

1913

BACHCHAN
LAL
v.
BANARSI DAS.

he had sued in the Punjab, could have recovered by law from the plaintiff.

As regards the plea relating to the account books, we notice that the appellants, when they filed their objections in the lower appellate Court, filed the roll of respondents in that court, and they never objected that the account books had not been proved. We understand that the respondent went into the witness box and as a matter of fact did prove the account books. This plea also fails. The appeal fails and is dismissed with costs.

Appeal dismissed.

1913

uary, 8.

Before Mr. Justice Sir Harry Griffin and Mr. Justice Chamier.

BIHARI LAL (PLAINTIFF) v. DAUD HUSAIN AND OTHERS (DEFENDANTS).*

Hindu widow—Hindu law—Compromise followed by an award settling disputes as to the property of various members of the family—Effect of such award on reversionary interests.

Where the widow of one and the son of the other of two brothers, Hindus separated in estate, entered into a compromise, which was found to be reasonable in its nature, concerning the partition of the property of the two brothers, and an award was made on the basis of such compromise, it was held that it was not open to the reversioner to dispute the validity of the compromise and award, especially when a considerable time had elapsed and most of the property had changed hands meanwhile. *Khunni Lal v. Gobind Krishna Narain* (1) and *Madan Lal v. Chuttan Singh* (2) followed.

THIS was a suit to set aside a deed of compromise and an award based thereon and to recover possession of certain immovable property.

The plaintiff came into court alleging that one Ganesh Rai, his maternal grandfather, was a separated Hindu and was the sole owner of the property in suit; that Musammat Gango, the widow of Ganesh Rai, on his death, took possession of the aforesaid property as a life-tenant, but unlawfully transferred it, under an arbitration award, to one Bhagirath, who was Ganesh Rai's cousin, that Bhagirath sold a portion of it to Musammat Wali-un-nissa, and that the ancestor of the defendants brought a suit against the latter for pre-emption and obtained possession of the property from her. The plaintiff prayed that the arbitration award might be set aside and

* Second Appeal No. 339 of 1912 (from a decree of D. B. Lyle, District Judge of Shahjahanpur, dated the 30th of January, 1912, reversing a decree of Gokul Prasad, Subordinate Judge of Shahjahanpur, dated the 11th of August, 1911.

(1) (1911) I. L. R., 33 All., 355, (2) (1912) 10 A. L. J., 101.

possession delivered to him. The defendants pleaded that Ganesh Rai and Bhagirath were members of a joint Hindu family and were joint owners of the property, and on Ganesh Rai's death, a dispute arising between Bhagirath and Musammat Gango, an arbitration award based upon a compromise between the parties was made, under which the property in suit was given to Bhagirath. He did not get it by transfer from Musammat Gango, and the plaintiff had no right to the property.

The court of first instance decreed the plaintiff's claim, but the lower appellate Court allowed the appeal and dismissed the suit. The plaintiff appealed to the High Court.

Munshi *Benode Behari* (with him Dr. *Satish Chandra Banerji*) for the appellant :—

The compromise seems to be collusive and cannot bind the reversioners. Further it was not arrived at in a contested suit and so it is of no effect. It was not even a compromise, since the arbitrators, without using their own judgement, gave the award according to the arrangement already arrived at by the parties. It would be extremely dangerous if widows were allowed to alienate property to which the reversioners would be entitled.

Mr. *Agha Haidar*, for the respondent :—

There is no allegation in the plaint that the compromise was collusive or fraudulent. Fraud is never presumed. If once it is found that the compromise was in every respect a fair and reasonable one the argument that it was not arrived at in a contested suit loses much of its force. The finding of the lower court is that the compromise is perfectly reasonable and saved the parties from a doubtful and ruinous litigation. On this finding the plaintiff has no case. Again the compromise is 21 years old. The property has, during the period, changed hands twice. It would be unfair if the plaintiff was allowed to take the property back from a *bona fide* purchaser. The plaintiff's family alone can know about the disputes which resulted in the compromise. They would not help the defendant with evidence, but would rather try to deprive him of the property. He relied on *Khunni Lal v. Gobind Krishna Narain* (1) and *Madan Lal v. Chutkan Singh* (2).

Munshi *Benode Behari* replied.

1913

BIHARI LAL
v.
DAUD HU-
SAIN.

