

**APPELLATE CIVIL.**

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*Before Sir Shadi Lal, Chief Justice and Mr. Justice Jai Lal.*

RALLA AND OTHERS (DEFENDANTS) Appellants  
*versus*

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April 29.

MULA AND ANOTHER (PLAINTIFFS) Respondents.

**Civil Appeal No. 233 of 1923.**

*Custom—Succession—Suit for possession on death of an adopted son—Previous suit by plaintiffs' father to set aside the adoption settled by compromise—whether compromise binding on the plaintiffs.*

One N. was adopted by his uncle B., and G. and H. sons of another uncle of N. sued in 1895 to set aside the adoption. This suit was settled by a compromise by which the plaintiffs were given 28 *kanals* 1 *marla* out of the land inherited by N. from B. on their acknowledging N.'s absolute title to the remainder of the land in dispute. N. having died childless the 2 sons of H. sued for recovery of this land from the real brothers of N. on the ground that the compromise made in 1895 was not binding on them.

*Held*, that in deciding whether the compromise is a *bona fide* one the Court must look at the circumstances as they existed when it was effected and that therefore the compromise effected by H. in the previous suit was binding upon the plaintiffs, his sons, and their suit must be dismissed.

*Habib Khan v. Muhammad* (1), followed.

*Second appeal from the decree of M. V. Bhide, Esquire, District Judge, Hoshiarpur, dated the 1st November 1922, modifying that of Lala Kashmiri Lal, Munsif, 1st class, Hoshiarpur, dated the 24th June 1921.*

HARGOPAL and BADRI DAS, for Appellants.

FAKIR CHAND, for Respondents.

The judgment of the Court was delivered by:—

JAI LAL J.—The pedigree of the parties will be found at page 3 of the printed paper book. Nathu.

son of Gulaba, was adopted by his uncle Bannu, and Gulla and Hamira, sons of Mangal, another uncle of Nathu, instituted a suit in the year 1895 to set aside this adoption. The dispute was settled by means of a compromise whereby 28 *kanals* 1 *marla* of land inherited by Nathu from Bannu was given up by him to Mangal's sons who recognised his title to the rest of the land in dispute expressly providing in the agreement of the compromise that Nathu would have an absolute title to the property in dispute. Nathu having died childless the present action was brought by Gulla and Mula, son of Hamira to recover possession of the land in suit from the real brothers of Nathu on the ground that on the latter's death without issue the property reverted to Bannu's heirs. The plea of the defendants was that by virtue of the compromise mentioned above Nathu having been given an absolute title in the land in suit it did not revert to the heirs of Bannu but descended to Nathu's heirs.

The learned District Judge has held that Gulla being a party to the compromise effected in 1895 was not entitled to any relief. He has, however, decreed the suit so far as the claim of Mula is concerned on the ground that Mula's father Hamira had legally no power to relinquish the future rights of succession of his descendants to Bannu's land. In his opinion the fact that as a result of the compromise Hamira and Gulla got 28 *kanals* of land could not validate such transfer. He has consequently decreed the suit to the extent of Mula's share in the land in suit. Both the parties have appealed to this Court. The brothers of Nathu appeal on the ground that the view of the District Judge that Mula was not bound by the settlement made by his father is erroneous and Mula plaintiff on the ground that the District Judge has not

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given him a decree for the whole of the land claimed by him.

We are unable to agree with the learned District Judge that Mula is not bound by the compromise effected by his father Hamira. In *Habib Khan v. Muhammad* (1), it was held that consent *bonâ fide* given by a father to an alienation by a widow binds his sons. The principle laid down in that case governs the present one and as the compromise was effected by Hamira *bonâ fide* and in consideration of having received 28 *kanals* of land, which under the circumstances as they existed at the time of the compromise, he or his descendants might not have ultimately got we consider that the compromise is binding on Mula, his son. In deciding whether a compromise is a *bonâ fide* one the Court must look at the circumstances as they existed when it was effected. In 1895 Nathu was apparently young and the parties must have been conscious of the fact that if he got male issue there would be no chance for the descendants of Mangal to inherit any portion of the property then in dispute. We hold, therefore, that the compromise is binding on Mula plaintiff, and accepting the appeal preferred by the brothers of Nathu we set aside the decree of the learned District Judge and dismiss the suit with costs throughout.

This disposes of the appeal by Mula which becomes infructuous. That appeal is dismissed with costs.

A. N. C.

*Appeal accepted.*