

for an adjustment of the account of profits of sir-land between not only the plaintiff and Jagan Nath, but between them and a third shareholder who is also a defendant, and it is not clear that the accounts of this sir-land are included in the general account of the profits of the village for which the lambardar is responsible to account to the plaintiff, so as to give in both suits the same cause of action to the plaintiff against Jagan Nath. But were it so, the suit would not be necessarily unmaintainable against Bala Nand, and besides we should hesitate to rule that the provisions of s. 7 of Act VIII of 1859 are applicable to such a case as this. Here the plaints in the two suits were filed at the same time. We cannot say that one suit has a priority over the other in point of time. The claims were divided for the convenience of trial, but there was no relinquishment of a claim, and there will be no question of entertaining a suit after such relinquishment or omission within the meaning of s. 7. There was no institution and entertainment of a suit after one had been already instituted and determined. The suits were not successive, but simultaneous, and to allow the objection, which can only be one of form and not of substance, would be to strain the obvious object of s. 7, which is not to allow persons to be harassed by successive claims. If the Court in which the plaints were filed considered they should have been tried together, the proper course was to allow one of the plaints to be amended, so as to combine both claims. As this suit has not been tried, and is one for a Revenue Court to determine, we reverse the decisions of the Courts and remand the case for trial on the merits to the Court of first instance. Costs to abide the result.

*Cause remanded.*

## APPELLATE CIVIL.

1878  
April 30.

*Before Mr. Justice Pearson and Mr. Justice Turner.*

PITAM SINGH AND OTHERS (DEFENDANTS) v. UJAGAR SINGH (PLAINTIFF).

*Hindu Law—Joint and Undivided Ancestral Property—Separate Property—  
Compromise.*

Certain ancestral estate was recorded as held in equal shares by four brothers, A, B, C, and D. On A's death his son E was recorded as the holder of his share.

First Appeal, No 122 of 1877, from a decree of Maulvi Hamid Hasan Khan, Subordinate Judge of Mainpuri, dated the 29th September, 1877.

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On the deaths of *B* and *D*, *C* was at first recorded as the owner of their shares. Shortly afterwards *B*'s widow, *F*, and *D*'s widow, *G*, were recorded as the holders of their husbands' shares. Again, at a later period, the names of *H* and *I*, the sons of *E*, were substituted for those of the widows. The estate was subsequently sold for arrears of Government revenue, but a farm of it was given to *E*, *H*, *I*, and *C*. In 1853 the Government having purchased the estate proposed to re-grant it to the old zamindars and farmers, and a report regarding the ownership of the estate was called for. It was reported that it appeared from the statements of *E* and *J*, the son of *C*, that the widows of *B* and *D* had made a gift of their shares to *H* and *I*. In 1853 *E*, *J*, *H*, and *I* were asked by the Collector in what manner they proposed to divide the estate if it were granted to them, and they replied that they would hold it in equal shares. The estate was eventually granted to these persons on payment of the arrears of revenue. Each of them contributed his quota in making such payment. In 1855 an administration-paper was framed in which they were entered, at their own request, as in possession each of equal shares. In 1864 they agreed to a partition of the shares by arbitration. These proceedings were stopped by *J* advancing a claim to a moiety of the estate. In March, 1867, *J* sued for possession of a moiety of the share originally held by *B*'s widow, then deceased, and for a declaration of his right to a moiety of the share held originally by *D*'s widow. In June, 1867, the parties to the suit effected a compromise, agreeing to divide the estate into four lots on certain conditions. A decree was accordingly passed in the terms of the compromise. *K*, *J*'s son, sued in 1876, in his father's lifetime, to obtain the same relief as his father had sought in 1867, and a declaration that the arrangement effected by the compromise and the decree was ineffectual. Held that, assuming that the estate was joint until 1867, *K* was, in the absence of fraud, bound by the compromise entered into by his father and his suit was not maintainable.

Assuming that the estate was held in separate shares, the shares of *K*'s great uncles descended as inheritance liable to obstruction and *K* could not have questioned his father's acts.

THIS was a suit for the possession of a certain share in a certain village. The facts of the case are sufficiently stated for the purposes of this report in the judgment of the High Court, to which the defendants in the suit appealed from the decree of the Court of first instance.

Munshi *Hanuman Prasad* and Paudits *Bishambhar Nath* and *Nand Lal*, for the appellants.

Mr. *Conlan*, the Junior Government Pleader (*Babu Dwarka Nath Banarji*), and Pandit *Ajudhia Nath*, for the respondent.

The judgment of the Court was delivered by

TURNER, J.—The common ancestor to the parties to this suit was *Anand Singh* who had five sons, *Chatrar Singh* who died with-

