For the reasons given above we allow this petition in revision and set aside the order of the learned Munsif, dated the 26th July, 1937. The applicant Panna Lal will have his costs throughout.

APPELLATE CIVIL

Before Justice Sir Edward Bennet and Mr. Justice Verma

BANWARI LAL (PLAINTIFF) *v.* RAM GOPAL (DEFENDANT) AND IMIRTI (PLAINTIFF)*

1939 *December*, 1

Civil Procedure Code, order XXIII, rule 3—Adjustment of suit—Agreement between parties that suit should be decreed if the court upon examining the plaintiff found that she was not deaf and dumb—Decree by consent of parties—Appeal—Civil Procedure Code, section 96(3).

In a suit for possession of property by right of inheritance under the Hindu law the main defence was that the plaintiff had been born deaf and dumb and so was excluded from inheritance. After one witness had been partly examined, the parties came to terms and stated to the court that they had agreed that if upon examining the plaintiff the court found that she was not quite deaf and dumb, her claim should be decreed. The court accordingly examined her, found that she was not quite deaf and dumb, and decreed her suit: *Held*, that the decree passed in these circumstances was in essence a consent decree, based on an agreement between the parties which amounted to a compromise, and no appeal lay against that decree.

Mr. *Panna Lal*, for the appellant.

Messrs. *G. S. Pathak* and *S. N. Seth*, for the respondents.

BENNET and VERMA, JJ.:—The appellant Banwari Lal was, as the plaint stood after amendment, plaintiff No. 1 in the suit. Mst. Imirti, who has been impleaded as a *pro forma* respondent to this appeal, was plaintiff No. 2. The lower appellate court has set aside the decree of the Subordinate Judge and has remanded the suit "for decision according to law". The appeal is directed against this order of remand.

One Shyam Sundar Lal was at the time of his death, which occurred in 1926, the sole owner of certain pro-

*First Appeal No. 238 of 1937, from an order of B. R. James, District Judge of Budaun, dated the 19th of July, 1937.

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perty. Mst. Imirti is his widow. He also left him surviving his mother Mst. Katori. In the ordinary course, on Shyam Sundar Lal's death Mst. Imirti alone should have got possession of the entire property left by him and her name alone should have been entered in the revenue records against the entire property. It appears, however, that the mother, Mst. Katori, raised some dispute in the course of the mutation proceedings, and ultimately there was an agreement between the two ladies, as the result of which Mst. Imirti's name was entered in respect of a portion of the property and Mst. Katori's name was entered against the remaining property. Mst. Katori died in 1933. The appellant Banwari Lal is the son of Shyam Sundar Lal's sister. The defendant Ram Gopal is a distant collateral of Shyam Sundar Lal. On Mst. Katori's death Ram Gopal obtained mutation of his name in respect of the property which had been entered in Mst. Katori's name and took possession of it. Thereupon this suit was filed. The reliefs claimed, as they now stand, are that (*a*) it may be declared that plaintiff No. 1, Banwari Lal, is entitled, as the reversioner of Shyam Sundar Lal, to obtain possession of the property in dispute after the death of the plaintiff No. 2; and (*b*) by ejectment of defendant Ram Gopal, possession over the property in question be given to the plaintiff No. 2 Mst. Imirti. There was also a claim for mesne profits.

One of the allegations made by Ram Gopal in his defence was that Mst. Imirti was born deaf and dumb. Although it is not stated in so many words, the object of this allegation evidently was to plead that she was excluded from inheritance. The issues framed by the learned Subordinate Judge raised this point.

When the case came on for trial, a witness was produced on behalf of the plaintiffs. A portion of his evidence was recorded, and then the parties came to certain terms which were embodied in the proceedings of the court. The defendant Ram Gopal stated to the court that "If Mst. Imirti would, in the presence of

the court, talk a little, and if she can hear anything spoken by the court, or in the presence of the court can hear things said by someone else and can speak a little, then the claim of plaintiff No. 2 be decreed." The plaintiffs accepted this offer and agreed to the proposal made by the defendant. This happened on the 20th of March, 1936. In pursuance of this agreement the learned Subordinate Judge sent for Mst. Imirti on 24th March, 1936, and in the presence of all the parties, their counsel and pairokars, put questions to her. He has recorded the entire proceedings that took place on that day in a rubkar. The final opinion formed by the learned Subordinate Judge as the result of what took place is thus recorded by him: "It appears from the entire talk that has taken place that she is somewhat hard of hearing, but is not deaf; she cannot speak distinctly, but is not dumb."

As the result of these proceedings and in pursuance of the agreement entered into by the parties, the learned Subordinate Judge decided issues 1 and 2 against the defendant and held that Mst. Imirti was "neither congenitally deaf nor dumb, and that she is entitled to succeed to her husband." He accordingly passed a decree in favour of the plaintiffs in terms of reliefs (*a*) and (*b*) of the plaint.

The defendant Ram Gopal filed an appeal against that decree and the learned District Judge has not only entertained that appeal but has allowed it and has passed the order of remand in question. The learned District Judge sent for Mst. Imirti again and put questions to her, and as the result of the impression created on his mind he came to the conclusion that Mst. Imirti was "absolutely deaf" and that she had "such a serious impediment in her speech that she cannot talk, leave alone take part in a sustained conversation."

