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by a person while in police custody to a Magistrate in England or in a Foreign country, does not appear to have been intended.

In these circumstances we think we may safely follow the decision of the Allahabad High Court above referred to in so far as it admits in evidence a confession made in the presence of a Magistrate of a Native State. That decision, it is true, deals with the question of the admissibility of the record of the proceedings of a Magistrate of a Native State under section 80 of the Evidence Act, but as it is based on the construction of the word "Magistrate" in that section as including a Magistrate in a Native State it is an authority for a similar construction of the word in section 26; for it would, we think, be unreasonable to hold that the Legislature used the same word in different senses in the same Act. We, therefore, reject the appeal, which raises no other point open to argument under section 418 of the Criminal Procedure Code,

## APPELLATE CIVIL.

*Before Sir C. Farran, Kt., Chief Justice, and Mr. Justice Hosking.*

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June 8.

MOTIRAM BALKRISHNA RAJMANE (ORIGINAL PLAINTIFF), APPELLANT,  
v. YESU AND OTHERS (ORIGINAL DEFENDANTS), RESPONDENTS.\*

*Civil Procedure Code (Act XIV of 1882), Sec. 375—Compromise—Court cannot refuse to record a compromise except where unlawful.*

The terms of section 375 of the Civil Procedure Code (Act XIV of 1882) are imperative, and a Court cannot refuse to record a lawful agreement of compromise, and to pass a decree in accordance therewith, merely because in its view it is too favourable to one of the parties.

SECOND appeal from the decision of Ráo Bahádúr N. G. Phadke, First Class Subordinate Judge of Sholápur with appellate powers, confirming the decree of Ráo Sáheb G. B. Laghate, Subordinate Judge of Karmála.

The plaintiff sued to recover possession of certain land.

The defendant claimed that the property was his, alleging that the plaintiff had purchased the property *benámi* for him (the defendant).

\* Second Appeal, No. 34 of 1895.

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At the first hearing the parties stated to the Court that the suit had been compromised in the terms that the defendant should pay to the plaintiff Rs. 225 within six months, and that the plaintiff should give up his claim to the land, and they applied that a decree should be passed in the terms of the compromise. The Subordinate Judge, however, refused to grant the application, but went into the merits of the case and found that the plaintiff had purchased the land for the defendant and that the defendant was the rightful owner. He, therefore, dismissed the suit.

On appeal by the plaintiff the Judge confirmed the decree. The following is an extract from his judgment:—

“The wording of section 375 of the Civil Procedure Code is certainly imperative in the matter of recording the compromise come to by the parties to the suit in respect of the subject-matter thereof; but it must be borne in mind that the Court is bound to adopt the procedure laid down in that section on the condition that the compromise is lawful and not otherwise. Exhibit No. 14, which embodies the compromise, bears the signatures of both the parties thereon, and the plaintiff therein admits himself to be a *benami* purchaser. In these circumstances the compromise cannot be said to be just and lawful, inasmuch as the plaintiff is thereby receiving some benefit at the sacrifice of the just interest of the defendant. The plaintiff is according to the compromise to get Rs. 225 from defendant for nothing. The defendant agreed to pay that sum at the suggestion of the panch only because he thought that he would otherwise be losing his beloved land.”

*Ganesh K. Deshamukh* appeared for the appellant (plaintiff):—The compromise was effected under section 375 of the Civil Procedure Code. The Judge refused to give effect to the compromise on the ground that the plaintiff was deriving an advantage to which he had no right. The Judge was wrong in refusing to record the compromise on that ground. The only ground on which the Court can refuse to record a compromise is that it is unlawful. Under section 375 the Court cannot go into the question of the compromise being just and equitable. The plaintiff's giving up all further litigation was a sufficient consideration.

*Mahadeo B. Chaubal* appeared for the respondents (heirs of the original defendant, deceased):—It is not now open to the plaintiff to insist upon the compromise, because after it was stated to the Court, the parties proceeded with the suit tendered evidence and

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allowed the case to be decided on the merits. The application was made on the 14th November, 1892. The whole evidence was recorded after that date and the case was decided on the 10th March, 1893. The conduct of the parties shows that they decided not to be bound by the suggested compromise and, therefore, it is ineffectual — *Shankar Venkatpataya v. Gopal Mahableshwar*<sup>(1)</sup>. The Subordinate Judge was of opinion that the defendant did not really understand the effect of the compromise. The parties reside in the Sholapur District to which the Dekkhan Agriculturists' Relief Act applies. Reference to arbitration was made while the suit was pending; therefore such a reference would not be legal taking into consideration the object and scope of that Act.

FARRAN, C. J.:—In this case we think that the Court was bound under section 375 of the Civil Procedure Code to record the compromise and pass a decree in accordance therewith. The case has not been brought within the special provisions of the Dekkhan Agriculturists' Relief Act, and must, therefore, be determined by those of the Civil Procedure Code alone. The terms of section 375 are imperative, and the lower Courts could not refuse to act upon the agreement of compromise, merely because, in their view, it was too favourable to the plaintiff. In no sense was the compromise unlawful.

The case of *Shankar Venkatpataya v. Gopal Mahableshwar*<sup>(1)</sup> has no application here, as the Subordinate Judge, when reserving his decision as to whether he would record the compromise, ordered the defendant to proceed with his evidence.

We must, therefore, reverse the decrees of the lower Courts and pass a decree in accordance with the terms of the compromise of the 14th November, 1892. The time for the payment by the defendant of the Rs. 225 must be extended for a period of six months from this day. As the cost of the subsequent proceedings has been caused by the error of the Subordinate Judge, we direct each party to bear his own costs throughout.

*Decree reversed.*

(1) P. J., 1893, p. 286.