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Court to *bandhus* on the father's side to *bandhus* on the mother's side. I think, therefore, the 2nd defendant should be preferred to the plaintiff. But apart from the question of sex there is another very interesting question which has not been considered, and which does not seem to have arisen in any reported case. The direct descendants of the propositus through daughters though they are *bandhus* are not cognates. Even if paternal cognates are not to be preferred to maternal cognates it might plausibly be argued that direct descendants should be preferred to both. I for one must regret that the principles with regard to the inheritance of *bandhus* cannot be laid down more definitely, instead of it being left to their being discovered by a process of exhaustion as occasion arises for a decision between rival claimants.

Decree set aside.

J. G. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

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September 30.

GOTURAM RADHAKISON (ORIGINAL PLAINTIFF), APPELLANT *v.* BARKU WALLAD DODHU (ORIGINAL DEFENDANT), RESPONDENT*.

Civil Procedure Code (Act V of 1908), Order XXIII, Rule 3—Compromise—One of the parties an agriculturist—Admission of the whole of the claim—Court's power to go behind the transaction—Dekkhan Agriculturists' Relief Act (XVII of 1879), section 12.

Where a compromise is entered into between parties one of whom is an agriculturist and the whole of the claim is admitted by him, the application of section 12 of the Dekkhan Agriculturists' Relief Act is not necessarily excluded, and the Court can go behind the transaction, even though an application is made to record an agreement under Orderr XXIII, Rule 3, Civil Procedure Code, 1908.

* Second Appeal No. 215 of 1921.

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Gangadhar Sakharam v. *Mahadu Santaji* (1) ; *Piraji* v. *Ganapati* (2) ; *Kishandas Shivram Marvadi* v. *Nama Rama Vir* (3) ; and *Shivayagappa* v. *Govindappa* (4), discussed.

SECOND appeal against the decision of N. B. Deshmukh, Assistant Judge of Khandesh, confirming the decree passed by G. V. Vaidya, Subordinate Judge at Erandol.

Suit to recover money.

The facts material for the purposes of this report are fully stated in the judgment of the learned Chief Justice.

B. G. Rao, for the appellant.

W. B. Pradhan, for the respondent.

MACLEOD, C. J.:—The plaintiff sued to recover on a promissory note, dated 29th December 1915, Rs. 450, principal, and Rs. 139-8-0 for interest. The defendant admitted the promissory note but denied consideration and prayed for an account and instalments. The defendant is an agriculturist. When the suit came on for hearing what was represented as a compromise was presented to the Court, under which the defendant agreed that he should pay the amount demanded, Rs. 589-8-0, and the costs by instalments of Rs. 100 each. In default of paying any two instalments the whole amount was to be recovered at once; interest at four annas per cent. per mensem was to run on the principal amount from that date until all the instalments had been paid off.

The defendant was examined by the Court and said :—

"I have made the settlement, which I have understood, (and which) I admit. A decree may be passed according to it. At first I received Rs 200 (two hundred) thirteen years ago. No receipt is passed showing what amount

(1) (1883) 8 Bom. 20.

(2) (1910) 34 Bom. 502 at p. 505.

(3) (1910) 35 Bom. 190

(4) (1913) 37 Bom. 611.

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is paid. I do not remember. I do not understand accounts; therefore I have agreed to this settlement."

The Court passed the following order:—

"Defendant is not able to say how much is due to plaintiff. He has no precise knowledge as to the Wasul paid. The transaction is very old. I cannot in these circumstances allow the compromise as I do not believe that defendant has entered into it after fully understanding his rights."

The learned Judge then went into the merits of the case and came to the conclusion that no consideration had been paid to the defendant for the promissory note in suit.

