

Special Appeal No. 280 of 1871.

1871.
Sept. 25.

JA'ÑKIBA'I, widow of Raghunáth Chitko,
and CHITKO RAGHUNA'TH.....*Appellants.*
A'TMA'RA'M BA'BURA'V and YESA'JI ANANT. *Respondents.*

*Decree—Prior Agreement—Presumption—Plaintiffs appearing by
different Pleaders.*

So long as a decree subsists unreversed and unvaried, the parties there-
to and those claiming under them are bound by it, and no effect can be
given to any prior agreement regarding the same matter on the ground
that the terms of the decree differ from those of the prior agreement,
notwithstanding that the parties had requested the court which passed
the decree to draw it up according to the terms of the agreement.

It is irregular to admit any one as a co-appellant in a special appeal
without giving notice to the special appellant.

Plaintiffs must all be represented by the same Pleader or set of
Pleaders, and cannot be severally represented by different Pleaders.

THIS was a special appeal from the decision of A. Lyon,
Assistant Judge of Ratnágiri, in Regular Appeal No. 9
of 1869, reversing the decree of the Subordinate Judge of
Vingurlá.

The appellant, Jánkibái, sued to recover possession of one
half of a godown, alleging that half of it belonged to herself,
and the other half to the defendant A'tmárám. She stated
that A'tmárám had sold the whole godown to the second
defendant, Yesáji.

The defence mainly was that an agreement (exhibit No. 72)
had been made between the plaintiff Jánkibái and Báburáv,
father of A'tmárám, under which Báburáv obtained the whole
godown in lieu of a dwelling-house which Jánkibái took for
herself.

The Subordinate Judge decreed in favour of the plaintiff's
claim. The decree, however, was reversed by the Assistant
Judge in appeal. The following is an extract from his judg-
ment:—

“ The second issue is as to the plaintiff's title. From the
additional evidence recorded before me, this point reduces

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itself to a very short question. The plaintiff Jánkibái and the defendant, A'tmárám, were originally joint owners of the property. While an action was pending for a partition of the estate, an agreement, recorded No. 72, was drawn up between Jánkibái and A'tmárám settling how the property was to be divided. One of the clauses of that agreement gives to A'tmárám the whole of the *vakhár* (godown) now in dispute, in terms as distinct as it is possible to conceive. Jánkibái got instead thereof the house she was living in, and altogether the arrangement seems to have been most fair and equitable. At Jánkibái's own request, a decree was drawn up purporting to be in the terms of this compromise, which was also produced by her with her petition, but unfortunately the decree awards to Jánkibái half the *vakhár* in dispute, instead of declaring that she had no title to it whatever.

“The question to be decided is simply this: whether a decree such as this, drawn up by mistake, is to have effect in preference to the compromise. I think not: after the compromise was made the court had no authority to go on with the trial. The court had no authority to decide anything, as there was nothing left for it to decide. The compromise is the real decree in the case. That is the real and true conclusion to which the dispute was brought, and by that the parties must abide.

* * * * *

“I reverse the Subordinate Judge's decree, and dismiss the plaintiff's claim.”

After the special appeal in the above case was registered, Chitko Raghunáth, on the 7th of August 1871, presented a petition to the High Court by his Pleader, Mr. Mánikshá, praying that he might be joined as a co-appellant in the special appeal, as a certificate of heirship was ordered by the District Judge of Ratnágiri to be granted to him (Chitko) and Jánkibái jointly. The petition was admitted by the court without any notice being given to the special appellant, Jánkibái.

The special appeal was argued before WESTROPP, C.J., and WEST, J., on the 26th of September 1871.

Ghanashám Nilkant, for the appellant :—The District Judge was wrong in holding that the agreement between the plaintiff Jánkibái and A'tmárám's father, Báburáv, having been executed previously to the passing of the decree (exhibit No. 4), was to be preferred to the latter, because the parties had requested the court to draw up the decree according to the terms of that agreement. In doing so, the Judge gave preference to a simple contract over a contract of record about the same matter. Moreover, the District Judge ignored the fact that, although by the terms of the decree the appellant Jánkibái was entitled to the part of the godown now in dispute, A'tmárám took no objection to the decree on the ground of its differing from the terms of the agreement. Nor did he hitherto take any steps to have the decree amended if he considered it to be erroneous.

Vishnu Ghanashám for the respondents.

WESTROPP, C. J. :—The Court reverses the decree of the Assistant Judge, bearing date the 8th day of February 1871, and remands this cause for a fresh hearing on the merits, this court being of opinion that so long as the decree of the 22nd of September 1847 in Suit No. 160 of 1847, between Jánkibái as plaintiff and Báburáv Náráyan Rájádaksh and others as defendants (and which is exhibit No. 4 in this cause) was subsisting unreversed and unvaried, the parties thereto and those claiming under them respectively were bound thereby; and that, inasmuch as Yesáji claimed as purchaser under A'tmárám, the son of the said Báburáv, who was a defendant in the suit in which the said decree of the 22nd of December 1847 was made, the said Yesáji and his representatives are bound by that decree so long as the same may stand as it now is, and the Assistant Judge was in error in giving effect to the prior agreement No. 72. It may be, for aught that this court knows to the contrary, that the court which made that decree departed from the terms of the agreement No. 72 with the express assent of the parties in the suit No. 160 of 1847. Whether that was so or not, this

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court does not venture to express any opinion, nor whether, after the lapse of time which has taken place since the making of that decree, and under the circumstances of the case, either the court of original instance or any other court could now vary or reverse that decree.

The co-special appellant, Chitko Raghunáth, having without notice to Jánkibái, and, therefore, irregularly, been admitted as a party to the present special appeal, this court sets aside as irregular its order made on the 10th of August 1871, admitting him to be a party to this suit, and dismisses his petition presented on the 7th of August 1871 in that behalf. This court also remarks that it was a further irregularity on his part to attempt to be represented in this suit by a Pleader not appearing for, or instructed by, the plaintiff Jánkibái, inasmuch as the plaintiffs must all be represented by the same Pleader or set of Pleaders, and cannot be severally represented by different Pleaders.

This court abstains from giving any opinion as to the rights of Jánkibái and Chitko as between each other, or as to the right of either separately to maintain a suit in respect of the property here in dispute.

The plaintiff Jánkibái, having succeeded in this appeal, must have her costs thereof against the special respondents, Bábáji and A'ntáji, the representatives of the original defendant, Yesáji.

Decree reversed and case remanded.