Sahu Madho Das And Others vs Pandit Mukand Ram And Another(And ... on 22 March, 1955

Equivalent citations: 1955 AIR 481, 1955 SCR (2) 22, AIR 1955 SUPREME COURT 481

Author: Vivian Bose

Bench: Vivian Bose, B. Jagannadhadas, Bhuvneshwar P. Sinha

PETITIONER:
SAHU MADHO DAS AND OTHERS

Vs.

RESPONDENT:
PANDIT MUKAND RAM AND ANOTHER(and connected Appeal)

DATE OF JUDGMENT:
22/03/1955

BENCH:
BOSE, VIVIAN
BENCH:
BOSE, VIVIAN
JAGANNADHADAS, B.
SINHA, BHUVNESHWAR P.

CITATION:
1955 AIR 481 1955 SCR (2) 22

ACT:
Compromise or family arrangement-Proof of-Assumption of antecedent title of some sort in the parties-Reversioner's assent to an alienation-Legal effect thereof.

HEADNOTE:
A family arrangement can, as a matter of law, be inferred from a long course of dealings between the parties.
It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them Respectively.

That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is necessary.

But in view of the fact that the Courts lean strongly in favour of family arrangements that bring about harmony in a family and do justice to its various members and avoid, in anticipation, future disputes which might ruin them all the Supreme Court, carrying the principle further, upheld an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is present.

The legal position in such a case would be this. The arrangement or compromise would set out and define that the title claimed by A to all the properties in dispute was his absolute title as claimed and asserted by him and that it had always resided in him. Next, it would effect a transfer by A to B, C and D (the other members to the arrangement) of properties X, Y and Z; and thereafter B, C and D would hold their respective titles under the title derived from A. But in that event, the formalities of law about the passing of title

23

by transfer would have to be observed, and under the present state of law either registration or twelve years' adverse possession would be necessary. But in the present case the arrangement was made in 1875 when the Transfer of Property Act was not in force and no writing was required; and as there is no writing, the Registration Act does not apply either. Therefore, the oral arrangement of 1875 would be sufficient to pass title in this way and that is what happened.

Once a reversioner has given his assent to an alienation, whether at the time, or as a part of the transaction, or later as a distinct and separate act, he is bound though others may not be, and having given his assent he cannot go back on it to the detriment of other persons; all the more so when he himself receives a benefit.

It is settled law that an alienation by a widow in excess of her powers is not altogether void but only voidable by the reversioners, who may either singly or as a body be precluded from exercising their right to avoid it either by express ratification or by acts which treat it as valid or binding.

The principle applicable to the present case is a rule underlying many branches of the law which precludes a person who, with full knowledge of his rights, has once elected to assent to a transaction voidable at his instance and has thus elected not to exercise his right to avoid it, from going back on that and avoiding it at a later stage. Having made his election he is bound by it.
Held, that in the present case the plaintiff who is in titulo now that the succession has opened out, had unequivocally assented to the arrangement with full knowledge of the facts and accepted benefit under it, so he is now precluded from avoiding it, and any attempts he made to go behind that assent when it suited his purpose cannot render the assent once given nugatory even though it was given when he was not in titulo and even though the assent was to a series of gifts.
Mst. Hardei v. Bhagwan Singh, (A.I.R. 1919 P.C. 27); Clif-ton v. Cockburn ([1834] 3 My. & K. 76); William v. William [1866] L.R. 2 Ch. 294); Bani Mewa Kuwtivar v. Rani Hutlas Kuwar [1874] L.R. I I.A. 157); Khunni Lal v. Gobind Krishna ([1911] L.R. 38 I.A. 87); Bamsumirn Prasad v. Shyam Kumar ([1922] L.R. 49 I.A. 348); Baia Modhu Sudhan Singh v Booke ([1897] L.R. 24 I.A. 164); Bijoy Gopal v. Sm. Krishna [1906] L.R. 34 I.A. 87); Ramgouda Annagowda v. Bhauaheb ([1927] L.R. 54 I.A. 396); Dhiyan Singh v. Jugal Kishore ([1952] S.C.R. 478 at 488); Rangaswami Gounden v. Nachiappa Gouinden ([1918] L.R. 46 I.A. 72 at 86 & 87), referred to.

JUDGMENT:

CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 92 and 94 of 1950.

Appeals from the Judgments and Decrees dated the 20th March 1942 of the Allahabad High Court in First Appeal Nos. 154 and 152 of 1934 arising Out Of the Judgments and decrees dated the 25th August 1932 of the Court of First Additional Subordinate Judge, and First Additional Civil Judge, Moradabad in Original Suit Nos. 90 and 87 of 1931 respectively.

N. C. Chatterji, (S. S. Shukla with him) for the Appellants.

Gopi Nath Kunzru, (B. P. Maheshwari with him) for Respondent No. 1.

P. C. Agarwala, for Respondent No. 2 in Civil Appeal No. 94 of 1950.

1955. March 22. The Judgment of the Court was delivered by BosE J.-These appeals arise out of two suits which were heard together along with two other suits with which we are not now concerned. All four raised the same set of questions except for a few subsidiary matters. They were tried together and by common consent the documents and evidence in the various cases were treated as

common to all. They were all governed by one common judgment, both in the first Court and on appeal. The defendants appeal here. The plaintiff, Mukand Ram, is common to all four cases. He sues in each suit as the reversioner to one Pandit Nanak Chand who was his materdal grandfather. The family tree is as below:

Nanak Chand d. 23-7-75 W: Mst. Pato. d. Jan. 1875.

