Supreme Court of India
Ram Charan Das vs Girjanandini Devi And Ors on 20 April, 1965
Equivalent citations: 1966 AIR 323, 1965 SCR (3) 841
Author: M R.
Bench: Mudholkar, J.R.

PETITIONER:
RAM CHARAN DAS

Vs.

RESPONDENT:
GIRJANANDINI DEVI AND ORS.

DATE OF JUDGMENT:
20/04/1965

BENCH:
MUDHOLKAR, J.R.
BENCH:
MUDHOLKAR, J.R.
SARKAR, A.K.
BACHAWAT, R.S.

CITATION:
1966 AIR 323 1965 SCR (3) 841
CITATOR INFO :
F 1971 SC1041 (8)
R 1972 SC1279 (10)
F 1976 SC 807 (14,17,40)

ACT:
U.P. Court of Wards Act, 1912 (Act 4 of 1912), s. 37(a)--Family' Settlement whether amounts to transfer or creation of interest in property within the meaning of section.
Compromise in suit--Document recording compromise whether amounts to family settlement--Monies paid by one of the parties under the document-Other parties whether estopped from challenging its validity--Party receiving benefit under document--Whether can challenge its validity.

HEADNOTE:
C's property passed under his Will, drawn in 1883, to K and M who were brothers. M died and K entered into possession of his share also. On K's death in 1922 his mother entered into possession of the whole property. She gave over the management of the property to the Court of Wards under s. 10 of the U.P. Court of Wards Act, 1912. The daughter of M however with the consent of K's mother got her

father's share released from the management of the Court of Wards in her favour. In 1932 G, sister's son of K, filed a suit in which he challenged the release of M's share in favour of his daughter. Two other suits were filed in respect of the property by descendants of C's brother who as collaterals claimed to be next reversioners to the property. The plaintiff in one of these suits was the present appellant; in the other suit the plaintiff was his brother. In these suits a declaration was sought that G and M's daughter had no rights in the properties in question. G, M's daughter. K's mother and the Court of Wards were made parties to these suits. Both these suits were cornpromised. The suit of the present appellant was compromised by ,a document Ex. Y-13, to which, among others, the appellant, G, and K s mother were parties. G had withdrawn his own suit shortly before. Acting on the document Ex. Y-13 G paid monies to the Court of Wards to clear his liabilities and get released from its management the properties in question. C, M's daughter, K's mother and the Court of promise. However, subsequently, the appellant filed a suit in which he challenged the validity of Ex. Y-13. Having failed in the trial court as 'well as in the High Court he appealed to this Court by special leave.

The questions that fell for determination were: (1) whether Ex. Y-13 was binding on the parties as a family arrangement or settlement, (2) whether certain reservation in the said deed, leaving it open to the parties to challenge its recitals in certain contingencies had the effect that the deed was not intended to be final, and (3) whether the family settlement fell within the mischief of s. 37(a.) of the U.P. Court of Wards Act.

HELD: (i) The document Ex. Y-13 was in substance a family 'arrangement and therefore binding on all the parties to it. On the face of it, the document was a compromise of conflicting claims. The

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parties recognised each others' rights to property, which they had earlier disputed. The suit filed by G was withdrawn shortly before the document was executed and those filed by the appellant and his brother were compromised on the day of its execution. All these transactions were part of one main transaction which was the settlement by members of the family of all their property disputes once and for all. Further, all those who could be said to be interested in the property were made parties to the transaction. [845H-846A]

In these circumstances, the appellant who had taken benefit under the transaction was not entitled to turn round and challenge its validity'. He was also estopped from doing so because G, acting on the document had paid monies to the Court of Wards to get his property released. [850G]

Ramgouda Annagouda v. Bhausaheb, L.R. 54 I.A. 396, relied

(ii) Courts give effect to a family settlement upon the broad and general round that its object is to settle

existing or future disputes general regarding property amongst members of a family. The word family in this context is not to be given a narrow meaning. In Ramgouda Annagouda's case, of the three parties, to the settlement of a dispute concerning the property of a deceased person one was his widow, another her brother, and the third her son-in-law. The two latter were not heirs of the deceased, yet bearing in mind their relationship to the widow the settlement of the dispute was regarded as the settlement of a family dispute. The consideration for such a settlement is the expectation that it will result in amity and goodwill amongst persons bearing relationship to one another. That consideration having passed by each of the disputants, the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter. [850F-H, 851A-B]

