mutual concession; and it is hardly necessary to say that no authority has been cited in support of the general proposition that a compromise is an alienation. Plaintiff’s vakil relies on (1) Sheo Narain Singh v. Khurgo Koerry and Sheo Narain Singh v. Bishen Prosad Singh (10 C.L.R., 337), (2) Mussamat Indro Kooer v. Shkhai Abool Burkat, 14 Weekly Reporter 146; (3) Sant Kumar v. Deo Saran (8 All., 365); and (4) Jeram v. Veerbai (5 B.L.R., 885). Of these, in Sheo Narain Singh v. Khurgo Koerry and Sheo Narain Singh v. Bishen Prosad Singh there is an observation that the suit by the widow and the succeeding

compromise was tantamount to an alienation by the widow, and that there was consequently no adverse possession during her life. It is clear that this was not intended to be a general definition; on the face of it, it refers only to the document in the particular case then before the Court. Moreover, the question before the Court was not as to the nature of a compromise or the distinction between a compromise and an alienation. The question the Court was considering was, whether the defendants' possession under the circumstances of the case could be said to be adverse; and it was decided that possession would not be adverse, because the compromise was effected on the basis of the widow giving the property to her husband's coparceners and their possession was derived from the widow. In *Mussamat Indro Kooer v. Shaikh Aboul Burkat* "a compromise like the present," says Mitter, J., "by which a Hindu widow gives up all her rights in the estate of her deceased husband, reserving only a life interest for herself in some of the villages belonging to that estate, cannot but be regarded as an alienation." (The observation is expressly limited to the facts of the particular case; and they obviously differ materially from the facts and recitals of Exhibit XLI.) In judging whether the compromise was binding upon the reversioners, the Court held that the compromise cannot but be regarded as an alienation. In *Sant Kumar v. Deo Saran*, all that is said is that the particular compromise then before the Court can scarcely be regarded as having any footing higher than that of an alienation which the widow in possession of her husband's divided estate could have made. The question which Mahmood, J., was considering was whether a suit for a declaratory decree was maintainable; and he argues at considerable length in support of the maintainability of such a suit. Now, if his Lordship's view was that a compromise by a widow is an alienation, all this long argument was out of place, as such a suit by a reversioner during the lifetime of the widow is expressly allowed by the Specific Relief Act, section 42 [see illustration (e)].

The case of *Jeram v. Veerbai* merely refers to, and adopts, this view of Mahmood, J., and requires no further comment.

These are the authorities cited in support of the proposition that a compromise is an alienation. Far from supporting the contention, they merely show that, under certain circumstances and for certain special purposes, certain compromises

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have been considered as having the force of alienations. As observed by the defendants' wakil, a compromise and an alienation are different in their nature and in their operation. In all alienations except gift, valuable consideration seems to be essential. Mere doubt or dispute is sufficient to uphold a compromise. But the more important distinction is that an alienation proceeds on the footing that the ownership is with the alienor and that the alienee's title is derived from him. There is a common agreement as to the title. In a compromise there is no such *consensus*. Each practically denies the other's title; but make concessions to purchase peace. The facts of the present case will also show that it was not the intention of the parties that Madamma should be regarded as owner of one-third under the decree in favour of her husband and that on that footing she was to alienate, and the first defendant's father was to reacquire under a title derived from Madamma, her right to one-third of the zamindari, etc., but that, on the contrary, the first defendant's father was to be treated as owner of the whole, as he has all along been contending, or, at any rate, became such on the death of the plaintiff's father, the decree-holder, which was the contention involved, in his Privy Council appeal, and that on that footing he was to make a settlement of certain villages on Madamma and her daughter and cash and annuity for life on Madamma in consideration of Madamma entering up satisfaction without executing the decree."

The lower Court dismissed the suit. Plaintiffs appealed.

The Hon. the Advocate-General and *L. A. Govindaragava Ayyar* for second appellant.