Mst. Maha Devi	Mst. Durga Devi	Mst. Har Devi
d. 1912	d. 1888	d. 10-9-19
H: Nathmal Das	H: Jwala Prasad	H: Bhawani Shankar
Mst. Ram Pyare		

Bhukhan Saran Banwari Lal Sital Prasad Shyam Lal Pyare-

			Lal
(dead)	(dead)		(deft.5)
	Brij Lal	Mukand Ram	
	(dead)	(Plff.No.1)	

The plaintiff's case is that the properties in the four suits belonged to Nanak Chand who died on 23-7-1856 leaving a widow Mst. Pato and three daughters, Maha Devi, Durga Devi and Har Devi. On his death, his widow Mst. Pato succeeded. She died in January 1875 and the estate then went to the three daughters. Of them, Durga Devi died in 1888, Maba Devi in 1912 and Har Devi in 1919. The plaintiff's rights as reversioner accrued on Har Devi's death on 10-9-1919. But before this came certain alienations which the plaintiff challenges in the present suits. The suits were filed on 8-9-1931. In Civil Appeal No. 92 of 1950, the challenge is to a mortgage effected by Durga Devi on 3-3-1887 in favour of Sahu Bitthal Das. The mortgagee sued on his mortgage, obtained a decree and in execution purchased the properties himself. The plaintiff's case is that Durga Devi only had a life estate and, as there was no necessity, the mortgage and the subsequent auction purchase do not bind him. In Civil Appeal No. 94 of 1950, there are two alienations, both sales. The first, dated 23-9-1918, was by Pyare Lal (son of Durga Devi) in favour of Shyam Lal, son of Mulchand. (This is not the Shyam Lal who was Pyare Lal's brother). The vendee later sold the properties to the first and second defendants on 5-3-1927. One of the vendees, the first defendant, is yet another Shyam Lal: Shyam Lal son of Harbilas.

The other sale was by Brij Lal's guardian on behalf of Brij Lal, Brij Lal then being a minor. It was on 25-11-1919 in favour of Chheda Lal. The first and second defendants preempted this sale after a fight in Court and took possession under the decree which they obtained. The plaintiff's case is that Har Devi was alive at the date of the first sale and as the reversion had not opened out Pyare Lal bad no power to sell. In the case of the second sale, the reversion had opened out but Brijlal being more remote than the plaintiff got no title, so that sale is also bad.

The defendants' case is that the properties in these two suits (as also in the other two suits with which we are no longer concerned) did not belong to Nanak Chand and formed no part of his estate; they belonged exclusively to Mst. Pato as part of her personal estate. On 22-1-1864 Mst. Pato executed a document which she called a deed of agreement but which, if it is anything at all, is a will. There are no other parties to it and she purports thereby to dispose of her properties after her death. The defendants in Civil Appeal No. 92 of 1950 have called it a will. After saying that she will remain in possession and occupation as long as she lives, Pato says that after her death her three daughters will be the owners and will either remain joint possession or will divide the estate in equal shares and, in that event, will take possession of their respective shares and will be the "owners" of them. But before she died Pato made another disposition of her estate during her life time in the year 1875 which, of course, abrogated the will. This was done orally. The defendants say that this was a family arrangement in which each of the three daughters was given certain properties absolutely so that each became the absolute owner of whatever fell to her share. Pato also gave properties to each of her four grandsons who were then living, namely Kanhaiya Lal, Mukand Ram, Banwari Lal and Sital Prasad. The defendants asserted that they also took separate and absolute estates immediately and said that each has been holding and dealing-with the properties so divided, separately and as absolute owners, ever since. Thus, at the dates of the transfers now challenged, each alienor had an absolute title to the properties alienated and the plaintiff has none.

The trial Court held that though most of the properties in Pato's hands came from her husband Nanak Chand, the plaintiff bad not shown that the properties with which his four suits were concerned formed part of Nanak Chand's estate.

An issue was also framed about the family settlement and one about estoppel. On both those point the learned Judge found against the plaintiff. The result was that all four suits were dismissed. The High Court reversed these findings on appeal and held that all the properties, including the ones in suit, formed part of Nanak Chand's estate.The learned Judges also held that though there was a family arrangement, it was a purely voluntary settlement made by Pato and was not made as the result of any dispute and that in any case it did not bind the plaintiff who was not a party to it and who does not claim through any of those who were. They also held that there was no estoppel. Accordingly, the plaintiff's claim was decreed in each of the four suits.

Appeals were filed here in all four suits by the various defendants but Civil Appeals Nos. 91 and 93 of 1950 were dismissed for want of prosecution, therefore the decree of the High Court in the two cases out of which those appeals arose will stand. We are now only concerned with Civil Appeals Nos. 92 and 94 of 1950.

In the lower Courts much of the effort was concentrated on finding out which items out of a large mass of property belonged to Nanak Chand and which did not. We do not intend to look into that because it it is unnecessary on the view we take. We will

therefore assume, without deciding, that all the properties in dispute were part of Nanak Chand's estate.

We will deal first with the family arrangement. The learned counsel for the plaintiff argued that the defendants never set up a family arrangement though they have used the words "family settlement". He contended that what they really pleaded was a gift out and out by Pato. It was pointed out that the defendants never suggested a dispute, neither did they suggest that any one ever questioned or doubted Pato's absolute title to the property. Therefore, it was argued, the present case, which is based on the assumption that the property was not Pato's and that she was laying wrongful claim to it, cannot be allowed because it flies in the face of the defendants' pleadings.

