

## APPELLATE CIVIL.

Before Mr. Justice Gokaran Nath Misra and Mr. Justice  
A. G. P. Pullan.

1923  
October, 30.

DURGA PRASAD AND ANOTHER (DEFENDANTS-APPELLANTS)  
v. NARAIN (PLAINTIFF-RESPONDENT).\*

Res judicata—Consent decree, whether operates as res judicata between the parties—Transfer of a bare expectancy, validity of—Reversionary rights when become rights of ownership—Transfer of reversionary rights, whether valid.

A consent decree is binding upon the parties and would operate as *res judicata* in a subsequent suit unless there are some special reasons for holding that the compromise and the decree were void.

A transfer of a bare expectancy is a nullity under section 6 (a) of the Transfer of Property Act, which is based on principles of public policy, but where reversionary rights become rights of ownership, a sale in respect of such rights is in no way contrary to public policy and could well become the subject of a compromise and a decree which would be binding upon the parties.

Case of *South American and Mexican Company* (1), and *Pranal Annee v. Lakshmi Annee* (2), relied upon. *Lakshmanaswami Naidu v. Rangamma* (3), and *Ramasami Naik v. Ramasami Chetti* (4), referred to.

Mr. Ram Bharose Lal, for the appellants.

Mr. S. M. Hafiz for Mr. Zahur Ahmad, for the respondent.

MISRA and PULLAN, JJ. :—The facts from which this second appeal has arisen are as follows :—

One Ghisa possessed certain property and died leaving two sons, Kali Charan and Durga. Kali Charan died

\* Second Civil Appeal No. 135 of 1923, against the decree of Damodar Rao Kelkar, Subordinate Judge of Rae Bareilly, dated the 17th of January 1928, modifying the decree of Bishunath Hukku, Munsif of Rae Bareilly, dated the 10th of October, 1927.

(1) (1895) L. R., 1 Ch. D., 37.

(2) (1899) L. R., 26 I. A., 101.

(3) (1903) I. L. R., 26 Mad., 31.

(4) (1907) I. L. R., 30 Mad., 255.

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in 1897 and Durga in 1898. The former left a widow Gulaba who died in the year 1915 after gifting her property to her daughter's son and we are not concerned with this share of the property. Durga left a widow named Menda and a son Badri Prasad. The son died in the year 1910 and the property devolved on Musammat Menda. For the purposes of this appeal it is admitted that Menda was the mother of Badri Prasad and that the rights she obtained in the property were those of a Hindu female. The reversioners to the property were Narain and Biru and, on the 13th of December, 1916, during the lifetime of Menda, they sold their reversionary rights in that portion of the property to two persons Durga and Badal. When Menda died in 1918 there was a dispute between Narain and Biru on the one hand and Durga and Badal on the other in the mutation court. It appears that Narain and Biru declined to be bound by their own sale of reversionary rights and obtained mutation in the revenue court. In January, 1919, Durga and Badal sued in the civil court on the basis of their sale-deed. On the 13th of February, 1919, the parties entered into a compromise and a decree was passed on the 7th of March, 1919, by virtue of which Durga and Badal obtained possession of the property. Before, however, the passing of the decree in terms of the compromise, Biru had sold his rights to a certain Parag, and Parag brought a suit against Durga and Badal in which he obtained a decree to the effect that the compromise was inoperative and he accordingly obtained possession of Biru's share in the property. Narain took no further action until the 7th of April, 1927, when he filed the present suit. His main contention was that the compromise and decree of 1919 had been held, in the suit brought by Parag, to be invalid and null and void, and on this ground he pleaded that he was entitled to possession of that portion of the property which he

had himself sold, without bringing any suit for the cancellation of the compromise and the decree.

The courts below have accepted the view that the compromise and the decree are void, and on this finding they have decreed the suit brought by Narain.

In the first place it is necessary to meet the general objection which has been raised before us that a compromise decree cannot act as *res judicata* under section 11 of the Code of Civil Procedure or even as an estoppel. On this point we need only refer to two rulings of the courts in England, which show very clearly that the contrary view is taken by the highest authority. In the case of *South American and Mexican Company* (1) Mr. Justice VAUGHAN WILLIAMS has made the following observations :

“Under these circumstances I have only to consider Mr. Moulton’s suggestion, that a judgment by consent, upon which the court has not exercised its mind, does not and cannot raise an estoppel *inter partes*. I can only say that this is the first time I have ever heard such a proposition suggested. It has always been the law that a judgment by consent or by default raises an estoppel just in the same way as a judgment after the court has exercised a judicial discretion in the matter.”