GRIFFIN and CHAMBER, JJ :—Balkishan and Mul Chand were brothers, separate in estate. Mul Chand died leaving a son Bhagirath. In execution of a decree obtained by Bhagirath a share in a village called Jaswan was put up for sale and purchased by, or at all events in the name of, Balkishan. The last named was succeeded by his son, Ganesh, who died in 1888, leaving a widow Musammat Gango. Bhagirath put forward a claim to the share in Jaswan. The dispute was referred to the arbitration of three persons, but before an award could be made the parties agreed that the share in Jaswan should go to Bhagirath and that a share in a village called Karauri, standing in the names of Ganesh and Bhagirath, should go to Musammat Gango, and at the same time other properties were allotted to one party or the other. An award was made in terms of this agreement. In 1904, Gango gave the share in Karauri to her daughter's son, the present plaintiff. She died in 1908. In 1892 Bhagirath sold the share in Jaswan to a Musammat Wali-un-nissa, from whom it was taken under a pre-emption decree by the predecessors of the defendants. Thus, there have been several dealings with the properties included in the award. In the present suit, instituted in 1910, the plaintiff seeks to recover the share in Jaswan on the ground that he is not bound by the compromise and award made thereon. The Subordinate Judge decreed the claim, but his decision was reversed by the District Judge, who upheld the compromise, on the ground that it was a reasonable settlement of the dispute between Musammat Gango and Bhagirath. The learned Judge was disposed to think that Balkishan and Bhagirath must have been joint owners of the share in Jaswan, as both were recorded as holders of *sir* and *khudkash*, and Bhagirath's name remained in the *khassra* after the death of Balkishan. In second appeal it is contended that Musammat Gango being the holder of a limited interest in the property had no power to surrender it to Bhagirath in such a way as to bind the reversionary heirs of her husband. In our opinion there is no force in this contention. The case appears to be covered by the decision of the Privy Council in *Khunni Lal v. Gobind Krishna Narain* (1) and the decision of this Court in *Madan Lal v. Chultan Singh* (2). The compromise which has been found to be a reasonable

(1) (1911) I. L. R., 33 All., 356. (2) (1912) 10 A. L. J., 101.

settlement was designed to put an end to a family dispute which would otherwise have resulted in ruinous litigation. On the authorities it is impossible to treat the compromise as an alienation, valid only if it can be shown to be justified by necessity. The appeal is dismissed with costs.

1913

BIHARI LAL
v.
DAUD HU-
SAIN.

Appeal dismissed.

Before Mr. Justice Tudball and Mr. Justice Muhammad Rafiq.

MOHAN LAL (JUDGEMENT-DEBTOR) v. JAGAN NATH AND ANOTHER (DECREE-HOLDERS).*

1913

February, 12.

Civil Procedure Code (1908), section 47—Execution of decree—Partition—Objection that decree-holders had realized certain debts assigned by the decree to the judgement-debtor—Procedure.

The decree in a partition suit, *inter alia*, allotted a sum of money to be paid by the judgement-debtor to the decree-holders and assigned certain debts on account books to the judgement-debtor. On application by the decree-holders for execution as to the sum allotted to them, the judgement-debtor took objection that the decree-holders had as a matter of fact realized a large amount out of the debts which had been assigned by the decree to him. *Held* that the question thus raised was not a matter falling within the purview of section 47 of the Code of Civil Procedure, and that the judgement-debtor's remedy was by a separate suit to recover from the decree-holders the amount alleged to have been illegally realized.

THIS appeal arose out of proceedings in execution of a decree based upon a compromise in a suit for the partition of the property of the family to which both parties belonged. Amongst this property were certain debts due on bonds and other debts due on account-books. Several of the bond debts were assigned to the plaintiffs, and the rest as well as the debts on account-books to the defendant. In addition to this the sum of Rs. 3,400 was to be paid by the defendants to the plaintiffs, Rs. 400 at once and the balance within two years. The sum of Rs. 400 was paid. In 1910 and 1911 there were applications made by the decree-holders in execution of the decree whereby they sought to recover the balance of Rs. 3,000. The present application for execution was made in January, 1912. On the 8th of March, 1912, the judgement-debtor filed certain objections. The objections were that the application was in contravention of the terms of the decree, that the application was time-barred, that interest had been charged by the

*First Appeal No. 205 of 1912 from a decree of Mohan Lal Hukku, Subordinate Judge of Meerut, dated the 25th of May, 1912.