APPELLATE CIVIL.

Before Mr. Justice Mukerji and Mr. Justice Ashworth.

1927
June, 28.

SIDH GOPAL (DEFENDANT) v. BIHARI LAL (PLAINTIFF).*

Family arrangement—"Bonâ fide dispute"—Estoppel.

The only requisite necessary to make valid a family arrangement is that it should be a transaction between members of the same family, which is for the benefit of the family generally, as, for example, one which tends to the preservation of the family property, to the peace or security of the family and the avoiding of family disputes and litigation, or to the securing of the honour of the family.

The expression "*bonâ fide* dispute" means nothing more than that each party must intend to press his claim to the property by litigation or otherwise. It has nothing to do with whether the claim is good or bad in law.

THIS was a second appeal arising out of a suit brought by the plaintiff respondent, Bihari Lal, against the defendant appellant, Sidh Gopal, for recovery of a half share in certain zamindari property. The plaintiff was admittedly in possession of the other half share. There were three brothers, Bihari Lal the plaintiff, Nand Kishore, and Hargobind. Nand Kishore was the father of the defendant Sidh Gopal. He died 30 years ago. Hargobind died only four years ago, and it was the share of the zamindari property which he enjoyed during his life-time that was the subject-matter of the present suit. The plaintiff Bihari Lal's case was that Hargobind died separate from the others, and that he, as Hargobind's brother, had a preferential right to the property over his nephew Sidh Gopal. The defence of Sidh Gopal was that the deceased Hargobind and his father (and afterwards himself) were joint and that Bihari Lal was separate. This plea was rejected by both the lower

*Second Appeal No. 1336 of 1925, from a decree of Syed Iftikhar Husain, Judge of the Court of Small Causes, exercising the powers of a Subordinate Judge of Allahabad, dated the 3rd of April, 1925, reversing a decree of Muhammad Taqi Khan, Munsif of West Allahabad, dated the 8th of November, 1924.

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courts. Sidh Gopal also pleaded a family arrangement between himself and Bihari Lal, arrived at at the time of Hargobind's death, whereby it was agreed that they should each take a moiety of Hargobind's property. The trial court found in favour of this alleged settlement. The lower appellate court found against it. That court found that on Hargobind's death Bihari Lal was claiming the whole of Hargobind's fractional share and Sidh Gopal was also claiming the whole of it. It found that Sidh Gopal had in law no title whatever, as the evidence clearly showed that he was separate from Hargobind. It found, however, that the parties were advised by their community to settle the matter, and agreed to take the property of Hargobind half and half. In pursuance of this agreement they put in an application to the revenue court that they should be entered jointly in the revenue papers. The lower appellate court was of the opinion that this would have been a family settlement if there had been a *bonâ fide* dispute and a *bonâ fide* settlement. It held, however, that there was no *bonâ fide* dispute, because *bonâ fide* dispute implied a *bonâ fide* claim by each party, and Sidh Gopal could have no belief in the validity of his claim. It, therefore, refused to acknowledge the settlement as a binding family settlement, and decreed the suit. The defendant appealed.

Mr. *A. P. Dube*, Munshi *Ambika Prasad* and Munshi *B. B. Chandra*, for the appellant.

Pandit *Rama Kant Malaviya*, for the respondent.

The judgement of ASHWORTH, J., after setting out the facts as above, thus continued :—

In appeal the appellant Sidh Gopal argues that the lower appellate court was wrong in considering it necessary that Sidh Gopal's claim should have been based on some valid ground. His counsel urges that it is sufficient to say that there was a dispute between the parties and that each party was determined to press his claim, whatever

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its merits. With this reasoning I am disposed to agree. The learned counsel for the respondent has taken the following grounds for upholding the decision of the lower appellate court. His first ground is that the fact of any agreement is merely based on an application to the revenue court, and that application merely asked for the names of both parties to be entered jointly inasmuch as both parties were legal representatives of the deceased. There is no authority for holding that an application to a revenue court cannot be good evidence of a preceding settlement. The Privy Council case of *Chokhey Singh* v. *Jote Singh* (1) was merely authority for holding that a particular application in a particular case was not sufficient proof of any preceding compromise. In the present case the lower appellate court has relied not only on the application to the revenue court for mutation, but also on the oral evidence and on the surrounding circumstances. I consider that there was material on which the lower appellate court could come to the finding that there had been a compromise before mutation, and that in second appeal it is not open to us to set aside this finding. A second point taken was that the evidence of a family arrangement did not disclose any sufficiently precise settlement to justify effect being given to it. It is pointed out that the application to the mutation court did not specify the shares of the parties, but only asked for an entry that they hold jointly. This application, however, to the revenue court had to be read in the light of the previous history of the property and in the light of surrounding circumstances. It could also be read in the light of the oral evidence produced in this court which was believed by the lower court. So read, there can be no question that, if there was a compromise at all, it was a compromise that the parties should hold the property of Hargobind in equal moeties. The next point taken up

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(1) (1908) I.L.R., 31 All., 73.

