

1922

MUFTI ALI  
JAFAR  
v  
FAZAL,  
HUSAIN  
KHAN.

it offended against the general principle of the Muhammadan Law, which is the only reason which the learned Judge gives, he having found all the other allegations in their favour, the plaintiffs could not sue in respect of it except under section 92. If, on the other hand, it was not a breach of trust, the plaintiffs had no cause of action in respect of the compromise, so that, in either event, the plaintiffs were bound to fail.

I agree that suits with regard to trusts relating to public charities must either be brought under section 92 or they cannot be brought at all. The Court has to look at the substance and not the form. It is easy to see that the relief in this case was carefully framed so as not to come within the reliefs specified in section 92, and obviously a court would not lend itself to a dodge of this kind adopted by a litigant for the purpose of evading ancient and salutary provisions. As far as I can see, the main difficulty about section 92 is to bring certain classes of claims, which persons are forced to make, within its terms. A person who wants to keep out of it is clearly acting *malâ fide*.

*Appeal dismissed.*

*Cross-objections allowed.*

*Before Mr. Justice Gokul Prasad and Mr. Justice Stuart.*

RAM KISHAN RAT (DEFENDANT) v. CHHEDI RAI AND ANOTHER  
(PLAINTIFFS).\*

1922  
*May, 5.*

*Hindu law—Joint Hindu family—Liability of sons for father's debts—Bonds executed in renewal of previous bonds which were time-barred.*

Inasmuch as the Hindu law does not recognize any rule as to the extinction of claims by efflux of time, the sons in a joint Hindu family are not exempt from payment of bonds executed by their father merely because such bonds were given by way of renewal of other bonds which at the time of execution of the second set were barred by limitation. *Narayanasami Chetti v. Samidas Mudali*, (1) followed.

THE facts of this case, so far as they are necessary for the purposes of this report, appear from the judgment of the Court.

Maulvi *Iqbal Ahmad*, for the appellant.

Pandit *Uma Shankar Bajpai*, for the respondents.

GOKUL PRASAD and STUART, JJ :—This is an appeal by the defendant in a suit brought by the plaintiffs for recovery of the amount due to them on three bonds executed by the

\* Second Appeal No. 69 of 1921, from a decree of Baijnath Das, District Judge of Ghazipur, dated the 10th of August, 1920, confirming a decree of Zamirul Islam Khan, Munsif of Ghazipur, dated the 15th of September, 1919.

father of the defendant. The only plea which has been argued before us is one of limitation. The case has been put before us by the learned vakil for the appellant in this form. He said that on the date the father executed the bonds which are now being sued upon, the earlier bonds in exchange for which the fresh bonds were executed had become barred by time and, therefore, there was no consideration for them and execution of these bonds would not be binding on the sons. There is no doubt whatever that the father was competent to execute the present simple bonds in lieu of time-barred debts. Against him the contract would have been a valid one under section 25, clause (3), of the Indian Contract Act. Moreover, the Hindu law does not recognize any rule as to the extinction of claims by the efflux of time, so that looked at from any point of view the bonds in dispute amounted to a valid contract made by the father. The father being dead, the sons were liable to pay the money which their father was bound to pay. This view finds support in *Narayanasami Chetti v. Samidas Mudali* (1). In our opinion the decree of the lower appellate court was a correct one. We accordingly confirm the decree of the lower appellate court and dismiss this appeal with costs.

*Appeal dismissed.*

1922

RAM KISHAN  
RAI  
v.  
CHHEDI RAI.

## MISCELLANEOUS CIVIL.

*Before Mr. Justice Piggott.*

RUP NARAIN AND OTHERS (DEFENDANTS) v. BISHWA NATH SINGH (PLAINTIFF).\*

1922  
May, 6.

*Act No. VII of 1870 (Court Fees Act), section 7 (v) (a) (b)—Court-fee—Suit by a member of a joint Hindu family to avoid a sale of ancestral property—Nature of relief to be asked for—Appeal.*

In a suit where a member of a joint Hindu family seeks to avoid the effect of a private sale of ancestral property executed by other members of the family, the plaintiff need not ask for any other relief than possession of the property sold: he is not bound to ask for cancellation of the sale-deed; but if he does so he will have to stamp his plaint according to the full value of the property sold, unless he is permitted by the Court to amend his plaint.

The case of the defendants' appeal against a decree in favour of the plaintiff in such a suit is, however, different, and they are entitled to value their appeal, for the purposes of the Court Fees Act, under section 7 (v) (a) of the Act.

*Raja Dhakeswar Prasad v. Jivo Chaudhry*, (2) distinguished.

THIS was a reference to the Taxing Judge on the question of the court fee payable on the plaint in a suit relating

\* Stamp Reference in First Appeal No. 255 of 1920.

(1) (1883) I. L. R., 6 Mad., 293.

(2) (1918) 3 Patna L. J., 448.