(iii) No doubt the parties to Ex. Y-13 recognised each others relationship to K only for the purposes of the deed, and also reserved to themselves the right to challenge the recitals to the deed, in certain contingencies. Thereby it is not established that the document was not intended to be final. Read as a whole the document left no doubt that it was intended to be a final settlement. If it were intended otherwise there would have been express mention to that effect in the deed. [848A-B]

Moreover what was permitted was a challenge to the recitals only. What the appellant's suit challenged. however was not the recitals but the terms of the deed which none of the parties was given liberty to derogate from. [849B-C]

(iv) A family settlement is not a transfer or creation of interest in the property within the meaning of s. 37(a) of the U.P. Court of Wards Act, 1912. It is in no sense an alienation by a limited owner of family property. Apart from that the two suits which were pending were compromised with the full knowledge of the Court of Wards which was also a party to both the suits and the Court of Wards in fact accepted monies from G which were due to it. In these circumstances the appellant was not entitled to press in his favour the provisions of s. 37(a) of the U.P. Court of Wards Act. [851C-852H]

Mst. Hiran Bibi v. Mst. Sohan Bibi, A.I.R. 1914 (P.C.) 44, Khunni Lal v. Govind Krishna Narain, I.L.R. 33 All. 35, Man Singh v. Nowlakhbati, L.R. 46 I.A. 72 and Sureshwar Misser v.. Nachiappa Gounden, L.R. 46 I.A. 72, and Sureshwar Misser v. Maheshrani Misrainn L.R. 47 I.A. 233, 843

JUDGMENT:

CIVIL APPELLATE JUPRISDICTION: Civil Appeal No. 520 of 1961 Appeal by special leave from the judgment and order dated September 23, 1958, of the Allahabad High Court in First Appeal No. 392

of 1944.

S.P. Sinha, E.C. Agarwala, S. Shaukat Hussain and P.C. Agarwala, for the appellant.

Niren De, Additional SolicitOr-General, Yogeshwar Prasad and A.N. Goyal, for respondent No. 1. Mudholkar, J. The substantial question which falls for decision in this appeal iS as tO the legal effect of a deed, EX. Y. 13, dated March 31. 1933 described in the paper-book as a deed of partition., A subsidiary question also arises for consideration which is, whether the validity of the transaction evidenced by the deed is affected by reason of the fact that the property comprised therein was at the time of its execution, under the management of the Court of Wards. According to the plaintiff the deed was invalid and did not affect his right to a share in the property in the suit. His contention failed both in the trial court as well as in the High Court.

The property covered by the deed belonged t9 one Kanhaiyalal who died on June 10, 1922 without leaving a widow or any issue. This property, along with some other property originally belonged to Kanhaiyalal's grandfather Chunnilal. It is said by some of the parties that by a will executed by him in the year 1883 he devised his property in favour of Kanhaiyalal and his brother Madho Prasad. Madho Prasad, died during the life-time of Kanhaiyalal, leaving a daughter Maheshwari Bibi. After Madho Prasad's death Kanhaiyalal entered into possession of the property which had been bequeathed to Madho Prasad by Chunnilal. After Kanhaiyalal's death Kadma Kuar, his mother, entered into possession of the entire property which was in the possession of Kanhanyalal till his death. Kadma Kuar died on October 14, 1937 and shortly thereafter the suit out of which this appeal arises was instituted by Ram Charan Das, the appellant. It may be mentioned that Kanhaiyalal and Madho Prasad had a sister by name Mst. Pyari Bibi. She had a son named Gopinath who died in the year 1934 leaving a widow, Girja Nandini, the first defendant to the suit. The plaintiff is the sixth son of Diwan Madan Gopal. Diwan Madan Gopal was one of the two sons of Brij lal and Brijlal was the only son of Deoki Nandan. Deoki Nandan himself was the eider brother of Chunnilal. The plaintiff who is the appellant before us is thus a collateral of Kanhaiyalal. It is not disputed that he and his brothers were the next reversioners entitled to succeed to Kanhaiyalal's property L/P(D)5SCI-15 after the death of his mother Kadma Kuar. To this suit he joined Girja Nandini Devi, widow of Gopinath as defendant No. 1 and it is she who is the contesting respondent before us.