Again in the case of *Pranal Annee v. Lakshmi Annee* (2), it was laid down that a *razinama* in so far as it was submitted to and was acted upon judicially by the learned Judge was in itself a step of judicial procedure not requiring registration and any order pronounced in terms of it constituted *res judicata* binding upon both the parties to this appeal who gave their consent to it.

(1) (1895) L. R., 1 Ch. D., p. 37 (2) (1899) L. R., 26 I. A., 101  
(45). (106.)

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It is clear, therefore, that the consent decree of 1919 was binding upon the parties and would operate as *res judicata* in the present suit unless there were some special reason for holding that the compromise and the decree were void. It is the finding of the courts below that the decree was void and it is in our opinion an erroneous finding. Both the courts appear to have found that the sale of expectant rights being contrary to public policy the decree passed as a result of a compromise in reference to that sale must, therefore, have been void. The lower courts have believed that they were following the view taken by the Madras High Court in two cases. The first is reported in *Lakshmanaswami Naidu v. Rangamma* (1) and the second is reported in *Ramasami Naik v. Ramasami Chetti* (2). In the first case the compromise was effected by two parties who wished to effect an illegal sale of an office attached to a temple which sale was against public policy and could not be recognized or enforced by the courts, and in the second case, which is more closely akin to the one before us, it was held that a transfer of a bare expectancy being a nullity under section 6 (a) of the Transfer of Property Act, which is itself based on principles of public policy, the court could not allow such transactions to be effected by a consent decree. But in the case before us there is a point which seems to have escaped the observation of both the courts below. Although the sale was actually effected in the year 1916, during the lifetime of Menda, and so was a transfer of expectant rights, when the suit was brought in 1919 Menda was dead and Narain and Bira were able in law to transfer the property to their vendees, as their reversionary rights had now become rights of ownership, and such a sale was in no way contrary to public policy and could very well become the subject of a compromise and a decree which would be

(1) (1903) I. L. R., 26 Mad., 31. (2) (1907) I. L. R., 30 Mad., 255.

binding upon both the parties. The fact that the compromise and the decree was held to be a nullity in the suit brought by Parag is irrelevant. Parag was not a party to that compromise or to the decree. He was a transferee from Biru before the compromise was entered into, and his rights were in no way affected by any compromise entered into subsequently by his vendor. Thus although the compromise and the decree may very well have been a nullity as far as Parag was concerned they have never been declared to be nullity in the case of Narain and in our opinion they are binding upon him and have in the present case the effect of *res judicata*.

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We, therefore, allow this appeal, set aside the decrees of the courts below and direct that the plaintiff's suit stand dismissed with costs in all courts.

*Appeal allowed.*

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### APPELLATE CIVIL.

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*Before Mr. Justice Gokaran Nath Misra and Mr. Justice Muhammad Raza.*

JIIYAO SINGH (DEFENDANT-APPELLANT) *v.* JAGESHAR SINGH (PLAINTIFF-RESPONDENT).\*

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 1928  
 September,  
 29.

*Pre-emption—Construction of documents—Dispute about succession to a deceased Hindu between his widowed daughter-in-law and his reversionary heirs—Sale by the reversioners of a moiety of the property for an ascertained sum leaving the major portion of the sale consideration with the vendee to meet the expenses of litigation—Sale, whether one of a doubtful right or of a share in a law suit—Sale, whether gives rise to a right of pre-emption.*

Where a Hindu died and a dispute arose relating to the succession of his property between the deceased's widowed

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\*Second Civil Appeal No. 29 of 1928, against the decree of Pandit Krishnanand Pandey, Additional Subordinate Judge of Sultanpur, dated the 24th of October, 1927, modifying the decree of Pandit Shyam Manohar Tewari, Munsif of Musafirkhana at Sultanpur, dated the 1st of August, 1927, decreeing the plaintiff's claim.