APPELLATE CIVIL.

Before Sir Louis Stuart, Knight, Chief Judge, and Mr. Justice Wazir Hasan.

1927 July, 20.

MAHABIR AND ANOTHER (DEFENDANTS-APPELLANTS) *v.* DWARKA AND ANOTHER (PLAINTIFFS) AND RAM PRASAD AND OTHERS (DEFENDANTS-RESPONDENTS).*

Family arrangement—Controversy as to whether a certain Hindu died as separate or joint with his brothers—Compromise in revenue court—Validity and binding effect of compromise, whether challengable in a civil court.

The essence of a family arrangement lies in an adjustment of conflicting claims *bona fide* made and recognized on both sides with the object of putting an end to a controversy. It is not permissible to raise and to obtain a trial of the issue as to title in a subsequent litigation and obtain a finding thereon and then to determine in favour of the validity of the arrangement if it falls in line with the finding. [*Tej Bahadur Khan* v. *Nakko Khan* (1) and *Miles* v. *New Zealand Alford Estate Company* (2), relied upon.]

Mr. *Bisheshwar Nath Srivastava*, for the appellant.

Mr. *A. P. Sen*, for the respondents.

STUART, C. J. and HASAN, J. :—This is the appeal by Mahabir, defendant No. 4, and Musammat Jai Dei, defendant No. 5, from the decree of the Second Additional District Judge of Lucknow at Unao, dated the 14th of August, 1926, reversing the decree of the Additional Subordinate Judge of Unao, dated the 23rd of September, 1925.

The facts are as follows :—

One Musammat Maharani died on the 29th of March, 1917, possessed of a 2 annas, 8 pies zamindari share in village Mawaiya, pargana Ghatampur, in the

*Second Civil Appeal No. 422 of 1926, against the decree, dated the 14th of August, 1926, of Jotendra Mohan Basu, Second Additional District Judge, Lucknow, reversing the decree, dated the 23rd of September, 1925, of Sitla Sahai, Additional Subordinate Judge of Unao, decreeing the plaintiffs' suit for possession.

(1) (1926) 3 O.W.N., 993. (2) (1896) 32 Ch.D. 266.

district of Unao. Proceedings in respect of mutation of names in the revenue records in place of the deceased Musâmmat Maharani ensued. The plaintiff No. 1, Dwarka, claimed title in those proceedings to the entire estate held by her on the ground that it had developed on her from her husband Kalka, who was a separated member of a *Mitakshara* Hindu family. This claim of title was resisted by the opposite party in those proceedings and that party is now represented by the defendants in the suit, out of which this appeal arises. The case of this party was that Kalka formed a joint Hindu family with his brothers Mukta and Bhawani, and that the family owned an 8 annas share in the village; that Kalka predeceased his brothers and that the estate in its entirety devolved upon Mukta and Bhawani by right of survivorship. The party claimed title to the entire estate as representatives of Mukta and Bhawani.

On this claim of right as put forward by Dwarka, the plaintiff, and by the opposite party, the defendants, the obvious controversy which arose between these two parties called for a decision of a question of fact as to whether Kalka had died as a separated member of the family or in the state of jointness with his brothers Mukta and Bhawani. Admittedly the death of Kalka had occurred about 40 years before the controversy had arisen. Eventually these two claims of right exclusive of each other were amicably decided in the court of Revenue by means of an application of compromise, dated the 12th of May, 1917. The plaintiff, Dwarka, also made a statement before the court in support of the terms of the compromise. According to those terms and the plaintiff's statement both sides recognized a pre-existing title in each other to certain fractional shares of the entire estate which was held by Musammat Maharani at the time of her death, that is the 2 annas, 8 pies share. According to that compromise Dwarka got 8 pies and the

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remaining 2 annas were divided amongst ten persons arrayed on the side of the opposite party and now represented by the defendants. Mutation of names was accordingly made on the 30th of July, 1917.

