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allowed six months' time to pay up the amount. Costs in proportion to the success of the parties.

Ross, J.—I agree.

Decree modified.

APPELLATE CIVIL.

Before Coutts and Ross, J.J.

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Jan. 25.

KUMAR GANGA SINGH

v.

PIRTHICHAND LAL.*

Injunction—Jurisdiction of court—power to restrain proceeding in another court.

A court has jurisdiction on the application of the plaintiff in a suit in which the defendants have entered appearance to issue a temporary injunction restraining the defendants from executing in another court a decree which they have obtained against the plaintiff.

Vulcan Iron Works v. *Bishumbhur Prasad*(1) and *Jumna Dass* v. *Harcharan Dass*(2), distinguished.

Begg Dunlop and Company v. *Jagannath Marwari*(3), *Carron Iron Company* v. *Maclaren*(4), *Dawkins* v. *Simonetti*(5), and *Mulchand Raichand* v. *Gill and Company*(6), referred to.

The facts of the case material to this report were as follows:—

On the 8th January, 1920, Prithichand Lal Chowdhury, the defendant in the present suit, obtained, in the court of the Subordinate Judge of Purnea, a final decree in two mortgage suits against the present plaintiffs' father. On the 23rd December, 1920, the plaintiffs instituted the present suit in the court of the Subordinate Judge of Bhagalpur to set aside the

* Appeal from Original Order No. 108 of 1921, from an order of M. Ehtisham Ali Khan, Subordinate Judge of Bhagalpur, dated the 31st May, 1921.

(1) (1909) I. L. R. 36 Cal. 233.
(2) (1911) I. L. R. 38 Cal. 405.
(3) (1912) I. L. R. 39 Cal. 104.
(4) (1855) 5 H. L. C. 416.
(5) (1880-81) 29 W. R. 228.
(6) (1920) I. L. R. 44 Bom. 283.

mortgage decrees on the grounds that the mortgages having been executed without legal necessity, were not binding on them. The plaintiffs also prayed for a perpetual injunction restraining the defendant from executing the decrees. On the 19th January, 1921, however, the defendants obtained permission to execute their mortgage decrees and on the 17th February, 1921, the plaintiffs applied to the court in which their suit was pending to restrain the execution proceedings, which were pending in the Purnea Court, until the disposal of the suit. On the 26th March, 1921, the defendants filed a written statement in the suit. They also opposed the application for a temporary injunction restraining the execution proceeding, and the application was rejected on the 31st May, 1921.

The applicants appealed to the High Court.

Manuk (with him *Kulwant Sahay* and *Sailendra Nath Palit*), for the appellants.

Sultan Ahmed (with him *Md. Tahir*), for the respondent.

COUTTS, J.—This appeal arises out of an application made for a temporary injunction to restrain the defendants first party from executing two mortgage decrees. The petitioners brought a suit to set aside these decrees on various grounds. The defendants first party obtained the decrees on compromise and their principal allegations are that they were minors and were not properly represented, that the procedure adopted was illegal and that there was nothing to show that the Court considered whether the compromise was for the benefit of the minors or not. For these and other reasons they asked for a declaration that they were not bound by these decrees and that they should be set aside. The suit was filed in December, 1920, and in February, 1921, the plaintiffs made the petition with which we are now concerned asking for a temporary injunction restraining the defendants from executing their mortgage decrees. The application has been dismissed by the learned

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Subordinate Judge on the ground that he has no jurisdiction and that no good reason has been shown for granting the injunction. The plaintiffs have appealed.

COUTTS, J.

Two points arise in the appeal: (1) whether the Court had jurisdiction to grant the injunction; and (2) whether in the circumstances of the case an injunction should be granted. In regard to the question of jurisdiction the learned Subordinate Judge has relied on the cases of *Vulcan Iron Works* v. *Bishumbhur Prosad* (1), *Jumna Dass* v. *Harcharan Dass* (2) and *Begg Dunlop & Co.* v. *Jagannath Marwari* (3). As the latter two cases are based on the decision in the case of *Vulcan Iron Works* v. *Bishumbhur Prosad* (1), it is necessary to consider that case. The case was decided on the authority of the *Carron Iron Co.* v. *Maclaren* (4) and the learned Judge who decided it relied on certain remarks in the judgment of Lord Brougham, that jurisdiction is limited to cases where the party sought to be restrained is within the limits of the jurisdiction of the Court, for the only remedy for breach of the injunoton is by way of process for contempt which being proceedings of a quasi-criminal nature could not be enforced against a party resident out of the jurisdiction; and following this decision Fletcher J., remarks that "the Court can only restrain a person from proceeding with a suit in a Foreign Court if the person sought to be restrained is within the jurisdiction of the Court." This suit was one in which the plaintiffs had asked for an order on the defendants to restrain them from proceeding with a suit which had been instituted by them in the Court of the Subordinate Judge of Farruckabad, the plaintiffs having sued the defendants on the original side of the Calcutta High Court. The application for injunction was rejected on the ground of want of jurisdiction. It is not clear from the report of the case whether the defendants in

(1) (1909) I. L. R. 36 Cal. 233.
(2) (1911) I. L. R. 38 Cal. 405.
(3) (1912) I. L. R. 39 Cal. 104.
(4) (1855) 5 H. L. C. 416.

the case in the Calcutta High Court had appeared and submitted to the jurisdiction of the Court and this was a point which was never considered in that case. In Halsbury's *Laws of England*, Vol. XVII, page 263, it is said that

> "a foreigner who has appeared to an action in an English Court gives jurisdiction to the English Court to restrain him from proceeding to litigate the same subject matter in the Courts of his own country".