There is not much in this objection. The defendants did plead a family arrangement and the matter was put in issue and fought out. The defendants' case was that all the property was Pato's. The plaintiff's case was that it was all Nanak Chand's. The issues were-

"4. Whether Mst. Pato gave properties separately to each of her three daughters and to daughter's sons and put them in proprietary possession and they remained absolute owners of their properties and what is its effect on the case?

5. Whether the arrangement mentioned in issue No. 4 was by way of family settlement and what is its effect on the case?"

These issues are broad enough to cover the present point. If the properties really belonged to Nanak Chand, as the plaintiff claims, then the case for a family settlement becomes all the stronger, for it is clear that Pato laid claim to them as her own properties of which she could dispose by will, for that is what the document of 1864 really is. If, on the other hand, they were her properties, as the defendants say, then she had the right either to gift them outright or to settle them as the defendants say she did by way of a family arrangement. In either case, the matter was fully fought out and neither side was misled. The real question we have to decide is, has the family arrangement been proved? We think it has. The direct evidence on this point is that of Shyam Lal (D.W. I in C.A. 94/50) and the first defendant there. He tells us that he had money lending transactions with Har Devi, Kanhaiya Lal, Shyam Lal and Pyare Lal on unregistered bonds from 1902 till 1910 and from 1910 on registered mortgage bonds. He says that-

"They" (that is to say, Har Devi, Mukand Ram, Kanhaiya Lal, Shyam Lal and Pyare Lal) "showed one copy of a deed of will and said that Mst. Pato had given the property to her daughters and grandsons..... I am illiterate and Kanhaiya Lal brother of Mukand Ram had the deed of will read over to me at the time of mortgaging property in 1909 or 1910. It was by means of that paper that I came to know that Mst. Pato had made her daughters and grandsons absolute owners and I know of the property which was mortgaged to me".

Now it is true that the so-called will of 1864 does not make provision for the grandsons, nor does it expressly confer an absolute estate on the legatees, but the witness is illiterate and had to depend on what he was told about the contents and meaning of the document, and what we have to test is the truth of his assertion that the plaintiff Mukand Ram and Kanhaiya Lal, and other members of the family, told him that Mst. Pato had given the property to her daughters and grandsons. If they told him this, as he says they did, then it operates as an admission against Mukand Ram and shifts the burden of proof to him because he was one of the persons who made the statement. The statements made by the others are not relevant except in so far as they prove the conduct of the family.

The plaintiff (P.W. 11 in C.A. 91/50) admits that Mst. Pato divided the estate but says that it was only for convenience of management and that neither she nor her daughters had, or pretended to have, anything more than a life estate. He denies that there was any gift or family arrangement. But he had to admit that the grandsons also got properties at the same time. His explanation is that it was for the purposes of "shradh" and pilgrimage to Gaya and he says that though they were given possession they were not the "owners".

We now have to choose between these two witnesses and see which is telling the truth. But before doing that we will advert to another member of the family, Pyare Lal, who was examined as a witness (D.W. 17) in C.A. 92/50. He admits a series of sales made by him but says that he had no wilt of his own and that he did just what Mukand Ram told him. Now to go back to the year 1864 when Mst. Pato made the so- called will of 1864. This document was construed by the Privy Council in Mast. Hardei v. Bhagwan Singh(1) and their Lordships said-

> "In the events which happened this document did not become operative, but it is relevant as showing that at the date of its execution Pato was claiming an absolute right to dispose of the whole of the scheduled property".

Mukand Ram was not a party to that litigation and the decision does not bind him but it operates as a judicial precedent about the construction of that document, a precedent with which we respectfully agree. She says there that the property "belongs exclusively to me without the participation of anyone else". That assertion, coupled with the fact that she purported to dispose of the property after her death (which she could not have done as a limited owner), and taken in conjunction with the subsequent conduct of the daughters and that of the grandsons, imports admissions by them that that was her claim and leaves us in little doubt about what she meant. We therefore reach the same conclusion as the Judicial Committee and hold that Mst. Pato claimed an absolute estate in 1864.

We will now examine the conduct of the family after Pato's death and the claims put forward by them from time to time. First, we have the statement of Mukand Ram in the witness box (P.W. 11 in C.A. 91/50) that on Pato's death her daughters took separate possession of the properties in the following villages and towns:

> Har Devi Qutabpur Amawti.

Shakerpore.

Lalpur.

Bagh Alam Sarai.

Houses, Shops, etc. in Bazaar Kot, Sambhal.

Durga Devi. Keshopur Bhindi.

Tatarpore Ghosi.

Half Bilalpat.

Qumharwala Bagh.

(1) A.I.R. 1919 P.C. 27.

Shehzadi Serai.

Houses, shops, etc. in Sherkhan Serai, Sambhal.

Maha Devi. Guretha.

Behrampur Half Bilalpat.

Mahmud Khan Serai.

Houses, etc. in Kot.

Grove in Alam Serai The plaintiff also admits that the grandsons got some properties but does not give details. All he says is that they were given properties "for purposes of performance of 'shradh' and pilgrimage to Gaya".