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is this. It is said that for a family settlement to be recognized as such there must be a *bonâ fide* dispute between the parties, and this is interpreted by counsel to mean that the dispute must arise out of a *bonâ fide* claim raised by each party. In this case he urges that the court below has come to a finding that Sidh Gopal could have had no real belief in the validity of his claim. Consequently his claim was not *bonâ fide* and could not give rise to a *bonâ fide* dispute or to a *bonâ fide* settlement. The expression "*bonâ fide* dispute" has been used in many decisions as a requisite for a family settlement. In my opinion it means nothing more than that each party must intend to press his claim to the property. The word "*bonâ fide*" indeed will have no meaning except when one of the parties to the dispute is a trustee or qualified owner. In such a case, the trustee or the qualified owner cannot defend a transfer of the property, made to defeat the interest of his beneficiary or a person for whom he stands, by merely alleging that another member of the family claimed the property and that there was a dispute. In such a case, there is really no dispute. The expression "*bonâ fide*" is not applicable to a case where each party is contending for an advantage to himself in his own right. Every decision relied upon by counsel for the contention that the dispute must be a *bonâ fide* dispute deals with a case where one of the parties was a Hindu female with qualified ownership. Nor again do I hold that the claim by each party to the settlement must be a claim which that party believes to be justified both upon facts and law. It is sufficient to point out that there might be an illegitimate son, who as such could have no title to the property and who was not likely to be able to produce evidence to prove his legitimacy. Supposing he claimed to be legitimate and threatened to litigate. If the rest of the family came to an arrangement with him, it could not be said that this failed to

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be a family arrangement. In other words I would construe a *bonâ fide* claim merely as a claim which the person making it intended to press by litigation or otherwise. The only requisite required to make valid a family arrangement is that it should be "a transaction between members of the same family which is for the benefit of the family generally, as, for example, one which tends to the preservation of the family property, to the peace or security of the family and the avoiding of family disputes and litigation, or to the saving of the honour of the family." (See the definition of "family arrangement" in Halsbury's Laws of England, volume 14, page 540). In this case it is clear that the community considered that the uncle and nephew should not fight over the matter. There can be no doubt that this arrangement was accepted by Bihari Lal for the purpose of avoiding litigation and he cannot be permitted to go back on the arrangement.

For the above reasons I hold that the lower court was wrong in finding that this settlement was not valid as a family settlement and prefer the reasoning of the trial court. I would allow this appeal and restore the decree of the trial court.

MUKERJI, J.—I agree with my learned brother that the decree of the lower court should be set aside and the decree of the court of first instance dismissing the respondent's suit should be restored.

The facts found are very simple. A person died leaving a brother and a nephew. If the deceased person was separate from his relations, the brother would succeed and not the nephew. If the nephew and the deceased were joint, the brother would be excluded. There was a claim for the deceased's property both by the brother and the nephew. The castemen decided that in order to avoid litigation the parties should divide the

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property equally amongst themselves. Accordingly an application was put before the revenue court stating that the names of the claimants should be put down as the heirs of the deceased person. This entry continued for four years. On foot of this entry the plaintiff, the brother of the deceased person, brought two suits for recovery of profits against the defendant. It is clear then that there was a dispute between two male persons about the heirship of the deceased person. That dispute was settled at the instance of castemen in a particular way. The settlement arrived at was given effect to at the instance of the claimants in the revenue papers, and the plaintiff in this case brought suits for profits in pursuance of that agreement. The question then is whether, after all this has happened, the settlement of dispute is to be set aside merely on the ground that there was no "*bonâ fide* claim" on the part of the defendant, and the settlement of the dispute was of no consequence. I am not prepared to say that any such contention should prevail.

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Case after case has been quoted before us. It is enough to say that each case was decided on its own peculiar facts. Where parties are *sui juris* and understand their own interest, where each party is prepared to press his claim and where these parties, in order to avoid a litigation, come to an arrangement, I fail to see why that arrangement should not hold good. It is a contract which has been entered into for consideration and it should be binding on the parties. For these short reasons I would hold that the plaintiff's suit was rightly dismissed.

BY THE COURT.—The appeal is allowed with costs, the decree of the court below is set aside and the decree of the court of first instance restored with costs throughout.

Appeal allowed.