

and his successors in title, who for the purposes of the present claim stand in the shoes of the mortgagee under the mortgage of 1880 which was discharged by the sale of Het Singh's property. This being so, it is clear that none of the plaintiffs has any right against the person or property of the defendants. The result is that we must dismiss this appeal with costs.

Appeal dismissed.

1914

KASHI RAM
v
HET SINGH.

Before Sir Henry Richards, Knight, Chief Justice, and Justice Sir Pramada Charan Banerji.

1914
November, 26.

DAYA SHANKAR (DEFENDANT) v. HUB LAL AND ANOTHER (PLAINTIFFS).
Registration—Family settlement—Distribution of family property carried out by means of mutation proceedings—Hindu law—Joint Hindu family—Representative capacity of father.

The members of a Hindu family, one of whom was a minor, entered into a compromise concerning the partition of certain property in the course of mutation proceedings, and the partition agreed to was carried into effect by these proceedings.

Held that, inasmuch as the minor was represented by his father and there was no evidence of fraud or collusion, the compromise was binding on him. *Held also*, that the compromise did not require registration. *Kokla v. Piari Lal* (1) referred to.

THE facts of this case were as follows :—

One Bhajan Lal made a will of certain property in favour of, among others, the plaintiffs. In mutation proceedings the father of the minor plaintiff Raj Narain entered into a settlement with the defendant, who had filed objections to mutation in favour of the plaintiffs being effected, by which the defendant got a share out of the property left to the minor. The minor brought this suit for possession of the entire share given to him under the will. The defence was that the arrangement made was a family settlement and was binding on the minor. The court below held that Bhajan Lal was entitled to give away the property to whomsoever he pleased and the father of the plaintiff could not enter into any settlement on behalf of his minor son. It decreed the suit. The defendant appealed to the High Court.

*Second Appeal No. 82 of 1914, from a decree of A Sabonadiere, District Judge of Aligarh, dated the 8th of November, 1913, modifying a decree of Kunwar Sen, Assistant Judge of Aligarh, dated the 16th of May, 1912.

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Munshi *Gulzari Lal*, for the appellant :—

In the absence of fraud a compromise entered into on behalf of a minor by his father is binding on him. It was found that in this case there was no fraud. The plaintiffs are, therefore, bound by the compromise.

Munshi *Girdhari Lal Agarwala*, for the respondents :—

A compromise was entered into in this case and filed. The consent of the court was not obtained, and it is, therefore, invalid. Further a compromise such as the one made in this case should have been registered; without registration it could not be admitted in evidence; *Bharosa v. Sikhdar* (1). There was however a case—*Kokla v. Piari Lal* (2)—which did not find favour with the Judge who decided. *Bharosa v. Sikhdar*. The case of *Jagrani v. Bisheshar* (3) is against the present contention. Here, however, the father could not enter into any settlement, the property not being joint family property. It was the exclusive property of the minor.

Munshi *Gulzari Lal*, was not heard in reply.

RICHARDS, C. J., and BANERJI, J.—This appeal arises out of a suit in which the plaintiffs sought a declaration that they were the owners and possessors of certain property and possession.

It appears that the parties, who are disputing about the estate of one Bhajan Lal, were all members of the same family. In mutation proceedings a family settlement was come to, in consequence of which the plaintiffs were recorded as owners in respect of the property now in suit. It is alleged by the plaintiffs that this arrangement was come to as the result of fraud. The court of first instance found that there was no fraud when the family settlement was entered into, and accordingly the plaintiffs were not entitled to a decree.

The lower appellate court agreed in all the findings of fact of the court of first instance, but, finding that one of the plaintiffs was a minor, it decreed the claim to the extent of the interest to which he would have been entitled had there been no family arrangement. The defendant comes here in second appeal contending that inasmuch as the father of the minor Raj Narain consented to the arrangement it is binding upon his son, who is a

(1) (1914) 12 A. L. J., 998.

(2) (1913) I. L. R., 35 All., 502.

(3) (1914) 12 A. L. J., 1316.

member of the joint Hindu family. In our opinion under ordinary circumstances and in the absence of fraud or collusion the managing member of a joint Hindu family is entitled to transact the business of the joint Hindu family and represent the members of it.

In the present case no fraud or misconduct of any kind on the part of the father is proved, and it is not shown that the arrangement taken as a whole was not for the benefit of the family. On this point, therefore, we think that the lower appellate court was wrong.

The respondent, however, seeks to uphold the decree of the court below on the ground that rights in immovable property were created by the compromise entered into between the parties, and that this could only be done by a document duly registered. We think that under the circumstances of the present case it was not necessary that there should have been any registered writing. The case is very similar to the case of *Kokla v. Piari Lal* (1). This case was followed in an unreported case to which one of us was a party (2).

We accordingly allow the appeal, set aside the decree of the lower appellate court, and restore the decree of the court of first instance with costs.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice Tudball.

EMPEROR v. JIWAN.*

Criminal Procedure Code, section 403—Previous acquittal—"Court of competent jurisdiction"—Sanction.

Where the law requires a previous sanction to be given before a charge can be entertained by a court, that court is not a court of competent jurisdiction until the sanction has been obtained. *In re Samsudin* (3) followed. The fact, therefore, that a person has been tried for and acquitted of offences under the Indian Penal Code in respect of certain transactions in connection with the registration of a document is no bar to his trial for an offence under section 82 of the Registration Act arising out of the same transactions.

* Criminal Reference No. 952 of 1914.

(1) (1913) I. L. R., 95 All., 502. (2) Since reported (1914) 12 A. L. J.,

181.

(3) (1896) I.L.R., 22 Bom., 711.

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