Soon after Kadma Kuar entered into possession of the estate of Kanhaiyalal, she applied to the appropriate authority for taking Over possession of management of the property which was in the possession of Kanhaiyalal at the time of his death whereupon the Court of Wards took over its management under s. 10 of the U.P. Court of Wards Act, 1912 (IV of 1912). This property consisted not only of the property which Kanhaiyalal had obtained under the will of Chunnilal but also of the property which had been bequeathed in that will to Madho Prasad and of which Kanhaiyalal had obtained possession during his life time. Maheshwari Bibi, the daughter of Madho Prasad laid a claim to the property which had been bequeathed by Chunnilal on the ground that the two brothers who took these properties under Chunnilal's will took them not as joint tenants but as tenants in common. The claim made by her in this respect was examined by the Court of Wards and upon Kadma Kuar agreeing, the Court of Wards released half of the estate under its management, that is, the share in the property which iS said to have been bequeathed to Madho Prasad.

It is necessary to refer to three suits which came to be instituted during the life time of Kadma Kuar, the first of which is 30 of 1932. This was instituted by Gopinath who claimed to be the next reversioner upon the ground that he being the sister's son of Kanhaiyalal, had become an heir preferential to the present appell-. ant and his brothers because of the passing of the Hindu Law of inheritance (Amendment) Act of 1929. To this suit Maheshwari Bibi and Kadma Kuar and the Court of Wards were made defend. ants. He sought therein a declaration to the effect that the Court of Wards had no right to release half the property in favour of Maheshwari Bibi. This suit, however, was eventually withdrawn. Two other suits, suit No. 53 of 1932 and 54 of 1932, came to be filed' shortly thereafter. In the first of these the present plaintiff was himself the plaintiff while in the second, his broher Hanuman Prasad (defendant No. 6 in the present suit) was the plaintiff. Both of them claimed to be the nearest reversioners upon the ground that the Act of 1929 did not affect their right to the properties left by Kanhajyalal. Each of them sought a declaration that Maheshwari Bibi and Gopinath had no right of any kind in respect of these properties. These suits were rounded' on the ground among others that Maheshwari Bibi had no right because Chunnilal could not by his will devise the property to her father Madho Prasad and Gopinath had none because he was not in fact Kanhaiyalal's sister's son. Gopinath, Maheshwari Bibi, Kadm.a Kuar and the Court of Ward's, were made parties to these suits. It is common ground' that the claims in both these suits were compromised. Under one of the compromises the dispute with Maheshwari Bibi was settled and we are no longer concerned with that matter. Under the other compromise the dispute with Gopinath and Kadma Kuar was settled. Decrees were drawn up in these suits embodying the terms of each of the compromises arrived at amongst the parties. The latter compromise was entered into in suit No. 53 of 1932 and' its date was March 31, 1933. The document, Ex. Y-13 embodies the terms of the compromise in suit No. 53 of 1932. To that document, amongst other, the appellant, Gopinath and Kadma Kuar were parties. According to the plaintiff the compromise in question was not in law a surrender nor a family arrangement and that in any case Kadma Kuar was not entitled to make a family settlement and that what she did' does not amount in law to a surrender. Also according to him Kadma Kuar was a person under disability being at the relevant time a ward under the Court of Wards and, therefore, the transaction was void. On behalf of the contesting defendant it was urged in the courts below that the transaction amounted to surrender of her estate by Kadma Kuar and alternatively that it was a family settlement to which the plaintiff was one of the parties and, therefore, he is estopped from challenging the validity of the compromise, particularly so as he has taken benefit thereunder and also because in view of the compromise Gopinath had discharged the debts of Kanhaiyalal which at law were recoverable from the property in question. Alternatively the defendants contended that the transaction evidenced by the document was an effective surrender by Kadma Kuar in favour of Gopinath who was the presumptive reversioner at that time.

At this stage it is desirable to point out that out of the properties described in List A of the Schedule to the plaint the plaintiff-appellant lays no claim to items 1 and 2 which are respectively described as properties at Hewett Road, Allahabad, and Goshain Tola, Allahabad' nor to item 7(1) described as 8 anna share in a Zamindari village. Such a concession was made before this Court by Mr. S.P. Sinha, counsel for the appellant, when the matter was argued before this Court on April 14, 1964, when the hearing was adjourned to enable the parties to arrive at a settlement. No settlement was arrived at and the matter was re-argued before this Court on March 8 and 9, 1965. Mr. Sinha has not withdrawn the concession made by him on the earlier occasion. We may also make a mention of the