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out issue, Darjan Singh who died in 1823 leaving a son Chakarpan, Sundar Singh who died in 1826 leaving a widow Gulab Kuar, Des Raj who died in 1852 leaving a son Gandharp Singh, and Chattarpat who died in 1829 leaving a widow Sahib Kuar. Chakarpan had three sons, who are the appellants; and Gandharp Singh had two sons, Ujagar Singh, the respondent, and Madho Singh, who is still a minor. The estate in suit was, after Chattar Singh's death, originally recorded as held in four shares of five biswas each, held respectively by Darjan Singh, Sundar Singh, Des Raj, and Chattarpat. On the death of Darjan Singh, Chakarpan was entered as the holder of his share, and after the deaths of Sundar Singh and Chattarpat, Des Raj was at first recorded as the owner of their shares, but shortly afterwards the names of the widows Gulab Kuar and Sahib Kuar were entered as the holders of their husbands' shares. Again, at a later period, the names of Ajudhia Prasad and Budh Singh, who were then aged four and two years old respectively, were substituted for those of the widows. The estate fell into arrears and was eventually sold at auction for a balance of Government revenue, but a farm was given to Chakarpan, Ajudhia Prasad, Budh Singh, and Des Raj. In 1853 the Government having purchased the estate at auction-sale proposed to re-grant it to the old zamindars and farmers, and a report regarding the ownership of the estate was called for. The tahsildar reported that it appeared from the statement of Chakarpan and Gandharp Singh, son of Des Raj, that the widows of Sundar Singh and Chattarpat had made a gift of their shares to Ajudhia Prasad and Budh Singh by deeds attested by the kanungo, and the kanungo confirmed the statement. On the 2nd May, 1853, the Collector of Farukhabad inquired of Chakarpan, Gandharp Singh, Budh Singh, and Ajudhia Prasad in what manner they proposed to divide the estate among themselves if it was granted to them by the Government, and they replied that all four would hold five biswas each. The Government eventually agreed to grant the estate on condition that the arrears of revenue which had accrued when the estate was sold should be discharged. This offer was accepted, and each of the four persons above-mentioned contributed his quota. On the 3rd April, 1855, the same persons appeared before the revenue officer, and requested that each of them might be recorded

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as the owner of five biswas, and that Chakarpan and Gandharp Singh should be entered as lambardars, and Ajudhia Prasad and Budh Singh as pattidars. It was ordered that a village administration-paper should be prepared, and in that document, which is dated the 5th April, 1855, they were entered as in possession each of five biswas. So matters continued until 1864, when, on the 15th November, they agreed to the appointment of arbitrators and an umpire to divide these shares. The arbitration proceedings lasted for upwards of two years, when Gandharp Singh advanced a claim to a ten biswas share, and the arbitrators refused to proceed with their award.

On the 29th March, 1867, Gandharp Singh brought a suit to obtain possession of a two and a half biswas share out of the five biswas originally held by Gulab Kuar, then deceased, and for a declaration of his right to a two and a half biswas share out of the five biswas originally held by Sahib Kuar. He alleged that each of the four sons of Anand Singh had, on the death of Chattar Singh, obtained a five biswas share; that the widows of Sundar Singh and Chattarpat had been recorded as the holders of their respective husbands' shares to ensure their maintenance; that these ladies had in 1855 appointed Ajudhia Prasad and Budh Singh their agents to take the account of the profit and loss on these shares, and that in the lifetime of the ladies Chakarpan wrongfully procured the substitution of his sons' names for the names of the widows. He claimed that the estate of Sundar descended on the death of his widow to Chakarpan and Des Raj, and that on the death of Sahib Kuar he would become entitled to possession of one moiety of her share. On the 26th June, 1867, the parties to the suit effected a compromise, agreeing to divide the estate into four lots on the conditions set out in their petition to the Court. A decree was accordingly passed in the terms of the compromise. The respondent now sues to obtain the same relief as was sought by his father in 1867, and a declaration that the arrangement effected by the compromise and the decree are ineffectual. The respondent's father is still alive. There is this difference between the claim asserted by the respondent and his father, that the latter treated the estate as held in separate shares, the former asserts the estate remained joint until 1867. If by "joint" he means undivided there is no difference in

the claims. The Subordinate Judge has decreed the claim. It appears to us impossible to support the decree. Assuming, which is not certainly proved, that the family remained joint until 1867, the respondent's father for all intents and purposes represented the interest in the estate which devolved and would on partition fall to the separate share of himself and his children, and the respondent must be bound by his acts unless he can show such fraud and collusion as would entitle him to relief on those grounds. Of this there is no evidence. On the contrary, Gandharp Singh asserted his claim, and if he forebore to press it in view of the circumstances to which we have adverted, it can hardly be doubted he prudently put an end to litigation which must have resulted in failure. There can hardly be a question that the shares of Sundar Singh and Chattarpat were entered in the names of Ajudhia Prasad and Budh Singh, then mere children, with the consent of Des Raj. Gandharp had by his declarations in 1853 and 1855 provided cogent evidence of his own acquiescence, and had this been absent, there was the difficulty in his way that the property had been granted to Ajudhia Prasad and Budh Singh by the Government. If, as there is strong evidence to show, the property was held in separate shares, the shares of the great uncles of the respondent descended as inheritance liable to obstruction, and he could not question his father's acts. For the reason that there is no proof of any fraud or collusion on the part of Gandharp Singh in entering into the compromise of 1867, the suit cannot be maintained. The appeal is decreed and the suit dismissed with costs.

*Appeal allowed.*

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## APPELLATE CIVIL.

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*Before Mr. Justice Pearson and Mr. Justice Oldfield.*

ALI MUHAMMAD AND OTHERS (PLAINTIFFS) v. LALTA BAKHSH AND OTHERS (DEFENDANTS). \*

*Redemption of Mortgage—Adverse Possession—Act IX of 1871 (Limitation Act), s. 29, and sch. ii, art. 148—Limitation.*

The mere assertion of an adverse title by a mortgagee in possession does not make his possession adverse, or enable him to abbreviate the period of 60 years

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\* Second Appeal, No. 258 of 1878, from a decree of Pandit Har Suhai, Subordinate Judge of Farukhabad, dated the 7th December, 1877, affirming a decree of Maulvi Wajid Ali, Munsif of Kaimganj, dated the 11th September, 1877.

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