Peace reigned since but apparently one Bishun Dayal, plaintiff No. 2, appeared on the scene and has caused disturbance. He has taken a conveyance of a 11 pies share in the property in suit from Dwarka and has launched the present suit. The case stated in the plaint is that the compromise and the statement of the plaintiff in recognition of the defendants' title was fraudulently obtained from Dwarka by the defendants, that the compromise was invalid for the reason that it was unregistered and also for the reason that it was without any consideration and that the title to the 2 annas, 8 pies share lay exclusively in the plaintiff, Dwarka, on the ground that Kalka, the husband of Musammat Maharani, was in enjoyment of that share as a separated member of the family.

The defence to this suit was as follows :—

The validity of the compromise was insisted upon, the jointness of Kalka with his brothers, Mukta and Bhawani, was pleaded and the devolution of the estate on Kalka's death upon Mukta and Bhawani by right of survivorship was alleged.

The court of first instance found on the question of fact in favour of the defendants. It also found on the question of law in favour of the validity and binding character of the compromise. The result was that that court dismissed the suit. On appeal by the plaintiffs the findings of the learned Additional District Judge are that Kalka died in a state of separation from his two brothers possessed of the 2 annas, 8 pies share in dispute and that on his death it devolved on his widow, Musammat Maharani, by right of succession. He also found

that in this state of facts Dwarka, plaintiff No. 1, was the sole heir by right of inheritance to the estate of Kalka on the death of Musammat Maharani as he was the nearest relation of Kalka in the pedigree when the lady died. On the question of the plea of fraud affecting the validity of the compromise his finding is that fraud has not been proved. On the question as to whether the compromise was otherwise binding he is of opinion that it is not a compromise in the sense of family arrangement because to quote his words "family arrangement is always a matter of give-and-take. There can be no family arrangement when one party has nothing to give and has every thing to take. In the present case the defendants had nothing to give to the plaintiff since they had no right to Kalka's inheritance. The suggestion on behalf of the respondents (defendants) was that it was an adjustment of a disputable right. In my opinion it was not, for the case was one of no right and not of a disputable right."

The learned Additional Judge's finding that the compromise is not binding on the plaintiff is challenged in second appeal before us. We have come to the conclusion that the challenge must be given effect to. The essence of a family arrangement lies in an adjustment of conflicting claims *bona fide* made and recognized on both sides with the laudable object of putting an end to a controversy. If it were permissible to raise and to obtain a trial of the issue as to title in a subsequent litigation and obtain a finding thereon and then to determine in favour of the validity of the arrangement if it falls in line with the finding no compromises will hold good in the end. The matter was discussed at some length by GOKARAN NATH MISRA, J., in the case of *Tej Bahadur Khan* v. *Nakko Khan* (1) and we agree with the opinion

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expressed therein. In the case of *Miles* v. *New Zealand Alford Estate Company* (1), BOWEN, L. J., said :—

> "If an intending litigant *bona fide* forbears a right to litigate a question of law or fact which it is not vexatious or frivolous to litigate, he does give up something of value. It is a mistake to suppose it is not an advantage, which a suitor is capable of appreciating, to be able to litigate his claim, even if he turns out to be wrong."

We, therefore, allow this appeal, set aside the decree of the court below and restore the decree of the court of first instance with costs in all courts.

Appeal allowed.

APPELLATE CIVIL.

Before Mr. Justice Wazir Hasan.

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JANG BAHADUR SINGH (PLAINTIFF-APPELLANT) v. SATNARAIN SINGH (DEFENDANT-RESPONDENT).*

*Oudh Land Revenue Act (XVII of 1876) sections 16 and 17—Circulars issued for conduct of first regular settlement, whether have force of law—*Jamabandis *prepared at the last settlement—Khataunis prepared at the first regular settlement—Entries of rent in jamabandis* and *khataunis of last settlement, presumption of correctness of.*

The first regular settlement was conducted under the rules of procedure formulated by the Revenue authorities with the sanction of the Chief Commissioner of the Province in the form of several circulars. These circulars have, therefore, the force of law.

The circulars containing the rules of procedure formulated by the Revenue authorities with the sanction of the Chief

*Second Rent Appeal No. 17 of 1927, against the decree, dated the 28th of January, 1927, of W. Y. Madeley, District Judge of Rae Bareli, reversing the decree, dated the 29th of April, 1926, of Ram Rai, Assistant Collector, First Class, Partabgarh, decreeing the plaintiff's suit.

(1) (1886) 32 Ch. D., 266.