Next, we have a long series of alienations by different members of the family with claims to absolute ownership which could only have sprung from titles derived either from a gift from Pato or from a family settlement. We say "family settlement" because we know now that the bulk of the property (and according to the High Court the whole of it) was Nanak Chand's. We also know that some of it was purchased by Pato after Nanak Chand's death from the income of the estate. Pato had the right to purchase properties for herself if she wanted instead of adding them to her husband's estate and we know she claimed title to the whole as an absolute owner in 1864. This claim may have been due to a mistaken view of Hindu law that in the absence of sons the widow gets an absolute estate, or it may have been due to other reasons, but that she made the claim is clear, and the subsequent conduct and statements of the family show that they either admitted the correctness of her claim

and accepted the properties as gifts from her or they agreed to and acted on a family settlement to avoid disputes on the basis that each got an absolute title to whatever properties fell to his or her share at the time of the division. The grandsons were minors at the time and were not parties to this arrangement, whatever its origin, and of course the widow and daughters could not enlarge their limited estates so as to bind the grandsons however much they agreed among themselves. But for the moment we are not considering the legal effect of whatever the arrangement was but whether the conduct of the family gives rise to an inference that there was an arrangement in fact.

A family arrangement can, as a matter of law, be implied from a long course of dealings between the parties: Clifton v. Cockburn(1) and William v. William(1); and we have such a course of dealing here. First, there is a long series of alienations by Har Devi stretching from 1877 down to 1916. We tabulate them below with the recitals she made about her title.

17-1-77 Mortgage Qutabpur Amawti "owned by me". Ex. LL-1 (C.A. 94) 11-1-78 do do Owner: "devolved on me from my Ex. 2J1 mother". (C.A.91) 20-3-81 do do Owner: "right of Ex.2H1 inheritance from (C.A.91) my father".

7-9-83 Sale. Lalpur Owner: "right of inheritance". Ex. 2Gl (C.A. 91) 23-8-87 Mortgage Qutabpur Amawti No recital Ex.L (C. A. 92) 15-7-05 do do Absolute owner with KanhaiyaEx. BB-1 (C.A. 94) Laland Mukand Ram.

19-11-08	do	do	No recital	Ex. M-1 (C.A. 94)
			do	
14-11-14	do	do	do	Ex. V (C.A. 92)
23-3-15	do	do	Owner: with Mukand Ram	Ex.X (C.A. 92)
17-2-16	do	do	With Mukand Ram. No recital	Ex. N-1 (C.A. 94)
28-3-16	do	do	Owner: with Mukand Ram and his son Ram Gopal	Ex. (G.A. 94)
22-1-18	do	Behrampur Buzurg	Owner: with Mukand Ram and Bhukan Saran	Ex.DDD-1(C.A. 91)
23-3-18	do	do	Owner: with Mukand Ram and Pyare Lal	Ex. M 1(C. A. 91)

It will be observed that Har Devi sometimes claimed to be absolute owner by right of inheritance from her father and at others from her mother in respect of the same village, but whichever way it was, (1) [1834] 3 My. & K. 76.

(2) [1866] L.R. 2 Ch. 294.

the claim to absolute ownership Was consistent throughout. This could only be referable to a family settlement where the origin of the property was in doubt but which was settled by bestowing, or purporting to bestow, an absolute estate on the daughters.

It will also be noticed that in later years Har Devi joined with Mukand Ram but still claimed an absolute estate along with him. This was for the following reason. Soon after Mukand Ram attained majority, the mother and sons quarrelled. On 11-2-1890 they referred their dispute to arbitration, Ex. RR-1 (C.A. 94). Mukand Ram became a major in 1890 and Kanhaiya Lal in 1884. It appears from their agreement of 11-2-1890 that Har Deyi claimed an absolute title while her sons said she was only a limited owner. But the sons agreed to accept a decision to the effect that she had an absolute estate in the whole of the property in dispute between them should the arbitrator so decide. The properties were--

Qutabpur Amawti, Shakerpore, Houses, shops, etc. in Mohalla Kot in Sambhal. Another significant thing is that in this document both mother and sons agreed that all of Nanak Chand's grandsons then in being were in separate possession and absolutely entitled to certain other properties which they expressly agreed were not to form the subject-matter of the arbitration. Here again, these titles could only be referable to a family arrangement, for the grandsons could not have got an absolute estate in any other way; nor could Har Devi. Mukand Ram tells us as P.W. 11 (C.A. 91) that he and his brother Kanhaiya Lal got Shakerpore and some shops in Bazar Kot, Sambhal, as a result of this arbitration, but does not say what happened to Qutabpur Amawti. But it is significant that Har Devi's dealings with Qutabpur Amawti after this date were all jointly with Kanhaiya Lal and Mukand Ram. It may be that the arbitrator awarded it jointly or they agreed to hold it on that basis. We do not know. All we know is that they mortgaged it jointly.

Behrampur fell to Mukand Ram's share and in the mortgage of the property in 1918 Har Devi joined with Mukand Ram and Murari Lal's son Bhukan Saran in one case and with Pyare Lal in the other. But except for the last two mortgages of 1918 the conduct of Har Devi and her sons for 39 years from 1877 to 1916 as disclosed in these deeds is only consistent with the family arrangement which the defendants allege, for on no other hypothesis could either the mother or the sons have laid claim to an absolute estate.

We will next turn to Durga Devi. She died in 1888 but before she died she mortgaged Keshopur Bhindi which had fallen to her share on 3-3-1887 by Ex. U-1 (C. A. 93) and claimed to be the owner.

