APPELLATE CIVIL.

Before Mr. Justice Chandavarkar and Mr. Justice Heaton.

1910. *March* 1.

PIRAJI BIN LAXMAN MALI (ORIGINAL PLAINTIFF), APPELLANT, *v.* GANAPATI BIN RAMJI MALI (ORIGINAL DEFENDANT), RESPONDENT.*

Dekkhan Agriculturists' Relief Act (XVII of 1879), section 12—Compromise of the case—Court's duty to record the compromise and pass decree in its terms—Pleader's compromising without authority from his client—Client to apply to cancel the compromise.

There is nothing in the provisions of section 12 or in any other section of the Dekkhan Agriculturists' Relief Act 1879, which expressly deprives the parties to a suit of the power of entering into a compromise and having that compromise recorded under section 375 of the Civil Procedure Code of 1882 which is the same as Order XXIII, rule 3 of the Code of 1908.

A compromise means the settlement of a disputed claim.

Where a party complains that a compromise effected in his name by his pleader was unauthorized, he must move the Court to cancel all that has been done and to revive the suit.

Basangowda v. *Churchigirigowda*(1), followed.

APPEAL from the decision of Ruttonji Mancherji, First Class Subordinate Judge at Poona.

Suit for accounts and redemption.

The property in dispute was mortgaged by plaintiff's father to defendant for Rs. 3,500 on the 15th August 1893. It was again mortgaged on the 31st January 1896 for Rs. 2,500 ; and for Rs. 1,500 on the 25th March 1897. The plaintiff mortgaged it to defendant for Rs. 1,200 on the 17th April 1901. The total amount advanced was Rs. 8,700.

The defendant was in possession of the property.

The plaintiff filed this suit on the 17th January 1908 for account and redemption of the mortgages.

After the issues were settled, the parties applied for and obtained an adjournment of the hearing ; and on the adjourned hearing they presented to the Court a compromise of the suit.

* First Appeal No. 48 of 1909.

(1) (1910) see page 408 *ante*.

Under the terms of the compromise the amount due at the foot of the mortgage was fixed at Rs. 9,500 for principal and interest; the sum was made payable in yearly instalments of Rs. 500 each; and the question of further interest and costs was left to be determined by the Court.

The Court passed a decree in terms of the compromise. It awarded further interest at the rate of three per cent. per annum; and made the plaintiff bear the defendant's costs.

The plaintiff appealed to the High Court.

L. A. Shah, for the appellant.—The lower Court erred in passing a decree on a so-called compromise. Under the Dekkhan Agriculturists' Relief Act, section 12, the Court is bound to take accounts unless the claim is admitted; and even in that case the Court must record its reasons in writing showing that it is satisfied that the admission is true and made by the debtor with a full knowledge of his rights under the Act; the lower Court has not followed the latter course and hence it was bound to take the accounts under section 12 of the Act.

Further, the judgment of the lower Court clearly shows that after the commencement of this suit and before the issues were raised, the respondent was asked to produce his accounts and to show what he claimed under the mortgage in dispute. The appellant's pleader examined the same and admitted that in so far as the accounts were concerned the amount given by the respondent was correct; yet he disputed the amount of the consideration and therefore a distinct issue on that point was raised. Then comes in the compromise wherein the whole consideration is admitted. Thus there is the admission of the claim.

There is no express provision in the Act about compromises. Again I submit that the compromise is not binding on the appellant as it was entered into by his pleader without any authority from him.

[CHANDAVARKAR, J., referred to *Basangowda* v. *Churchigirigowda*[1].]

(1) (1910) see page 408 *ante*.

1910.

PIRAJI v. GANAPATI.

Lastly, the lower Court was wrong in awarding future interest when it itself says that the respondent has already received past interest almost equal in amount to the principal.

V. G. Ajinkya, for the respondent, was not called upon.

CHANDAVARKAR, J. :—The suit was brought by the appellant to redeem certain mortgages. The plaintiff alleged that the amounts of the mortgages were for past debts except the last mortgage, and that that was for interest due on the previous amounts. The plaintiff claimed relief in the suit as an agriculturist under the Dekkhan Agriculturists' Relief Act. The respondent pleaded that all the mortgages were for cash advances. The suit was fixed for disposal on the 20th of November, 1908. On that date the parties, appearing by their pleaders, asked for and obtained an adjournment upon the ground that they were going to effect a compromise. On the day fixed they appeared again and put in a compromise, embodying certain terms, except as to interest and costs, and the Court was asked to pass a decree in terms of the compromise, and also to give its own directions on the question of interest and costs. Accordingly, the Subordinate Judge, who heard the suit, passed a decree in accordance with the compromise, and also gave certain directions on the question of interest and costs.

