

meaning of section 244 and that a separate suit for possession was not maintainable. The question again came before this Bench in the case of *Kalyan Singh v. Thakur Das* (1), in which the question was carefully considered and the decision of the Calcutta and Madras High Courts was followed. So far therefore as we are concerned the question is concluded by authority. We do not think that we are unduly extending the scope of section 244, and we say this with the more confidence, in view of the observations of their Lordships of the Privy Council in recent cases as regards the object and meaning of that section, in which they express approval of the facts that the Courts in India have not placed any narrow construction on its language:—see *Prosunno Coomar Sanyal v. Kabi Das Sanyal* (2).

For these reasons we must allow the appeal and dismiss the suit with costs in all Courts.

Appeal decreed.

1907

SHEO NARAIN
v.
NUR
MUHAMMAD.

1907

December 7.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir William Burkitt.

MAHADEI (PLAINTIFF) v. BALDEO (DEFENDANT).*

Hindu law—Hindu widow—Effect of compromise entered into by a Hindu female with a limited estate.

Held that a compromise made by a person holding a Hindu widow's or Hindu daughter's estate in the property of a deceased husband or father is not binding on the reversioners, even though it has been followed by a decree of Court; the reversioners can only be bound by a decree made after a full contest in a *bona fide* litigation. *Gobind Krishna Narain v. Khunni Lal* (3) followed.

THIS was a suit to recover possession of certain zamindari property of small value, and was brought under the following circumstances. The property originally belonged to one Dayal, who died leaving a widow Musammat Anandi, a son Suraj Din and a daughter Sukhdei. Suraj Din succeeded to the property. On Suraj Din's death his widow, Musammat Batasia, took

* Appeal No. 35 of 1907 under section 10 of the Letters Patent from the judgment of Aikman, J., in Second Appeal No. 228 of 1906, dated the 16th of May 1907.

(1) Weekly Notes, 1906, p. 87. (2) (1902) 19 I. A., 169; s. C., I. L. R., 19 Calc., 683.

(3) (1907) I. L. R., 29 All., 487.

1907

MAHADEI
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possession of the whole estate. A suit was instituted against her by Musammat Anandi for a share in the estate. On the 26th of November 1898 Batasia and Anandi compromised the suit, and in terms of the compromise Anandi got a one-third share of the property. On Batasia's death on the 24th of January 1905, her daughter Musammat Mahadei brought the present suit to recover possession of the one-third share which had been made over to Anandi. The defendants to the suit were Musammat Anandi and Baldeo, a daughter's son of Musammat Anandi, to whom the latter is said to have made over the share by gift. The Court of first instance (Munsif of Allahabad) held that the plaintiff was not entitled to recover possession of the share whilst Anandi lived. It left it an open question as to whether the plaintiff would be entitled to get the share on Anandi's death. On appeal the lower appellate Court (Subordinate Judge of Allahabad) came to a different conclusion. It held that Musammat Batasia being a Hindu widow had no power to make the transfer, and decreed the plaintiff's claim. The defendants thereupon appealed to the High Court and their appeal coming before a single Judge of the Court was allowed and the decree of the first Court restored, *vide* Weekly Notes, 1907, p. 199. The plaintiff appealed under section 10 of the Letters Patent.

Mr. W. Wallach and Munshi Gobind Prasad, for the appellant.

Mr. B. E. O'Connor, for the respondent.

STANLEY, C.J., and BURKITT, J.—The decision of the learned Judge of this Court against which this appeal is preferred is wholly opposed to the principle laid down in a judgment of a Division Bench of this Court in the case of *Gobind Krishna Narain v. Khunni Lal* (1). In that case the Court held, following earlier rulings and citing the leading case of *Stapilton v. Stapilton* (2), that a compromise made by a person holding a Hindu widow's or Hindu daughter's estate in the property of a deceased husband or father is not binding on the reversioners, even though it has been followed by a decree of Court, and that the reversioners can only be bound by a decree made after a full contest in a *bona fide* litigation. This case was not reported until the

(1) (1907) I. L. R., 29 All., 487. (2) (1739) 1 W. and T., 230.

20th of May 1907, and does not appear to have been brought to the notice of the learned Judge. The fact that the property involved is of little value is a matter which cannot be taken into consideration in determining the rights of the parties. In view of the ruling above referred to we must allow the appeal. We set aside the decree of the learned Judge of this Court and restore the decree of the lower appellate Court with costs in all Courts.

1907

 MAHADEI
 v.
 BALTEO.

Appeal decreed.

Before Sir John Stanley, Knight, Chief Justice, and Mr. Justice Sir
 William Burkitt.

 1907
 December 13.

BAHAL SINGH AND ANOTHER (PLAINTIFFS) v. MUBARIK-UN-NISSA AND
 OTHERS (DEFENDANTS).*

Pre-emption—Wajib-ul-arz—Construction of document—“Shurkayan-i-shikmi.”

The wajib-ul-arz of a village (Kandhla) in the Muzaffarnagar district gave a right of pre-emption, first to *shikmi* co-sharer (*shurkayan-i-shikmi*), secondly, to share-holders descended from a common ancestor (*shurkayan-i-jaddi*), and thirdly, to *khewatdars* in the mahal (*khewatdaran-i-mahal*). The mahal was divided into seven *pattis* and the land in dispute was situated in *patti* Khail, *thok* Bhuria. The pre-emptors were co-sharers in *patti* Khail. One of the vendees was a co-sharer in the mahal, but not in *patti* Khail. *Held* that, regarding the whole context of the wajib-ul-arz, the expression *shurkayan-i-shikmi* was intended to denote relatives by blood and not co-sharers in any sub-division of the mahal, and the plaintiffs were not therefore entitled to pre-emption. *Jeymul v. Keeree* (1) and *Abdul Shakur v. Mendai* (2) referred to.

THIS was a suit for pre-emption of a zamindari share in mauza Kandhla in the district of Muzaffarnagar. The property in dispute formed part of khewat Nos. 22 and 33, portion of a mahal of 15 biswas. The mahal was divided into seven *pattis*, and the land in dispute was situate in *patti* Khail, *thok* Bhuria. The plaintiffs were co-sharers in *patti* Khail while the defendant Musammât Mubarik-un-nissa was a co-sharer in the mahal, but not in *patti* Khail. In the wajib-ul-arz of the village the persons in whose favour a right of pre-emption was given were classified under three heads:—

* Second Appeal No. 1077 of 1905, from a decree of L. G. Evans, District Judge of Saharanpur, dated the 22nd of June 1905 reversing a decree of Madho Das, Subordinate Judge of Saharanpur, dated the 1st of September 1904.

(1) Agra. F. B. 1866. n. 171. (2) (1901) L. L. R., 23 All., 260.