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L. J., I have to look at the state of knowledge of Gulab Chand who at that time had to judge and make the concession. I am satisfied that the cause of action was neither vexatious nor frivolous and that Gulab Chand believed at the time that he had a good cause of action. On these findings the appeal must succeed, for there was clearly forbearance of a *bonâ fide* claim, and such forbearance is a good consideration in law.

I concur in the order proposed.

BY THE COURT:—The order of the Court is that the appeal is allowed, the decree of the court below is set aside and the plaintiff's claim is decreed against the defendant respondent Kamal Singh. Kamal Singh shall pay his own costs and those of Gulab Chand in all courts.

Appeal allowed.

Before Mr. Justice Ryves and Mr. Justice Gokul Prasad.

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February, 28.

NARAIN SINGH AND ANOTHER (DEFENDANTS) *v.* RAJ KUMAR SINGH AND OTHERS (PLAINTIFFS) AND JAGTA KUNWAR AND OTHERS (DEFENDANTS).*

Hindu law—Female in possession for life—Compromise of claim against the estate to the detriment of the reversionary interest.

After the death of the second of two brothers, who had been joint in estate, his daughter obtained possession of the entire property which had been of the two brothers. The daughter had an infant son, who was the next reversioner. The representatives of the first brother (two daughters) brought a suit against the daughter of the second, claiming half the estate. The defendant, without even filing a written statement or getting a guardian *ad litem* appointed for her son the reversioner, who was then a baby, compromised the suit and gave the plaintiffs half the property.

Held that the compromise so entered into was *ultra vires* and could not affect in any way the rights of the minor reversioner. *Amrit Narayan Singh* v. *Gaya Singh* (1) followed.

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

Maulvi *Iqbal Ahmad*, for the appellant.

Babu *Piari Lal Banerji*, for the respondent.

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* Second Appeal No. 457 of 1920, from a decree of Jagat Narain, District Judge of Azamgarh, dated the 27th of January, 1920, confirming a decree of Raj Bihari Lal, Subordinate Judge of Azamgarh, dated the 16th of November, 1918.

(1) (1917) I. L. R., 45 Calc., 590.

RYVES and GOKUL PRASAD, JJ. :—The following facts are admitted. Dawan and Budhan Singh were brothers. Dawan died leaving him surviving a widow Musammat Khaira and two daughters, Musammats Kalwanta and Maktola. On his death, his widow's name was recorded against half the property that had originally belonged to Ranjit Singh, the father of the above mentioned brothers. Budhan had two wives, Musammats Palti and Samarkha, and by the latter a daughter Musammat Jagta, who was the mother of Raj Kumar Singh, plaintiff No. 1, and two other sons who are now dead, who were also plaintiffs.

The plaintiffs (who are all minors) brought this suit on the allegation that the two brothers Dawan and Budhan were joint, and that on the death of Dawan, Budhan succeeded to the whole property by right of survivorship, and that Musammat Khaira's (Dawan's widow's) name was recorded against half only for her consolation. After her death, and Budhan's death, the names of his widows were recorded against the entire family property. On their death, Musammat Jagta Kunwar succeeded to a daughter's estate and the name of the plaintiff was recorded against the whole property. Then Musammats Kalwanta and Maktola brought a suit against Musammat Jagta, claiming the property, and on the 20th of June, 1911, "deceived her and caused her to file a compromise" by which she admitted their right to half the property which is now the subject of dispute. The suit was decreed according to the compromise and their names were recorded against half. On the 16th of September, 1912, these ladies executed a mortgage, which was "fictitious and without consideration," in the name of Narain Singh. The relief claimed in this suit was a declaration that on the death of Jagta the plaintiffs were owners of the property in dispute, and prayed that the mortgage be "cancelled" as against the plaintiffs.

They made Musammat Kalwanta (Maktola being dead) defendant first party, Musammat Jagta defendant second party, and Narain Singh and his sons, defendants third party.

The main defence to the suit was that Dawan Singh and Budhan were separate, and his widow's name was entered against her late husband's own share as his heir; that on her death, the widows of Budhan wrongfully got possession of this property;

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that Musammats Maktola and Kalwanta then brought their suit against Jagta and plaintiff No. 1, Raj Kumar Singh; the suit was properly compromised and the right of Maktola and Kalwanta was admitted and decreed. Then came the mortgage to Narain Singh, whereupon Musammat Jagta brought a suit, in which she joined Raj Kumar Singh as co-plaintiff, to have the compromise she had entered into set aside on the ground that it was induced by fraud, but the suit was dismissed. In short, they pleaded that the compromise was valid and bound the plaintiffs, and that the plaintiffs' suit was barred by the rule of *res judicata*.

On these pleadings the parties went to trial. The trial court found on the clearest possible evidence, chiefly documentary, that the brothers, Dawan and Budhan, were joint, and that on the death of Dawan, his widow and daughters had no right whatever to succeed to any property.

It held the compromise was not binding on the plaintiffs as "there was no real trial of the case and Jagta was not entitled in this way to compromise the future claims of her issue"; Maktola and Kalwanta had no interest in the property, and so the compromise was "fully injurious to reversioners."