That decree has been appealed from. It is contended, in the first place, that such a compromise as the parties entered into could not be recognized by the Court, having regard to the provisions of the Dekkhan Agriculturists' Relief Act, and section 12 is relied upon. No doubt, under the latter part of that section, if the amount of the claim is admitted, and the Court, for reasons to be recorded by it in writing, believes that the admission is true and was made by the debtor with full knowledge of his legal rights as against the creditor, the Court is not bound to take an account as directed by the previous provisions of the section. But the portion of the section, which is relied upon by the appellant, applies where the debtor, appearing before the Court to answer the creditor's claim, admits it. That is different from a compromise. There is nothing in the language of section 12 or in any other section of the Act, which expressly deprives

the parties to a suit of the power of entering into a compromise and of having that compromise recorded under section 375 of the old Civil Procedure Code, which is the same as Order 23, Rule 3, of the Code now in force. Here it cannot be said that it was a case of mere admission by the defendant of the claim. What the Court was asked to do was not indeed to pass a decree on any admission of the defendant, but to make one in terms of the compromise which, after trial commenced, had been deliberately entered into by the parties. A compromise means the settlement of a disputed claim. This view is supported by the decision of this Court in *Gangadhar Sakharam* v *Mahadu Santaji*[1] where it was said :—" If a creditor and debtor cannot define their mutual relations by the mediation of persons in whom they have confidence, still less should they be allowed to do so unaided, and thus the settlement of accounts would be no settlement unless made by a Court. The foundation would thus be laid for universal litigation, but this is so generally disapproved that it cannot without an express declaration be supposed to have formed a part of the policy of the legislature in this particular instance." And then the Court went on to observe that " the Code of Civil Procedure and the Dekkhan Agriculturists' Relief Act being within the territorial range of the latter, Statutes in *pari materia* must be construed together so as to give effect, so far as possible, to the provisions of each."

That decision has remained undisturbed and unquestioned as law. There have been several amendments of the Act since that decision was reported, and yet the legislature has left it untouched.

It was next argued, however, that this compromise had not been consented to by the appellant; that what was put in was merely a *purshis* of his pleader and that the pleader had no authority, express or implied, to give such a consent. But, as was held by this Court in a recent case, *Basangowda* v *Churchigirigowda*[2], where a party complains that a compromise effected in his name by his pleader was unauthorized, he must move the Court to cancel all that has been done and to revive the suit. Here no

(1) (1883) 8 Bom. 20.

(2) (1910) see page 403 *ante*.

1910.

PIRAJI v. GANAPATI.

steps for that purpose, as required by law, have been taken, and we are asked to set aside the compromise on a ground raised for the first time before us while we are concerned with only an appeal. The lower Court was not asked to determine whether it had been misled in the way that it is said to have been in consequence of the alleged want of authority in the appellant's pleader to effect the compromise.

On the question of interest, it is entirely a matter of discretion and we do not think there is any reason in law or equity to interfere with the Court's award. The decree is confirmed with costs, without prejudice to the right, if any, of the appellant to have the compromise set aside on the ground of fraud.

Decree confirmed.

R. R.

APPELLATE CIVIL.

Before Sir Basil Scott, Kt., Chief Justice, and Mr. Justice Batchelor.

1910.
April 4.

NARAYAN SHRIDHAR DATE (ORIGINAL DEFENDANT), APPELLANT, *v.* PANDURANG BAPUJI DATE (ORIGINAL PLAINTIFF), RESPONDENT.*

Hindu Wills Act (XXI of 1870), sections 2 and 5—Indian Succession Act (X of 1865), section 187—Administrator-General's Act (II of 1874), section 36—Will made in Bombay—Property worth less than Rs. 1,000—Probate—Administrator-General's certificate.

A will made in Bombay is subject to the provisions of the Hindu Wills Act (XXI of 1870) and a person claiming as a legatee under the will is not entitled to sue without taking out probate as he would be bound by section 187 of the Indian Succession Act (X of 1865) which is incorporated in the Hindu Wills Act (XXI of 1870).

The provision of the Administrator-General's Act (II of 1874) is not affected by the incorporation in the Hindu Wills Act (XXI of 1870) of section 187 of the Indian Succession Act (X of 1865).

SECOND appeal from the decision of S. S. Wagle, First Class Subordinate Judge of Thána, with Appellate Powers, confirming

* Second Appeal No. 558 of 1909.