fact that Mr. Niren De, the Additional Solicitor General has not argued that Ex. Y-13 purports to show that Kadma Kuar surrendered the widow's estate. In the circumstances we proposed to confine ourselves to the consideration of only one matter and that is whether the deed (Ex. Y-13) is a family arrangement and' as such binding upon the plaintiff. It seems to us abundantly clear that this document was in substance a family arrangement and, therefore, was binding on all (D) 5SCI--16 the parties to it. Moreover it was acted upon by them. For, under certain terms thereof one of the parties, Gopinath, paid off certain liabilities to which the property which was allotted to his share was subjected. According to Mr. Sinha, however, the transaction evidenced by the document was not a family settlement but only a surrender by Kadma Kuar though in law it could not operate as a surrender firstly because it was not of the entire estate of which she was in possession as a limited owner and secondly because of the two sets of persons between whom she divided the property only one could be said to be her reversioner or reversioners and the other a stranger or strangers. In our opinion the document on its face appears to effect a compromise of the conflicting claims of Gopinath on the one hand and the present plaintiff Ram Charan Das and his brothers on the other to the estate of Kanhaiyalal. In the document Kadma Kuar is referred to as 'first party'. Gopinath as 'second party' and Ram Charan Das, the appellant before us and his brothers as the 'third party'. In cl.(1) of the document it is stated "That the first party renounces all her claims to the estate of her son M. Kanhaya Lal deceased according to the provisions of this deed in favour of the Second' and Third party out of which the second party shall be the absolute owner and possessor of the properties detailed in List "A" annexed hereto; and the third party shall be the absolute owner and possessors of the properties detailed in the List "B" annexed hereto". These recitals, taken in conjunction with the surrounding circumstances indicate that Kadma Kuar purported to recognise thereby the rights of these parties to her son's properties though earlier she disputed them. Similarly the recitals "that the first party shall remain in de facto management of Arrah Kalan property for her life without any interference from the second or the third party to whom she shall in no case be liable to render any accounts and that after her death the second party or his heirrs representatives, assigns or transferees and Babu Sehat Bahadur Advocate Allahabad as representing the third party or their heirs, representatives, assigns or transferees shall manage and enter into possession of the said village Arrah Kalan jointly", indicate that the 2nd and 3rd party were disputing and interfering with the right of Kadma Kuar to the management of one of the properties but ultimately, under the document in question, they agreed not to do so. Further, as we have already pointed out, three suits had been instituted in the year 1932 concerning this very property, one by Gopinath and the other two by the plaintiff and his brother Hanuman Prasad. In his suit Gopinath claimed to be the next reversioner. The plaintiff appellant Ram Charan Das claimed that he and his brothers were the next reversioners and not Gopinath. A similar claim was made by Hanuman Prasad in his suit. It is worthy of note that the plaintiff's suit was compromised on the very day on which this document, Ex. Y-13, was executed and that the terms of the settlement were recited in Ex. Y-13. This document further makes express mention of the two suits which were companion suits, suit No. 53 of 1932 and suit No. 54 of 1932, and says, categorically that these suits shall be deemed to be compromised in terms of this deed. By compromising those two suits the plaintiff and his brother Hanuman Prasad withdrew their challenge to the claim put forward by Gopinath to the estate of Kanhaiyalal. Prior to this Gopinath had withdrawn his suit in which he had claimed to be the next reversioner to the estate of Kanhaiyalal after the death of Kadma Kuar. All these transactions are quite evidently part of one main transaction which is the settlement by the members of the family of all those disputes

once and for all. No doubt according to the plaint allegation this was merely a temporary arrangement but no reasons have been given nor any material was placed before the Court from which it could be inferred that it was not the intention of the parties that the disputes amongst them should be finally settled'.

Mr. Sinha, however, places reliance upon the following recital in Ex. Y-13 and contends that the arrangement was not final. The recital runs thus:

> "That in pursuance of and for the purpose of this deed the First and the Third Party do admit and recognise Babu Gopi Nath, the Second party to be the son of Musammat Peari Bibi the own sister of the late Munshi Kanhaya Lal and the daughter of Musammat Kadma Kuar the First Party; and similarly for the purposes of and in pursuance of this deed, the First and the Second party admit and recognise the Third party as the sons of Dewan Madan Gopal a great-grandson of M. Lalji, the greatgrand father of M-Kanaya Lal as per pedigree set up by them in suits Nos. 53 and 54 of 1932--referred to above. Provided always that if the rights of the second or the third party to the ownership and possession of their respective properties as detailed in List 'A' items Nos. 1 to 5 and seven, in List 'B' item Nos. 1, 2, 4, 5 and 8 respectively are ever questioned they shall not be precluded from setting up any claim, right or title, propositions of law or fact consistent or inconsistent with the recital of this deed, and if the rights of ownership or possession of the second party to item No. 6 in List 'A' annexed hereto or the rights of ownership or possession of the third party to items Nos.