That decision on appeal was confirmed. The learned Judge said:—

"I think that the lower Court was perfectly justified in this case in disallowing the compromise (Exhibit 18) as it was no compromise in fact at all; the defendant had disputed the amount of the claim in this case (Exhibit 11). When he was examined by the Court he distinctly stated that he had received no cash consideration at all under the pro-note in suit, whereas plaintiff's case was that he had paid a cash consideration of Rs. 450 at the time of the execution of the pro-note by the defendant in the presence of the writer Damoo. In spite of this position of things we find defendant entering into a compromise admitting the whole of the plaintiff's claim and agreeing to pay the whole amount with all costs, and I fail to see how this can be called a compromise at all which on the very face of it is conspicuous for total absence of any mutual concessions in the matter."

He agreed with the finding of fact that no consideration had been paid.

We have been referred to four decisions of this Court on the question whether the Court can go behind a compromise entered into between the parties when one of them is an agriculturist, and whether the Court was bound to pass a decree under what is now Order XXIII, Rule 3, provided the provisions of rule have been complied with. In *Gangadhar Sakharam* v. *Mahadu Santaji* [1] it was held that where a matter had been

[1] (1883) 8 Bom. 20.

referred to arbitration, without the intervention of a Court of justice, by parties, one of whom was an agriculturist, and an award had been made thereon, any person interested in the award might, without obtaining the conciliator's certificate, apply for the filing of the award under section 525 of the Code of Civil Procedure of 1882, the provisions of which were not superseded by section 47 of the Dekkhan Agriculturists' Relief Act. Mr. Justice West said : " 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. Another general principle is that exceptional provisions are not to receive a development to all their logical consequences contrary to the general principles of the law. When these principles are applied, there is nothing to be found which prevents parties from resorting to friendly arbitration instead of to the Court, or to prevent the filing and if need be the enforcement of an award thus obtained."

In *Piraji* v. *Ganapati* [1] a decree had been passed by the lower Court in terms of the compromise. On appeal to the High Court the decree was confirmed. But Mr. Justice Chandavarkar said : " 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."

In *Kishandas Shivram Marwadi* v. *Nama Rama Vir* [2] the parties proposed certain terms to the Court and asked for a decree, but the terms were at variance with section 15 B of the Dekkhan Agriculturists' Relief Act, and the Subordinate Judge referred the question to

[1] (1910) 34 Bom. 502 at p. 505.

[2] (1910) 35 Bom. 190.

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the High Court whether he could pass a decree in such terms although the parties asked him to do so, and it was held that it was not competent to the Court to pass a decree in terms which were at variance with section 15 B.

In *Shivayagappa* v. *Govindappa* [1] a question arose with regard to the execution of a decree passed in accordance with the terms of a compromise, and, as it appeared to the Bench before whom the question came for decision that the decisions in *Piraji* v. *Ganapati*[2] and *Kishandas Shivram Marwadi* v. *Nama Rama Vir* [3] were conflicting, the question was referred to a Full Bench, and the question which had been referred was construed by the Full Bench as referring to the special provisions of section 15 B, which were the only special provisions referred to in the statement of the case. The effect of the decision was that if there was a compromise made by parties who were *sui juris* it should be given effect to, and that the fact that the decree was not in accordance with the provisions of section 15 B did not make it unlawful.

It will be seen, therefore, that none of these decisions touch the question whether the provisions of Order XXIII, Rule 3 prevent the Court from going behind the transaction when the defendant admits the whole of the plaintiff's claim and asks the Court to pass a decree in accordance with that admission. I do not think myself it can be said that Order XXIII, Rule 3 ousts the jurisdiction of the Court in this class of cases from inquiring into the nature of the admission so as to satisfy itself whether the admission is true and made by the debtor with a full knowledge of his legal rights as against the creditor. If when the case had been called on the defendant said "I admit the claim and

(1) (1913) 37 Bom. 614 at p. 620. (2) (1910) 34 Bom. 502.
(3) (1910) 35 Bom. 190.

am willing that a decree should be passed against me accordingly" it is perfectly obvious that under section 12 of the Dekkhan Agriculturists' Relief Act the Court would be bound to record in writing its conclusions as to whether the admission was true and made by the debtor with a full knowledge of his legal rights, and it seems to me to make no difference that before he came to Court the defendant has written down a paper to that effect and produces it in Court when the case is called on. I think myself, therefore, that provided it is perfectly clear that the whole of the plaintiff's claim is admitted the Court can go behind the transaction even though an application is made to record an agreement under Order XXIII, Rule 3. In this case the evidence shows that the defendant signed a promissory note without receiving any cash so as to admit his liability for a certain old transaction of the nature of which he seems to have been entirely ignorant. I consider, therefore, that the decree dismissing the suit was right and the appeal should be dismissed with costs.

