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of section 41 of the Transfer of Property Act to the defendant respondent, inasmuch as there were circumstances in this case which ought to have put him on inquiry if he had acted as a reasonable man. As we have stated above, the other issues of fact have been decided against the defendant respondent. This was the only point on which the case was decided in his favour and as we have disagreed with the Subordinate Judge on this point we modify the decree of the court below and decree the plaintiffs' claim in full with costs in all courts.

Appeal allowed.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Gokul Prasad.

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October, 25.

SHAHZADI BEGAM (PLAINTIFF) v. MUHAMMAD IBRAHIM AND OTHERS
(DEFENDANTS).*

Construction of document—Compromise—Compromise settling all matters in dispute except one—Agreement therein that on that matter the parties would be bound by the finding of the court—Finding of the court not appealable.

The parties to a suit for the recovery of property of various kinds by right of succession agreed in respect of the various classes of property except one. As to this, however, they agreed that they would be bound by the finding of the court in respect of it. *Held* that the effect of this last term of the compromise was that the finding of the court was final and binding upon the parties and that no appeal would lie against it. *Bahir Das Chakravarti v. Nobin Chunder Pal* (1) followed.

THE facts of this case sufficiently appear from the judgment of the Court.

Dr. S. M. Sulaiman, for the appellant.

Dr. Kailas Nath Katju, for the respondents.

BANERJI and GOKUL PRASAD, JJ. :—This appeal arises out of a suit brought by Musammat Shahzadi Begam for recovery of her legal share in the estate of her deceased father Baqar Ali. The defendants to the suit were her brother Muhammad Ibrahim and her sisters or their legal representatives. The suit was mainly defended by the brother, who alleged that part of the property claimed was *waqf* property, that part was property which exclusively belonged to him, and that the plaintiff was

* First Appeal No. 428 of 1917, from a decree of Kshirod Gopal Banerji, Subordinate Judge of Cawnpore, dated the 14th of September, 1917.

(1) (1901) I. L. R., 29 Cal., 306.

not entitled to obtain any share in the *waqf* property. A document was produced, alleged to have been executed by one Wilayat Ali, who was the ancestor of Baqar Ali, and under which certain property was declared to be *waqf*. In the course of the trial the parties came to terms, and a compromise was filed on 13th of September, 1917. This compromise is printed at page 27 of the paper book. The compromise dealt with all the property in dispute, which consisted of house property, shops, some government securities and money deposited in a bank, and other property of a similar description. As to part of the property, which was claimed to be *waqf*, the compromise provided as follows:—“With regard to the remaining properties, which defendant No. 1 says in his written statement to be *waqf* properties, the court may find with reference to the documentary evidence produced by the parties in this case whether they are *waqf* properties or not, and the parties will be bound by such a finding.” The court in accordance with the terms of this compromise came to a finding as to whether some of the property was *waqf* property or not, and accordingly directed a preliminary decree for partition to be prepared. It is against the finding of the court below as regards some properties claimed by one party to be part of the estate of Baqar Ali and by the other as *waqf* property that the present appeal has been preferred. A preliminary objection has been taken to the hearing of the appeal on the ground that under the terms of the compromise, as quoted above, the parties undertook to be bound by the finding of the court and that consequently it is not open to the appellant to question the correctness of that finding. In our opinion this objection is well-founded. As we have stated above, the parties under the compromise came to an understanding as to all the various items of property claimed in the suit. They made arrangements in regard to all the property with the exception of certain properties referred to in the passage which we have quoted above, and they agreed that on the basis of the documentary evidence alone the court should come to a finding and such finding would be binding on the parties. The words which we have italicized above would be meaningless unless we hold that by those words the parties agreed to accept the finding as a

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correct finding and not to appeal against it. There was a clear implication in the agreement not to appeal against the finding, but to be bound by it whatever it might be. As all the terms of the compromise were agreed upon in view of this condition also, the plaintiff in our opinion is estopped from disputing the correctness of the finding. We think that this case is similar to the case of *Bahir Das Chakravarti v. Nobin Chunder Pal*(1). In our opinion it is not open to the plaintiff to dispute the correctness of the court's finding and this appeal must fail. We accordingly dismiss this appeal with costs.

Appeal dismissed.

Before Justice Sir Pramada Charan Banerji and Mr. Justice Gokul Prasad.

KARAN SINGH (PLAINTIFF) v. ISHTIAQ HUSAIN AND ANOTHER
(DEFENDANTS).*

1920
October, 26.

Mortgage—Prior and subsequent mortgagees, rights of, inter se—Separate and independent decrees obtained by each set of mortgagees—Property sold by prior mortgagee and purchased by a third party leaving a surplus of sale proceeds—Rights of auction purchaser and puisne mortgagees.

A mortgaged the same property, first to B and then by two separate mortgage-deeds to C. B and C both sued on their mortgages, each party without implicating the other, and obtained decrees. B's decree was executed first. The mortgaged property was sold and was purchased by K. B's mortgage was paid up, and a considerable surplus remained, which was deposited in court. C then endeavoured to execute his decree against the surplus sale proceeds, but failed, and the money was ultimately withdrawn by the mortgagor. C next proceeded with the execution of his decree against the property in the hands of K, the auction purchaser, and K, in order to retain possession, paid up the amount of B's decree. K then sued the representatives of A to recover the amount so paid.

Held that in the circumstances K was entitled to a decree. *Barhamdeo Prasad v. Tara Chand* (2) referred to.

THE facts of this case are fully stated in the judgment of the Court.

Mr. B. E. O'Connor and Maulvi Iqbal Ahmad, for the appellant.

Dr. S. M. Sulaiman, for the respondents.

* First Appeal No. 441 of 1917, from a decree of Lal Gopal Mukerji, Second Additional Subordinate Judge of Aligarh, dated the 20th of September, 1917.

(1) (1901) I. L. R., 29 Calc., 306 (2) (1913) I. L. R., 41 Calc., 654
(310).