3.6 and 9 in List 'B' annexed hereto are ever questioned they shall only be entitled to set up claims only consistent with the terms of this deed."

No doubt, the recognition of relationship claimed' by the second pary to Kanhaiyalal was admitted by the first and third parties in pursuance and for the purposes of the deed. Similarly recognition of the relationship of the. third party by the first and the second parties to Kanhaiyalal was admitted by the first and' second parties and: also in pursuance and for the purposes of the deed. This, however, does not show that the settlement arrived at and sought to be given effect to by the deed was not intended to be final. As already stated, the document read as a whole leaves no doubt that it was intended to be a final settlement of the disputes amongst the parties. If it were intended to be otherwise it would have been natural to find an express statement somewhere in the document to show that it was intended to be a temporary settlement only. The proviso to the aforesaid clause was pressed in aid by Mr. Sinha to support his contention that the settlement was only temporary. The document itself was drawn up in English and looking at the formal manner in which it is drawn up and bearing also in mind the fact that it came into being when litigations were, pending in court in which the parties to the deed also figured as parties and was intended to compromise those suits, it would be legitimate to infer that it was drawn up or at least approved by a lawyer. In that proviso at one place the word "recitals" and at another the word "terms" were used. The expression "recitals" occurs in the first part of the proviso and it is only with respect to them that a party is given the liberty to set up in a certain circumstance "any claim or right or title, propositions of law or fact

consistent or inconsistent with the recitals in the deed". Now the expression "recitals" means, according to the Dictionary of English Law by Jowitt: "Statements in a deed', agreement or other formal instrument, introduced to explain or lead up to the operative part of the instrument." It is stated further that recitals are generally divided into narrative recitals which set forth the facts on which the instrument is based and introductory recitals which explain the motive for the operative part. Where the recitals are clear and the operative part is ambiguous the recitals govern the construction. Normally a recital is evidence as against the parties to the instrument and those claiming under them and in an action on the instrument itself the recitals operate as an estoppel, though that would not be so on a collateral matter. It is not clear why this clause was put in. But even if we assume that the parties did so because they were apprehensive that the rights of the second or the third party to the ownership and possession of the respective properties--that is items 1 to 5 and 7 in List A allotted to the second party and items 1, 2, 4, 5 and 8 in List B allotted to the third party were liable to be challenged by persons not bound by the settlement the reservation was only of the right to challenge the explanatory or narrative recitals in the documents but not of the right to challenge the terms thereof. It therefore affords little assistance to the plaintiff. The expression "terms" used in a document, would, according to webster's New World' Dictionary, mean "conditions of a contract, agreement sale etc. that limit or define its scope or action involved." Those parts of Ex-13 which prescribe the conditions upon which the disputes among the parties were settled would be the terms of this document and so far as these are concerned the proviso shows that none of the parties was given the liberty to derogate from them. Thus, far from showing that the settlement arrived at was of a temporary character the proviso read as a whole further fortifies the conclusion that the settlement was to be binding upon the parties for all time. We may add that the contentions now raised on behalf of the plaintiff denying the rights of Gopinath and of those who claim through him are not based upon any challenge to the "recitals" in the documents, as that expression is understood in law, but to the terms and conditions contained in that document. It may be that the properties to which the suit relates would' fall under the items allotted to Gopinath as specified in the first part. of the proviso but no liberty has been reserved therein to permit any of the parties to derogate from the terms and conditions upon which the settlement was arrived at. The view that the transaction is a family arrangement is borne out by the decision of the Privy Council in Ramgouda Annagouda v Bhausaheb(1). The facts of the case which have been correctly summarised in the head note are briefly these:

> "A Hindu died in 1846, leaving a widow who survived until 1912, and a daughter. On the death of the widow A was heir to the estate. In 1868 the widow had alienated nearly the whole property by three deeds executed and registered on the same day. By the first deed she gave a property to her brother, by the second she sold half of another property to A, and by the third she sold the other half of that property to her son-in-law. The signature of each of the deeds was attested by the two other aliences. A who survived the widow for six years, did not seek to set aside any of the alienations. After his death his son and grandsons brought a suit to recover the whole property."
>
> Upon these facts the Privy Council held as follows:

"Their Lordships consider that the decision of this case depends upon how far the three documents can be taken as separate and independent, or so connected as to form one transaction.

