

## APPELLATE CIVIL.

Before Courtney Terrell, C.J. and Saunders, J.

GOKULANANDA HARICHANDAN

v.

ISWAR CHHOTRAL.\*

1935.

December,  
12.

*Hindu Law—Reversioner, suit by, for declaration that defendant was not the adopted son and that certain alienations made by him were not binding—compromise between plaintiff and defendant—remote reversioner, if can challenge compromise—remote reversioner, if can be added as party in appeal.*

I brought a suit for declaration that *G* was not the adopted son of the last male holder and to set aside certain alienations made by him. The suit was decreed. *G* appealed and subsequently compromised with *I*. The remote reversioners filed a petition challenging the compromise as fraudulent.

*Held*, that the application of the distant reversioners to be added as parties to the appeal was a proper application as their interest was manifestly affected by the compromise.

The facts of the case material to this report are set out in the judgment of Courtney Terrell, C.J.

*B. K. Ray* and *P. Mahanty*, for the appellant.

*B. N. Das* and *B. Mahapatra*, for the respondent.

COURTNEY TERRELL, C.J.—These two applications arise out of a suit by one Iswar who claims to be the nearest reversioner to the last male holder of a certain estate and his suit was for a declaration that the defendant Gokulananda was not, as he purported to be, the adopted son of that last male holder. There was a further claim to set aside an alienation by Gokulananda of a portion of the estate. The Subordinate Judge decreed the suit finding that Gokulananda was not the adopted son of the last male holder and he declared that the alienation did not bind the reversioner. The defendant Gokulananda has lodged a

\*Circuit Court, Cuttack. In the matter of First Appeal no. 6 of 1934.

1935.

GOKULA-  
NANDA  
HARI-  
CHANDAN  
v.  
ISWAR  
CHHOTRAL.

COURTNEY-  
TERRELL,  
C.J.

first appeal and comes before us with a petition to record a compromise of the appeal, according to which proposed compromise the decree of the Subordinate Judge is to be set aside in consideration of certain money to be paid to the respondent, the plaintiff in the suit. At the same time we have before us an application by certain persons who claim to be more distant reversioners than the plaintiff Iswar. They say that by the proposed compromise the effect of the judgment of the Judge declaring that Gokulananda was not the adopted son would be set aside and that their status accordingly would be affected as reversioners inasmuch as a judgment upholding an alleged adoption or holding that the adoption did not take place is a judgment in rem, and these persons ask that notwithstanding the proposed disappearance of the respondent Iswar from the appeal they may be allowed to take up the respondent's position in the appeal and defend the judgment of the Subordinate Judge. This application is resisted by the appellant who seeks to record the compromise.

There are various allegations contained in affidavits by the distant reversioners to the effect that the compromise was obtained from Iswar by fraud or unfair means and that he is a person of weak mind who has been induced to give away not only his own position but the status of the distant reversioners by consenting to the reversal of the judgment of the Subordinate Judge. Into the merits of those allegations it is not right that we should enter beyond saying that in order to record a compromise it is necessary for the Court before whom the compromise is brought for recording, to be satisfied that the suit has been adjusted wholly or in part in any lawful manner and the onus of establishing that state of mind in the Court lies upon the person who brings the compromise forward. Without discussing the merits of the allegations by the distant reversioners, I would merely state that speaking for myself I am far from

satisfied on the materials before us that the suit has really been compromised and would refuse, therefore, to record the compromise, at any rate, at this stage of the proceedings.

As regards the application for the addition of the distant reversioners as parties to the appeal, in my opinion that is a right and proper application. Their interests are manifestly affected by the decision of the Subordinate Judge and if his decision is reversed their position will be adversely affected. It is contended on behalf of the appellant, who seeks to record the compromise, that the remedy of the distant reversioners is to bring a separate suit saying, as they would have a right to say, that their interests were not affected by the compromise. But this offer of a statement that the distant reversioners' interests are not affected is gratuitous and has no serious value, for the statement that the distant reversioners' interests were not affected might be denied by other litigants in the future and the Court would have to decide as a matter of law whether the decision in rem on the subject of adoption affected the rights of the distant reversioners. The offer, therefore, to limit the effect of the compromise merely to the particular plaintiff's own interest is illusory. I would allow, therefore, the application of these persons, Pravakar Chhotrai and Bansidhar Narendra, to be added as respondents to the appeal, with permission to contest the appeal. This is of course subject to any objection which may be taken at the hearing of the appeal by the appellant that these new respondents or anyone or more of them have not the required status to prosecute the appeal. As to the matter of costs, the costs of both of these applications will be costs in the appeal.

SAUNDERS, J.—I agree.

*Order accordingly.*

1935.

GOKULA-  
NANDA  
HARI-  
CHANDAN

"  
ISWAR  
CHHOTRAI.

COURTNEY,  
TERRELL,  
C.J.