*P. R. Sundara Ayyar* for first respondent.

*P. R. Ganapathi Ayyar* for all the respondents.

*S. V. Padmanabha Ayyangar* for second respondent.

JUDGMENTS (MILLER, J.).—The preliminary objection that the suit was not on behalf of the estate fails. There is nothing in the language of the plaint to which our attention was called which rebuts the presumption arising from the nature of the relief claimed, that the suit was on behalf of the estate.

On the merits I have had an opportunity of reading the judgment which my learned brother has prepared, and I agree with him that the compromise does not effect an alienation of the widow of rights which she possessed, so as to make

possession of the first defendant's father a possession derived from her. The widow gave up or relinquished her rights and interest and all claim under the decree, but I do not read that as meaning that she transferred those rights, interests and claims to the first defendant's father, but only that she undertook to make no further claim under the decree. There is a transfer of property by him to her but none by her to him.

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That being so I concur in dismissing the appeal on the ground that the suit is barred by limitation.

MUNRO, J.—This is an appeal by the plaintiff against the decree of the District Court of North Arcot in Original Suit No. 9 of 1903. The plaintiff's father brought Original Suit No. 5 of 1876 against the father of the first defendant, and a compromise was entered into and a decree passed thereon by which one-third of the Kangundi zamindari and a sum of Rs. 20,000 were awarded to the plaintiff's father. The plaintiff's father executed the decree so far as the sum of Rs. 20,000 was concerned. He also applied in execution for the one-third share of the zamindari, but died in 1878 before the division was carried out. The plaintiff's mother Madamma was brought on record as legal representative. Her right to execute the decree was contested by the first defendant's father, but was upheld by the District Court and by the High Court on appeal. The first defendant's father on the 28th October 1881 obtained leave to appeal to the Privy Council and on the 30th March 1882 applied for stay of execution. While matters stood thus the parties came to an agreement and executed Exhibit XLI on the 2nd July 1882. Exhibit XLI sets out the above facts and goes on to say that in view of the termination of the disputes, in view of the trouble and loss that both parties had been put to, and also in view of the uncertainty of the result of the appeal to the Privy Council a settlement had been arrived at. Under the settlement the first defendant's father was to give certain immoveable properties to Madamma and to the plaintiff who was then a minor, pay Rs. 2,500 annually to Madamma and a lump sum of Rs. 57,000 to Madamma and the plaintiff. On their part Madamma, the plaintiff, and their heirs were to relinquish all their rights under the decree in Original Suit No. 5 of 1876. The deed then proceeds to say, in paragraph 10, that Madamma took possession of the immoveable properties and received payment of the Rs. 57,000, and relinquished on

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her own behalf and on behalf of the plaintiff all rights and interest in the decree in Original Suit No. 5 of 1876, while the first defendant's father and his heirs relinquished all their rights and interest in the matter of Madamma, the plaintiff and their heirs enjoying the properties put in Madamma's possession. It was further provided that Madamma should within twenty days certify satisfaction of the decree in Original Suit No. 5 of 1876, and that the first defendant's father should withdraw his appeal to the Privy Council and his application for stay of execution. These provisions were carried out. Madamma died in 1885, and the estate was in charge of the Court of Wards till the 11th March 1900. On the 15th March 1900 the plaintiff applied to be brought on record as her father's representative, and to be allowed to execute the decree in Original Suit No. 5 of 1876. The first defendant contended that as satisfaction had been recorded there was no subsisting decree which the plaintiff could execute. This contention was upheld by the District Court and the High Court, and the plaintiff's application was dismissed. The plaintiff then filed the present suit. She alleged in her plaint that the settlement under Exhibit XLI was fraudulent and intended to defeat her rights; that for the consideration set out in Exhibit XLI Madamma alienated the property decreed to her father; and that as the settlement was without legal necessity and in fraud of her rights the alienation effected thereby was not binding beyond her mother's life-time. She prayed *inter alia* for a declaration that the alienation was invalid and inoperative beyond Madamma's life-time, and for partition and recovery of a third share of the zamindari.