Then there is Maha Devi. The only direct evidence we have of her conduct is a written statement that she filed in O.S. 177/97, Ex. 2BI (C.A. 91). She asserted there on 5-1-1898 that she had been in proprietary possession and occupation of her divided share of the property obtained by her from her mother under a deed of will. The circumstances in which she made this statement are to be found in the judgment in that suit, Ex. GI (C.A. 91). The suit was by Har Devi against her sister and a transferee who claimed title through the other sister Durga Devi. Har Devi's allegation was that Durga Devi had mortgaged Keshopur Bhindi and Tatarpore Ghosi on 3-3-87. The mortgagee sued on his deed and obtained a decree for sale. In execution of the decree he purchased the properties himself Durga Devi died in 1888 and Har Devi claimed that Durga Devi had only a limited estate

and that Maha Devi and herself were entitled -to the properties by survivorship. Maha Devi refused to support her sister and took up the position that each sister, or at any rate that she, Maha Devi, got an absolute estate in the property that came to her and of which she was placed in separate possession, from Pato. On 16-12-10 Maha Devi mortgaged Behrampur Buzurg and claimed that it belonged to her, being property left to her by her mother in which no one else had any rights. The deed is Ex. BB-1 (C.A. 93). On 2-7-11 she sold Bilalpat and claimed to be its exclusive proprietor, Ex. R-1 (C.A. 93). We now come to two statements made by Har Devi and Maha Devi as witnesses in that suit. Strong exception was taken to their admissibility because the plaintiff was not a party to the earlier litigation. It is a moot point whether they would be admissible under section 32(3) of the Evidence Act, but we need not decide that because we do not intend to use them as proof of the truth of the facts stated in them. But they are, in our view, admissible to show the conduct of these two ladies. The conduct of the various members of the family is relevant to show that their actings, viewed as a whole, suggest the existence of the family arrangement on which the defendants rely. At this distance of time gaps in evidence that would otherwise be available have to be filled in from inferences that would normally have little but corroborative value. But circumstanced as we are, inferences from the conduct of the family is all that can reasonably be expected in proof of an arrangement said to have been made in 1875. The statements that Har Devi and Maha Devi made as witnesses are therefore as relevant as recitals made by them in deeds and statements made by them in pleadings. They do not in themselves prove the fact in issue, namely the family arrangement, because, in the absence of section 32(3), they are not admissible for that purpose, but as their conduct is relevant these statements are admissible as evidence of that conduct. Maha Devi's statement is Ex. 2-Al (C.A. 91) and Har Devi's Ex. 2-Fl (C.A. 91). Both speak of an arrangement effected by Pato in her life time and say that they entered into separate possession of the properties by reason of that arrangement. Har Devi says in addition that the grandsons were included in the arrangement and given properties too. Therefore, we know that this is the title under which each claimed to hold in O.S. No. 177/97. It is proof of their assertion of this title at that early date and though it is no proof of the truth of those assertions it is proof of the fact that the assertions were made and that is all we need at the moment.

We turn next to the conduct of the grandsons, and first we will consider the plaintiff Mukand Ram and his brother Kanhaiya Lal. The plaintiff attained majority in 1890 and from that date down to 1922 we have a series of assertions of a title that can only spring from the family arrangement. First, we have the deed of 11-2-90, Ex. RR-1 (C.A. 94) which we have already considered in connection with Har Devi. This is the agreement between his brother and himself on the one hand and Har Devi on the other to refer their dispute to arbitration. We have already commented on the fact that the two brothers asserted an absolute title to properties that were in their possession and acknowledged the absolute title of Pyare Lal and Shyam Lal to the properties of which they were possessed. The only dispute they were prepared to submit to arbitration was about the properties in Har Devi's possession and there, they were prepared to accept a decision upholding Har Devi's claim to an absolute estate.

After this came the following dealings:

20-11-91 Sale Shahzadi Proprietary pos- Ex. 2 K1 (C.A. 91) Sarai session "devolved on us by right of inheritance from Pato ".

28-7-93 Sale Dugawatr Proprietary pos- Ex. 2 El (C.A. 91) session "by right of inheritance".

```
2-7-96    Mortgage    Qutabpur " ancestral and Ex. KK-1(C.A.
                      Amawti                          94)
                                  purchased by
                                 us": Possessed
                                  by us....without
                                the participation of anybody
                                else".
```

30-1-00 Sale Bazar Mah- " Proprietary pos-Ex. U (C.A. 92) mud Khan session" by "right Sarai, Sam-of inheritance":

bhal " without the par-

ticipation of anyone else."

15-7-05 MortgageQutabpur Owners:withHarEx.BB-1(C.A.94) Amawti Devi "without the participation of anyone else".

Kanhaiya Lal died about this time and thereafter Mukand Ram continued to make transfers claiming to do so in his own right. He made the following along with Har Devi. We have already analysed them. They were-

```
19-11-08  Ex.MI (C.A.94)
14-11-14  Ex.V  (C.A.92)
23-3-    15    Ex.X(C A.92)
17-2-    16    Ex.N-1(C.A.94)
28-3-    16    EX.MM1(C.A.94)
22-1-    18    Ex-DDD1(C.A.91)
23-3-    18    Ex.M1(C.A.91)
```

But in addition to these he made the following transfers on his own:

18-2-16 Sale Lashkarpur Absolute owner. Ex. PP-1 (C.A.