On the plea of *res judicata*, it held that Raj Kumar Singh was an unnecessary party to Jagta's suit, and so was not bound by the decision. It decreed the suit. On appeal, the evidence as to jointness was so overwhelming, that the plea of separation was abandoned, and the two remaining pleas only were pressed.

On the first point the lower appellate court held, that (1) Jagta had no power to bargain away the rights of her son, following the recent Privy Council case of *Amrit Narayan Singh* v. *Gaya Singh* (1), and it further held (2) that Jagta had "entered into the compromise recklessly without protecting the interests of her minor son." On the third point it held that "*as the compromise itself is not binding on the plaintiffs*," the dismissal does not affect the plaintiffs, who "cannot forfeit their right to inherit the property after the death of their mother on account of her reckless conduct." It upheld the decree. The defendants come here in second appeal. We note that plaintiffs 2 and 3 and Jagta are now all dead.

(1) (1917) I. L. R., 45 Calc., 590.

An elaborate argument has been addressed to us on both sides and a large number of cases have been quoted, some of which may not be easily reconcilable ; but having regard to the findings of the lower appellate court, we have no difficulty in deciding the appeal, and do not propose to discuss these rulings.

The main argument for the appellants is (1) the compromise was *bonâ fide*, and until it could be proved that it had been obtained by fraud, it could not be set aside. Fraud had not been proved. (2) The compromise may be regarded "as a family settlement" within the meaning of the well known Privy Council cases, and, as such, was binding. It is said there was a *bonâ fide* dispute between the members of the family. Jagta represented the estate and this was a reasonable settlement by her by which each branch of the family got a half.

Now, what are the facts ? The brothers were joint. On the death of Dawan, Budhan succeeded to the whole of the property. On his death his widows were entitled to a life estate, after them the daughter of Budhan came into a life estate and on the birth of Raj Kumar Singh, plaintiff No. 1, he was sole reversioner to the whole. This state of things depended on whether Dawan and Budhan were separate or joint. It was admitted in the lower appellate court that they were joint when Dawan died. It follows that his daughters Maktola and Kalwanta had no shadow of claim to any of the property when they filed their suit against Jagta and the infant Raj Kumar Singh. Soon after the filing of the plaint in that suit, the 27th of June, 1911, was fixed for the appointment of Jagta as guardian *ad litem* to her infant son, then a baby in arms. On the 20th of June, Jagta filed her compromise. No written statement had been put in, issues had not been fixed, nor was any order made appointing a guardian *ad litem* for the minor. These facts speak for themselves. There was no contest, and the conduct of Jagta, who was in possession of the whole property and who should have known that the plaintiffs had no sort of claim, was so precipitate, (although the courts below have held it to be "reckless" only), that the inference that the compromise was obtained improperly is almost irresistible. But, in any case, as held by the Privy Council in the case relied on by the lower court, Jagta could

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not bargain away her son's right, which was only a *spes successionis*. It was not a settlement of a *bond fide* family dispute such as has been recognized by the Privy Council.

The minor himself cannot be considered a party to the suit, as no guardian had been appointed. He, therefore, cannot be personally bound as a party to the compromise and decree.

With regard to the last point, the mere fact that Jagta joined her minor son, who was quite an unnecessary party, in her suit, will not, we think, make the decision against her *res judicata* against her son.

In the result, the appeal fails and is dismissed with costs.

Appeal dismissed.

Before Mr. Justice Piggott and Mr. Justice Walsh.

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March, 2.

SARDAR MAL, HARDAT RAI (PLAINTIFF) *v.* SHEO BAKHSH RAI, SRI NARAIN (DEFENDANT).*

Act No. IX of 1899 (*Indian Arbitration Act*), *schedule I, clause* (3)—*Arbitration—Award made after three months from notice calling on arbitrator to enter on reference but within three months from the arbitrator entering upon the reference.*

Held on a construction of clause (3) of schedule I to the Indian Arbitration Act, 1899, that the provisions "entering on the reference" and "having been called upon to act by notice in writing" are alternative in this sense that where no reference is entered upon at all then the time runs from the notice calling upon the arbitrators to act. But, on the other hand, even though the arbitrators may be called upon to act by entering upon the reference, if they enter upon the reference they have three months from that moment for making their award.

"Entering upon the reference" means not when the arbitrator accepts the office or takes upon himself the duty, but when he actually enters upon the matter of the reference, when the parties are before him, or under some peremptory order compelling him to conclude the hearing *ex parte*. *Baring Gould* v. *Sharpington* (1) and *Baker* v. *Stephens* (2) referred to.

THIS was an appeal from an order of the District Judge of Cawnpore refusing to file an award. The facts of the case are thus stated in the order under appeal :—

"This was an application for filing an award under section 11 of the Indian Arbitration Act. There were eight parties who on the 14th of January, 1919, submitted the dispute to the

* First Appeal No. 81 of 1921, from an order of I. B. Mundle, District Judge of Cawnpore, dated the 21st of February, 1921.

(1) (1899) 2 Ch., 80. (2) (1867) L. R., 2 Q. B., 523.