The District Judge found that the plaintiff's suit was barred by *res judicata*, by limitation and by section 244, Civil Procedure Code (Act XIV of 1882). He also found that the plaintiff had no cause of action. The decision of these questions turned mainly upon whether there was an alienation by Madamma of her husband's estate as alleged in the plaint. The District Judge found there was not, and it is to the propriety of that finding that the arguments for the appellant have been mainly directed. *Sheo Narain Singh v. Khurgo Koerry* and *Sheo Narain Singh v. Bishen Prosad Singh* (1), *Mussamat Indro Kooer v. Shaikh Aboul Burkat* (2),

(1) (1882) 10 C.L.R., 337.

(2) (1870) 14 W.R., 146.

and *Sant Kumar v. Deo Saran*(1), are relied upon in support of the contention that under the settlement or compromise evidenced by Exhibit XLI there was an alienation by Madamma of the property decreed to the plaintiff's father in Original Suit No. 5 of 1876. In the first of these cases one Tejmun Singh having died in 1835, his brothers, though divided from him, got their names registered as owners of the estate which had been in his possession till his death and, as is clear from the report—see particularly page 345, where it says the brothers got possession in 1835—took possession of at least two mouzahs of that estate. The widow of Tejmun Singh, alleging that he had been divided from his brothers, sued for cancelment of the registration and for confirmation of possession. She succeeded in the first Court, but was defeated on appeal. She then preferred a special appeal, and, while that appeal was pending, entered into a compromise, by which she gave up her claim of having the special appeal heard, and agreed that the heirs of her husband's brothers should remain in possession of the two mouzahs, of which, as above mentioned, they had taken possession, she herself taking the rest of the property for life with reversion to the heirs of the brothers. In 1879 within twelve years after the death of the widow suits to recover the two mouzahs were brought by the daughters of Tejmun Singh and their assignees, and one of the questions which the High Court had to decide was whether the suit was barred by limitation. The Court held that there was no adverse possession during the life of the widow because “the suit by the widow and the succeeding compromise was tantamount to an alienation by the widow of a portion of the property for her lifetime,” and that the period of limitation must be counted from her death. With great respect I find myself unable to accept this view. In *Radha Mohon Dhar v. Ram Das Day*(2), one Ramkant died leaving immovable property and his widow took possession. The defendant claimed the property and threatened the widow with legal proceedings. The widow thereupon gave up her own title and possession and permitted the defendant to hold the property as part of his estate. The question arose whether the possession of the defendant was adverse to the widow, and it was held that it was. In *Adi Deo Narain Singh v. Dukharan*

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(1) (1880) I.L.R., 8 All., 365.

(2) (1869) 3 B.L.R., 362.

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*Singh*(1), on the death of the widow, who was in possession, the person entitled to succeed to the property was the daughter of the last male holder if it was his separate property. The defendants however took possession, and it was alleged that the daughter acquiesced in this possession. It was contended that as the defendants held possession with the consent of the daughter their possession was not adverse to her. The argument was held to be fallacious. It was observed that the possession of the defendants was in no way derived from or under the daughter, as she had never obtained possession herself at all, and that the defendants did not maintain their possession in virtue of any title acquired by them through her, by sale, transfer or otherwise. It is pointed out that the two cases just referred to were not cases in which there had been a compromise after suit brought. It can, I think, make no difference whether the female gives up her claim before suit or by compromise after suit, unless there is something in the compromise itself to make a difference. In *Gunesh Dutt v. Mussamut Lall Muttee Koer*(2), there were two brothers. One had a son, Chedee Lall, who died leaving a widow. This widow and the sons of the other brother put in applications under Act XXVII of 1860, the former claiming a life interest in Chedee Lall's estate and the latter claiming the property as joint family property. There was a compromise by which the widow abandoned her claim and admitted the right claimed by the brother's sons. It was contended that the brother's sons were holding with the widow's consent, and that therefore their possession was not adverse to her. The Court observed as follows:—"Looking to the proceedings under Act XXVII it is quite clear that the defendants have never admitted in the slightest degree that they hold under the widow. They alleged, and still allege, a title entirely hostile to her and possession based on that title, and the fact that she, for reasons which we need not consider, chooses to abandon her own claim . . . . does not alter the nature of their possession from an adverse to a derived possession. The compromise may be perfectly binding on her, but there is nothing in the terms of it to show that the appellants admitted and acquired her rights. . . . They bought the widow's