94) 24-4-22 Sale Houses, etc. do Ex. Y (C.A. 92) in Sambhal 23-11-22 Sale Qutabpur Amawti do Ex. Q (C.A. 92) Next, we come to Shyam Lal. His alienations were as follows:

19-6-97 Mortgage. Shops in Sanbhal. Owner.Ex. W-1(C.A. 94) 9-11-07 do House in Sambhal. No recital Ex. TT-1(C.A. 94) 17-9-09 do Bilalpat. do Ex. UU-1 (C. A. 94) In addition, he made the following transfers jointly with his brother Pyare Lal:

18-1-06 Mortgage. Bilalpat & shops No recitals. Ex. EEE-1 in Sambhal. (C.A.94) 21-2-10 do Bilalpat & Sabz. do Ex. AA-1(C.A 94) Pyare Lal also made two transfers on his own- 23-9-18 Sale Bilalpat."Devolved on Ex. 15(C.A. 94) me"from Nanak Chand by right of inheritance.

2-1-20 do do do Ex. 18 (C. A. 93) Lastly, there is Bhukban Saran, who is Maha Devi's daughter's son. He transferred as follows: 26-3-18 SaleHouses, etc.in Absoluteand Sambhal. exclusive Ex. MM-1 (C.A.92) owner.

9-1-21 Relinquish- Bilalpat do Ex. DD-1 (C.A. 93) ment.

These documents disclose a long line of conduct on the part of the various members of the family and show that from 1877 down to 1922 each dealt with the properties in his or her possession as absolute owner and set up exclusive proprietary title to the properties transferred. It is true the source of title was not consistently stated, sometimes it was said to be Pato and at others Nanak Chand, but the assertion to a separate, exclusive and absolute title in each is common all through. There is only one way in which they could have got these exclusive titles and that is by a family arrangement, for whether the property was Nanak Chand's or whether it was Pato's, in neither event could any one of these persons have obtained an absolute estate on the dates with which we are concerned: the grandsons, because the reversion had not opened out; the daughters because, either way, they would only be limited owners under the Hindu law. But if there was a family arrangement assented to by the daughters and later accepted and acted on by the sons when they attained majority, their claim to separate and independent absolute titles is understandable. It does not matter whether the claims were well founded in law because what we are considering at the moment is not the legal effect of the arrangement but whether there was one in fact. Now, in spite of all these dealings, the conduct of Har Devi and Mukand Ram and Kanhaiya Lal was not always consistent. They were greedy and while insisting that they be allowed to hold on to what they had got, they wanted to snatch more if and when they could. The ball started rolling in 1890 as soon as Mukand Ram attained majority. There was the reference to arbitration in that year to settle their dispute with their mother Har Devi. But even there, there was the inconsistency regarding their own properties to which we have already referred. Mukand Ram's later explanation in the witness box that they got those properties for shradh purposes and for a pilgrimage to Gaya cannot be believed.

Next, there was the suit by Mukand Ram and Kanhaiya Lal against their aunt Maha Devi in 1895: S. No. 21/1895, Ex. 31 (C.A. 91). That was occasioned by two sales by Maha Devi on 19-2-83 and 20-5-85. She stoutly maintained that she had an absolute title.

The litigation had a chequered career and ultimately the suit was dismissed as barred by time.

Next came suit No. 177 of 1897, Ex. GI (C.A. 91), in which Har Devi sued Maha Devi and a transferee. This time it was to set aside an alienation by Durga Devi, Durga Devi then being dead. Har Devi claimed that the property was Nanak Chand's and that the daughters were limited owners. But again Maha Devi stood by the family arrangement and asserted an absolute title in all the daughters; Ex. 2BI (C.A. 91). We have seen that Har Devi entered the box and admitted the arrangement: Ex. 2F-1 (C.A. 91). The suit very naturally failed, but the result of the litigation is not relevant because the plaintiff was not a party. What we are examining is the conduct of Har Devi.

In 1913 Har Devi tried again after Maha Devi's death, this time against alienees from Maha Devi. This is the suit that went up to the Privy Council, Mst. Hardei v. Bhagwan Singh(1). She failed again'.

Having failed against Maha Devi in the 1897 litigation, Har Devi next tried her luck against Maha Devi's grandson (daughter's son) Bhukhan Saran, after Maha Devi's death. The suit is O.S. 52/14, Ex. 78 (C.A. 94). This time she succeeded with respect to some items and failed as regards the rest. But again the result is irrelevant: Exs. 6 and 8 (C. A. 94).

Now what we are examining at the moment is whether Shyam Lal, D. W. I in CA. 94, is to be believed when he says that Mukand Ram, among others, told him about the family arrangement tinder which Pato had divided all her property between her daughters and their sons. It is evident from what we have said above that Mukand Ram had been consistently asserting such a title for 31 years from 1891 to 1922 despite his aberrations in 1890 and 1895. In parti- cular he did this whenever he wanted to borrow money or to sell property: and he makes a significant admission in the witness box as P. W. 11 in C. A. 91 that-

(1) A.I.R. 1919 P.C. 27.

"In the mortgage or sale of the property over which Mst. Har Devi was in possession none of her sisters or sisters' sons joined. Similarly, in the sale or transfer of the property that came to Durga Devi, none of her sisters or other sisters' sons joined".

He also admits that there was a division and separate possession from 1876. He says that it was for convenience of management and says that it was after Pato's death, but in view of the mass of evidence that we have just analysed, we think it far more likely that he told Shyam Lal just what Shyam Lal says he did. After all, he was borrowing money from Shyam Lal on each of these occasions; so there is every reason to believe that he would have told Shyam Lal what he had so repeatedly asserted to his other transferees. We accordingly believe Shyam Lal.