It is urged by learned counsel appearing for the appellant that when the parties entered into the agreement quoted above they intended that the proceedings

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should take place before the trial court and not before an appellate court. We have no doubt that this contention is well founded. His next argument is that the decree passed in these circumstances by the learned Subordinate Judge was in essence a consent decree, based on an agreement arrived at between the parties which amounted to a compromise, and that no appeal lay against that decree. In our opinion this contention is also correct and must be accepted. There is a long series of decisions of this Court which supports the argument put forward on behalf of the appellant. The earliest case that need be mentioned is that of *Shahzadi Begam* v. *Muhammad Ibrahim* (1). The next case is that of *Himanchal Singh* v. *Jatwar Singh* (2). Then there are the decisions in *Ram Sundar Misra* v. *Jai Karan Singh* (3); *Sita Ram* v. *Piari Lal* (4); *Ballabh Das* v. *Sri Kishen* (5) and *Jaggu Mal* v. *Brijlal* (6). The principle underlying all these decisions is the same although the facts are different. As MEARS, C.J., remarked in *Ram Sundar Misra's* case: "It is surely open to a litigant, be he plaintiff or defendant, at any stage of the proceedings to make an offer to the other side to bring litigation to a close." That is exactly what Ram Gopal did in this case. In his judgment in *Ballabh Das's* case SULAIMAN, J., has thus explained the underlying principle: "Where, in pursuance of an agreement between the parties, the court proceeded outside its ordinary jurisdiction, the proper inference would be that there was to be no appeal from the decision as would be in the case if the trial were in the ordinary way." The learned Judge, has further made it clear that it is not only where the court has proceeded outside its ordinary jurisdiction that an appeal is barred, and that there can be other circumstances because of which the parties to a case may have no right of appeal. We entirely agree with the rule laid down in these cases.

(1) (1920) I.L.R 43 All. 266.
(2) (1924) I.L.R. 46 All. 710.
(3) (1925) I.L.R. 47 All. 456.
(4) (1925) I.L.R. 47 All. 921.
(5) A.I.R. 1926 All. 90.
(6) [1930] A.L.J. 452.

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Learned counsel appearing for the defendant respondent has cited two judgments of a learned single Judge of this Court in the cases of *Raghubir Saran Das* v. *Ram Das* (1) and *Mohammad Ishaq* v. *Balmakund Lal* (2). The agreement between the parties in those cases was materially different from the agreement in the case before us. In both the cases the parties requested the Munsif to inspect the locality and to decide the case on the basis of what he might see on the spot and on an examination of the documentary evidence produced by the parties. The learned Judge held that no intention on the part of the parties to bind themselves by the decision that might be given by the Munsif and to deprive themselves of the right of appeal could be gathered from the language used in the agreement in those cases. It may be pointed out that that learned Judge was a party to the decision in *Jaggu Mal* v. *Brijlal* (3). Learned counsel for the respondent has also cited the case of *Sankaranarayana Pillai* v. *Ramaswami Pillai* (4). This case had been cited before SULAIMAN, J., in the case of *Ballabh Das* v. *Sri Kishen* (5). We agree with the comments made by the learned Judge on this case.

In our judgment no appeal lay against the decree passed by the learned Subordinate Judge so far as the decree of the Subordinate Judge awarding possession to the plaintiff No. 2 was concerned. That was the only portion of the decree which was covered by the agreement between the parties. The declaration granted to plaintiff No. 1 is not only against law but was also not covered by the agreement. Therefore an appeal against that portion of the decree which granted the declaration to the plaintiff No. 1 lay to the District Judge. The learned District Judge has rightly set aside that portion of the decree of the Subordinate Judge.

The result is that the order of remand passed by the learned District Judge with the direction that the suit

(1) A.I.R. 1925 All. 348. (2) A.I.R. 1929 All. 116.
(3) [1930] A.L.J. 452. (4) A.I.R. 1923 Mad. 444.
(5) A.I.R. 1926 All. 90.

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should be tried *de novo* is set aside and the learned Subordinate Judge's decree awarding possession to Mst. Imirti, plaintiff No. 2, in terms of relief (*b*) of the plaint is restored. The appellant shall have his costs from the defendant Ram Gopal throughout.

Before Justice Sir Edward Bennet and Mr. Justice Verma

GAYA PRASAD AND OTHERS (JUDGMENT-DEBTORS) *v.* RAM CHARAN (DECREE-HOLDER)*

1939

December, 4

Civil Procedure Code, order XXI, rule 2—Compromise after decree and varying its terms—Validity—Certification by court.

There is no bar in law to the recording, under order XXI, rule 2 of the Civil Procedure Code, of a compromise between the parties relating to their rights and obligations under a decree.

The Civil Procedure Code contains no general restriction of the parties' liberty of contract with reference to their rights and obligations under a decree, and if they do contract upon terms which have reference to and affect the execution, discharge or satisfaction of the decree, questions relating to such terms are to be determined by the executing court under section 47 of the Code.

Mr. *C. B. Agarwala,* for the appellants.

Mr. *G. S. Pathak,* for the respondent.

BENNET and VERMA, JJ.:—This is a first appeal by the judgment-debtors against an order of the court below refusing to entertain an application to record an alleged compromise. The application was headed as an application under order XXIII, rule 3. The sole ground for refusal was that the alleged compromise was of a date subsequent to the final decree in the suit and therefore as rule 4 of order XXIII states that order XXIII does not apply to execution proceedings the compromise could not be recorded under that order. The judgment-debtor in appeal points out that

*First Appeal No. 96 of 1938, from an order of K. K. K. Nayar, Civil Judge of Cawnpore, dated the 8th of March, 1938.