(1) (1883) I.L.R., 5 All., 532.

(2) (1871) 17 W.R., 11.



silence, but did not attempt to acquire her rights as heiress . . . . In considering whether the possession is adverse, we must see whether it is based on a title derived from the widow as representative of the separate estate or on one which leaves no separate estate to be represented." Now I have no hesitation in holding that the principles upon which the three cases last quoted were decided are correct, and, applying them to the facts in *Sheo Narain Singh v. Khurgo Koerry* and *Sheo Narain Singh v. Bishen Prosad Singh*(1), I am constrained to hold that the decision in that case on the question of adverse possession cannot be supported. The possession of the brother's heirs was clearly adverse to the widow, and this being so, their holding could not be regarded as being under an arrangement which in its effects was tantamount to an alienation by the widow. In *Mussamut Indro Koer v. Shaikh Abool Burkat*(2), there was a compromise by which a Hindu widow gave up all her rights in the estate of her deceased husband, reserving only a life interest in part of it, and the question was whether the reversioner was bound by the compromise. It was held that he was not on the ground that the compromise could not but be regarded as an alienation. Now there can be no doubt that such a compromise would not be binding on the reversioner—*Imrit Konwur v. Roop Narain Singh* (3), and if, as I think, what the learned Judges meant to say was that the compromise could not affect the rights of the reversioner any more than an alienation could have done, there is no difficulty in agreeing with them. In *Sant Kumar v. Deo Saran*(4), the widow got possession of her husband's property alleging it to be his separate estate. Her husband's brother's sons sued her for possession of the property. There was a compromise by which the widow admitted that the family was joint and that she was only entitled to maintenancè. In a suit by a reversioner after the widow's death the question arose whether the compromise was binding on the reversioner. It was pointed out that while a decree finally obtained against a widow in a *bonâ fide* litigation could bind the reversioners, a compromise was not on the same footing as such a decree, and that the compromise then in question could scarcely be regarded as having any footing

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(1) (1882) 10 C.L.R., 337.

(2) (1870) 14 W.R., 146.

(3) (1880) 6 C.L.R., 76.

(4) (1886) I.L.R., 8 All., 365.

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higher than that of an alienation which the widow in possession of her husband's divided estate could have made. With all this I entirely agree. But it is no authority for saying that the same results necessarily flow from a compromise by a widow as would flow from an alienation by the widow.

Now when we examine the compromise in the present case in the light of the principles indicated above, it is I think impossible to hold that there was an alienation by Madamma of one-third of the zamindari. The effect of the compromise briefly is that for a consideration Madamma agreed not to press her disputed claim to execute the decree and recover the property. There was no admission of her right, no title derived from her. In this view the only other question which need be considered is whether the suit is barred by limitation. Though the plaintiff's father got a decree in 1876 for the suit property he never got possession, nor did Madamma. Even as against the plaintiff's father the possession of the first defendant's father was adverse, and it having been found that no title was derived by the first defendant's father by alienation from Madamma, the property continued to be held adversely by the first defendant's father and the first defendant up to the date of the suit. The suit is therefore clearly barred by limitation and was rightly dismissed. This appeal fails and is dismissed with costs.

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