That at once shifts the burden of proof to the plaintiff, and what is his explanation? First, a division of the estate for convenience of management (but that does not explain the long chain of

unchallenged transfers bar Har Devi's efforts in four cases); and second, that the grandsons got property absolutely for the purposes of shradh and pilgrimage: 'an explanation which we disbelieve). We are therefore left with the plaintiff's admission to Shyam Lal and that admission, coupled with the conduct and actings of the family, firmly establishes the family arrangement. We accordingly hold that, whether the property belonged to Pato or to Nanak Chand, Pato claimed an absolute right which the daughters acknowledged, and in return they and their sons were given separate and absolute estates in separate portions of the property immediately.

This arrangement bound the daughters because they were parties to it and received good consideration. But so far as the sons are concerned, they were minors at that time and were not parties to this arrangement, for no one suggests that they were represented by guardians who entered into it on their behalf. Therefore, the properties they received were, so far as they are concerned, gifts pure and simple 6 from Pato with the assent of her daughters. It does not matter whether the properties were Pato's exclusive properties or whether they came to her from her husband because, either way, the title to the properties resided in her and she was the only person competent to pass it on to another. If her title was absolute, the sons got absolute estates. If it was the limited title of a Hindu widow, they obtained a limited title good during her life, and, as the daughters consented to the gifts and obtained properties for themselves as a result of the arrangement that resulted in these gifts, they would not be permitted to question the gifts; and the Privy Council so held in Har Devi's suit against the alienees from Maha Devi: Mst. Hardei v. Bhagwan Singh(1). But so far as the grandsons are concerned, the mere,' fact that each received a separate gift from Pato at a time when they were not competent to assent or to dissent would not in itself bind them. To achieve that result, there would have to be something more; and it is to that something more that we will now direct our attention. But before doing that, we will pause to distinguish Rani Mewa Kuwar. Rani Hulas Kuwar (2); Khunni Lal v. Gobind Krishna Narain (3), and Ramsumran Prasad v. Shyam Kumari (4). It is well settled that a compromise or family arrangement is based on the assumption that there is an antecedent title of some sort in the parties and the agreement acknowledges and defines what that title is, each party relinquishing all claims to property other than that falling to his share and recognising the right of the others, as they had previously asserted it, to the portions allotted to them respectively. That explains why no conveyance is required in these cases to pass the title from the one in whom it resides to the person receiving it under the family arrangement. It is assumed that the title claimed by the person receiving the property under the arrangement had always resided in him or her so far as the property falling to his or her share is concerned and therefore no conveyance is (1) A.I.R. 1919 P.C. 27.

(2) [1874] 1 I.A. 157, 166.

(3) [1911] 38 I A. 87, 102.

(4) [1922] 19 I. A. 342, 348.

necessary But, in our opinion, the principle can be carried further and so strongly do the Courts lean in favour of family arrangements that bring about harmony in a family and do justice to its various

members and avoid, in anticipation, future disputes which might ruin them all, that we have no hesitation in taking the next step (fraud apart) and upholding an arrangement under which one set of members abandons all claim to all title and interest in all the properties in dispute and acknowledges that the sole and absolute title to all the properties resides in only one of their number (provided he or she had claimed the whole and made such an assertion of title) and are content to take such properties as are assigned to their shares as gifts pure and simple from him or her, or as a conveyance for consideration when consideration is present. The regal position in such a case would be this. The arrangement or compromise would set out and define that the title claimed by A to all the properties in dispute was his absolute title as claimed and asserted by him and that it had always resided in him. Next, it would effect a transfer by A to B, C and D (the other members to the arrangement) of properties X, Y and Z; and thereafter B, C and D would hold their respective titles under the title derived from A. But in that event, the formalities of law about the passing of title by transfer would have to be observed, and now either registration or twelve years adverse possession would be necessary. But in the present case, we are dealing with an arrangement made in 1875 at a time when the Transfer of Property Act was not in force and no writing was required; an d, as there is no writing, the Registration Act does not apply either. Therefore, the oral arrangement of 1875 would be sufficient to pass title in this way and that, in our opinion, is what happened.

But these rules only apply to the parties to the settlement and to those who claim through or under them. They cannot be applied to the minor sons who were not parties either personally or through their guardians and who do not claim title' either through Pato or her daughters. So far as they are concerned, what they received were gifts pure and simple and the only assent that could be inferred from mere acceptance of the gift and nothing more would be assent to that particular gift and not assent to the gifts similarly made to others; and for this reason.

When Mukand Ram attained majority he had two titles to choose from. One from Pato as a limited owner coupled with the assent of the daughters to her gift to him. In that case, he would hold a limited estate till the reversion opened out. The gift would be good during Pato's life time because she had that title to convey, and thereafter, till the three daughters died, because they assented to it and obtained considerable benefit for themselves from the transaction out of which it arose. The other title would be an absolute one on the basis that Pato was the absolute owner of the properties. That title could only be referable to the family arrangement, and if Mukand Ram, knowing the facts, assented to the arrangement ex post facto, he will be precluded from challenging it for reasons which we shall now explain.