SHAH, J.:—I concur in the order proposed. I have felt some difficulty in coming to this conclusion because it seems to me that according to the decisions of this Court the provisions of Order XXIII, Rule 3, wherever they are applicable, must be given effect to even in cases which are governed by the Dekkhan Agriculturists' Relief Act. The principle has been sufficiently recognised in *Gangadhar Sakharam* v. *Mahadu Santaji*[1], *Piraji* v. *Ganapati*[2], and *Shivayagappa* v. *Govindappa*[3]. In spite of the observations in *Kishandas Shivram Marwadi* v. *Nana Rama Vir*[4], which conflict with that view, I think that the Court would be bound even in cases

(1) (1883) 8 Bom. 20.
(2) (1910) 34 Bom. 502.
(3) (1913) 37 Bom. 614.
(4) (1910) 35 Bom. 190 at p. 195.

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governed by the Dekkhan Agriculturists' Relief Act to give effect to the provisions of Order XXIII, Rule 3. Thus in any suit where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by a lawful agreement or compromise, the Court shall order such agreement or compromise to be recorded and pass a decree in accordance therewith so far as it relates to the suit.

The question, however, that arises on the special facts of this case is whether the nature of the agreement between the parties is within the scope of Rule 3 of Order XXIII. In substance the defendant in the present case, who is an agriculturist, has admitted the whole of the claim by the agreement in question. I say this in spite of the fact that there is a provision in the agreement as to the payment of the amount by way of instalments. I do not desire to lay down any general proposition that such an agreement would never fall within the the scope of Rule 3, in cases governed by the Dekkhan Agriculturists' Relief Act. But having regard to the facts of this case, and the view taken by the lower Courts that substantially the defendant admitted the whole of the claim, it seems to me that it was an admission of the claim within the meaning of section 12 of the Dekkhan Agriculturists' Relief Act. The application of that section is not necessarily excluded in such a case. If in spite of the provisions of Order XXIII, Rule 3, the application of section 12 is not excluded, it would be open to the Court under the provisions of that section to consider whether the debtor has made the admission with a full knowledge of his legal rights as against the creditor, and unless the Court is satisfied on that point, the Court would not be bound to accept the admission of the debtor, but would be at liberty to inquire into the case as required by that section.

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In the present case on the evidence the Courts have found that the debtor admitted the claim without full knowledge of his legal rights, and that finding must be accepted in second appeal as a finding of fact. The whole question which has presented difficulty to my mind is whether in view of the adjustment of the claim between the parties the application of section 12 of the Dekkhan Agriculturists' Relief Act was not excluded in virtue of the provisions of Order XXIII, Rule 3. But on the special facts of this case, as I have said, it does not seem to me that the application of that section was necessarily excluded. If that section applies it is clear that the conclusion reached by the lower Courts is really a conclusion based on the circumstances and the evidence in the case which must be accepted.

Decree confirmed.

J. G. R.

CIVIL REFERENCE.

Before Sir Nroman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

IN RE THE TATA INDUSTRIAL BANK, LIMITED*.

1921

October 10

Indian Income Tax Act (VII of 1918), section 9—Banking concern—Income tax—Income derived from business—Deduction from assessable income, of depreciation in the value of securities held by the bank—"Profits."

A banking concern was assessed to income tax on profits amounting to Rs. 12,54,130 but claimed to deduct therefrom a sum of Rs. 2,98,000 which represented depreciation on securities, arrived at by comparing the market rates with the valuations in the books of the bank :—

Held, that the deduction claimed could not be allowed under section 9 of the Indian Income Tax Act, 1918.

* Civil Reference No. 12 of 1921.