In support of that dictum the authority of *Dawkins* v. *Simonetti* (1) was quoted. In his *Conflict of Laws*, (1908 Edn.), page 45, Dicey says :

> "The sovereign of a country, acting through the Courts thereof, has a right to exercise jurisdiction over any person who voluntarily submits to his jurisdiction, or, in other words, the Courts of a country are Courts of competent jurisdiction over any person who voluntarily submits to their jurisdiction;"

and again at page 48 he says,

> "The Courts of Common Law and of Equity have further always exercised jurisdiction over a defendant who appeared to, or a plaintiff who brought, an action or suit. This again is in strict conformity with the principle or test of submission".

The true test then would appear to be a submission to jurisdiction and it is to be noticed that in the case of *Carron Iron Co* v. *Maclaren* (2) on which Fletcher J. based his decision in the case of *Vulcan Iron Works* v. *Bishumbhur Prosad* (3) the Scottish respondents were not respondents to the English action nor did they claim the benefit of the administration decree, in other words, they did not submit to the jurisdiction of the Court. This was a question which, as I have already said, was not considered by Fletcher J. in his decision and it is not clear from the report of that case whether in fact the defendants had submitted to the jurisdiction or not. In the case now before us the defendants have submitted to the jurisdiction by appearing to the suit of the plaintiffs and by so doing they have given the Court jurisdiction. This same matter was very fully considered in a judgment of Marten J. in the case of *Mulchand Raichand* v. *Gill & Co.*(4), in which the

(1) (1880-81) 29 W. R. 228 (229).
(2) (1855) 5 H. L. C. 416.
(3) (1909) I. L. R. 36 Cal. 416.
(4) (1920) I. L. R. 44 Bom. 283.

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COUTTS, J.

learned Judge took the view of the matter I have already expressed. In my opinion, then, the Subordinate Judge had jurisdiction to grant an injunction.

It remains to be considered whether jurisdiction should be exercised in this particular case or not. In my opinion it should not. The contention in support of the application is that the proceedings of the Court which led up to the *ex-parte* decrees being obtained by the defendants were not in accordance with law. The orders of the Subordinate Judge on the order-sheet which refer to the making of the *ex parte* decrees are as follows :

"23-1-18. On the application of the guardians *ad litem* of the minor defendants for permission to compromise the case with the plaintiff it is ordered 'permission granted' ".

On the same day there is this final order :

" Both sides file a petition of compromise. I order the suit be decreed on compromise. All the lines of the petition of compromise should be embodied in the decree".

The first point urged is that there is nothing in either of these orders to show that the learned Subordinate Judge considered the question whether the compromise was for the benefit of the minors and on the authority of *Gobinda Chandra Pal* v. *Kailash Chandra Pal* (1) it is contended that the order is illegal.

The second point urged is that before the defendants had filed written statements the case was submitted to arbitration and it was in pursuance of that arbitration that the compromise was arrived at, consequently the arbitration was not in accordance with Schedule II of the Civil Procedure Code and was illegal. Now what happened appears to be this. After the suit was filed but before the defendants filed their written statements both parties with the knowledge of the Court submitted their differences to the District Judge and the Collector and it was arranged that they should settle the dispute. These two officers arranged a settlement, a compromise petition in accordance with it was filed and the decree was passed. In these

(1) (1921) L. R. 48 I. A 241.

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circumstances I am unwilling to believe that the compromise was not in fact for the benefit of the minors. It may be that there was some irregularity in the procedure adopted by the parties and possibly by the Court and I refrain from expressing any opinion as to whether on account of this irregularity the plaintiffs may succeed in their suits, but I am not satisfied that in the circumstances of the case their interests were not properly considered and, therefore, I would not grant an injunction. I would dismiss this appeal with costs.

COUTTS, J.

Ross, J.—I agree.

Appeal dismissed.

APPELLATE CIVIL.

Before Das and Adami, J.J.

1923.

February, 2.

DIGAMBAR MAHTO

v.

DHANRAJ MAHTO.*

Hindu Law—Partition—parties—whether grandsons are necessary parties—whether grandsons entitled to claim partition against grandfather.

In a suit for partition instituted by a member of a joint Hindu family the grandsons may be proper parties but they are not necessary parties if their interests are represented in the suit by their father.

Obiter—Grandsons are entitled to claim partition as against their grandfather.

Apaji Narhar Kulkarni v. *Ramchandra Ravji Kulkarni*(1), disapproved.

Jogul Kishore v. *Shib Sahai*(2), *Rameshwar Prasad Singh* v. *Lachmi Prasad Singh*(3) and *Subba Ayyar* v. *Ganasa Ayyar*(4), approved.

* Appeal from Original Decree No. 121 of 1919, from a decision of J. E. Friend Pereira, Esq., Subordinate Judge of Deoghar, dated the 8th March, 1919.

(1) (1892) I. L. R. 16 Bom. 29 (F.B.).
(2) (1883) I. L. R. 5 All. 430.
(3) (1904) I. L. R. 31 Cal. 111.
(4) (1895) I. L. R. 18 Mad. 179.