If the properties were Nanak Chand's, which is the assumption on which we are deciding this case, then Pato was a limited owner under the Hindu law, but as such she represented the estate and any title she conveyed, whether by gift or otherwise, would not be void; it would only be voidable. It would be good as against all the world except the reversioner who succeeded when the reversion opened out and he is the only person who would have the right to avoid it; and it would continue to be good until he chose to avoid it. Therefore, if he does not avoid it, or is precluded from doing so, either because of the law of limitation or by his own conduct, or for any other reason, then no one else can challenge it; and the law is that once a reversioner has given his assent to an alienation, whether at the time, or as a part of the transaction, or later as a distinct and separate act, he is

bound though others may not be, and having given his assent he cannot go back on it to the detriment of other persons; all the more so when he himself receives benefit:see Raja Modhu Sudan Singh v. Rooke(1); Bijoy Gopal v. Krishna(1), and Ramgouda Annagouda v. Bhausaheb(3). Lord Sinha, delivering the judgment of the Privy Council in the last of these three cases, said at page 402:-

> "It is settled law that an alienation by a widow in excess of her powers is not altogether void but only voidable by the reversioners, who may either singly or as a body be precluded from exercising their right to avoid it either by express ratification or by acts which treat it as valid or binding".

This was followed in Dhiyan Singh v. Jugal Kishore(4) though the ground of that decision was estoppel. We are now founding on another principle which is not grounded on estoppel and which, indeed, is not peculiar to Hindu law. Estoppel is rule of evidence which prevents a party from alleging and proving the truth. Here the plaintiff is not shut out from asserting anything. We are assuming in his favour that Pato had only a life estate and we are examining at length his assertion that he did not assent to the family arrangement. The principle we are applying is therefore not estoppel. It is a rule underlying many branches of the law which precludes a person who' with full knowledge of his rights, has once elected to assent to a transaction voidable at his instance and has thus elected not to exercise his right to avoid it, from going back on that and avoiding it at a later stage. Having made his election he is bound by it.

So far as the Hindu law is concerned, Lord Dunedin explained in Rangaswami Gounden v. Nachiappa Gounden(5), a case in which a widow gifted properties to her nephew, that though the reversioner is not called upon to exercise his right to avoid until the reversion falls in and so no assent can be inferred from mere inaction prior to the death or deaths of the limited owner or owners, he is not bound to wait and "of course something might be done even before (1) [1897] 24 I.A. 164, 169. (2) [1906] 34 I.A. 87. (3) [1927] 54 I.A. 396. (4) 1952 S.C.R. 478, 488. (5) [1918] 46 I.A. 72, 86,87.

that time which amounted to an actual election to hold the deed good".

Ramgouda case(1) is an illustration of what that something can be, for there the assent was given by the ultimate reversioner before he became in titulo to alienations by a widow, one of which was a gift. The present case is another illustration. For the reasons we have given and which we shall now further examine, we hold that the plaintiff, who is in titulo now that the succession has opened out, unequivocally assented to the arrangement with full knowledge of the facts and accepted benefit under it, therefore, be is now precluded from avoiding it, and any attempts he made to go behind that assent when it suited his purpose cannot render the assent once given nugatory even though it was given when he was not in titulo and even though the assent was to a series of gifts. The real question is whether the plaintiff assented to the family arrangement, and as the plaintiff was not a party to the arrangement his assent to the arrangement itself, and not to something else, must be clearly established, and also his knowledge of the facts. But we think they have been. In the first place, there was the express assent in 1890 to the gifts made to the other grandsons on the basis that each grandson got an absolute estate. Next, there was the long course of dealings by Kanhaiya Lal

and Mukand Ram in which they asserted absolute titles. Mukand Ram tells us in the witness box as P.W. 11 (C.A. 91) that Kanhaiya Lal was the karta of the joint family to which Mukand Ram belonged, therefore Kanhaiya Lal's dealings with the properties which he and his brother held under a joint and undivided title are also relevant as they will bind Mukand Ram. And lastly, there is Mukand Ram's representation to Shyam Lal (D.W. I in C.A. 94) which leaves us in no doubt about his knowledge. The cumulative effect of this course of conduct leads to a reasonable inference that Kanhaiya Lal and Mukand Ram were holding, not on the basis of a separate and individual gift made by a life owner with the assent of the next set of life

1) [1927] 51 I.A. 396, 402.

owners, but on the basis of the family arrangement which was one composite whole in which the several dispositions formed parts of the same transaction under which Mukand Ram himself acquired a part of the estate: see Ramgouda v. Bhausaheb(1). We are therefore satisfied that the plaintiff's assent was to this very arrangement. and that concludes both cases. In C. A. 94/50 there is, in addition, a direct personal estoppel against the plaintiff. The transfers that are challenged there are sales of 23-9-18 and 25-11-19 made by two of the grandsons, one personally and the other by the guardian, but the relevant dates for the purposes of the estoppel are later because the representation in this case was not made to the immediate transferees but to the first defendant who obtained title to the properties at a later date, in one case by a sale from the immediate transferee, in the other by pre-emption. But the exact dates do not matter because the representation to the first defendant was made in 1910 before the first defendant's purchases. It was made by Kanhaiya Lal and Mukand Ram as as well as by other members of the family. We have already referred to the first defendant's evidence. This case would therefore be governed by Dhiyan Singh v. Jugal Kishore(2) in any event. But we need not elaborate this further because of the other principle which, in our opinion, is sufficient to dispose of both the present cases.

The result is that both appeals are allowed. The decrees of the High Court -are set aside and those of the first Court dismissing the plaintiff's claims in those suits out of which Civil Appeals 92 and 94 of 1950 arise are restored. Costs here and in the High. Court will be paid by the plaintiff-respondent but there will be only one set of costs and they will be divided half and half between the two sets of appellants.

Appeals allowed.

(1) [1927] 54 I.A. 396, 402.

(2) 1952 S.C.R. 478.