The long lapse of time between the execution of the deeds and the institution of the suit has rendered it impossible to prove what actually occurred between the parties on that occasion. There is not sufficiently definite evidence to come to a conclusion as to how far any of those properties were validly encumbered, or what was done with the purchase money alleged to have passed on the two deeds of sale. But the parties to the documents included, or after so great a lapse of time may be presumed in a very real sense to have included, all persons who (1) L.R. 54 I.A. 396.

LP(D)5SCI---17 had any actual or possible interest in the properties-namely, the widow herself, her brother, who was a natural object of her affection and bounty, her son-inlaw, who was the natural protector of the interests of her daughter and grandson, and the nearest kinsman on the husband's side and the only person from whom any opposition might be apprehended with regard to dealings by the widow concerning her husband's estate.

Their Lordships conclude that all the circumstances strongly point to the three documents being part and parcel of one transaction by which a disposition was made of Akkagouda's estate, such as was likely to prevent disputes in the future and therefore in the best interests of all the parties. The three deeds appear thus to be inseparably connected together and in that view Annagouda not only consented to the sale of Shivgouda and the gift to Basappa but these dispositions formed parts of the same transaction by which he himself acquired a part of the estate."

In our case, however, there is fortunately only one transaction and we have definite evidence to show that there were disputes amongst the members of the family and it was avowedly for settling them that the transaction was entered into. Further we have material to show that all the persons who can be said' to be interested in the property were joined as parties to the transaction. In that sense this case is stronger than the one which the Privy Council had to consider. We have therefore no hesitation in holding that the plaintiff who has taken benefit under the transaction is not now entitled to turn round and say that that transaction was of a kind which Kadma Kuar could not enter into and was therefore invalid.

Moreover acting on the terms of that document Gopinath paid monies to the Court of Wards for obtaining release from its management of the properties which were allotted to him. The rule of estoppel embodied in s. 115 of the Indian Evidence Act, 1872 would, therefore, shut out such pleas of the plaintiff. Courts give effect to a family settlement upon the broad and general ground that its object is to settle existing or future disputes regarding property amongst members of a family. The word 'family' in the context is not to be understood in a narrow sense of being a group of persons who are recognised in law as having a right of succession or having a claim to a share in the property in dispute. In Ramgouda Annagouda's(1) case, of the three parties to the settlement of a dispute

concerning the property of a deceased person one was his widow, other her brother and the tlhird her son-in-law. The two latter could not, under the Hindu Law, be regarded' as the (1)L.R. 54 I.A. 396.

heirs of the deceased. Yet, bearing in mind their near relationship to the widow the settlement of the dispute was very properly regarded as a settlement of a family dispute. The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in esablishing or ensuring amity and goodwill amongst persons bearing relationship with one another. That consideration having been passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter.

The final contention of Mr. Sinha is based upon s. 37(a) of the U.P. Court of Wards Act, 1912. The relevant portion of this provision runs thus:

> "A ward shall not be competent-
>
> (a) to transfer or create any charge on, or interest in, any part of his property which is under the superintendence of the Court of Wards, or to enter into any contract which may involve him in pecuniary liability; ..... "

Here the transaction in question is a family settlement entered into by the parties bona fide for the purpose of putting an end to the dispute among family members. Could it be said that this amounts to a transfer of or creation of an interest in property? For, unless it does, the action of Kadma Kuar would not fall within the purview of the aforesaid clause of s. 37. In Mst. Hiran Bibi v. Mst. Sohan Bibi(1) approving the earlier decision in Khunni Lal v. Govind Krishna Narain(2) the Privy Council held that a compromise by way of family settlement is in no sense an alienation by a limited* owner of family property. This case, therefore, would support the conclusion that the transaction does not amount to a transfer. Mr. Sinha, however, contends that the transaction amounts to creation of an interest by the ward in property which was under the superintendence of the Court of Wards and in support of his contention relies on Man Singh v Nowlakhbati(3). In the first place once it is held that the transaction being a family settlement is not an alienation, it cannot amount to the creation of an interest. For, as the Privy Council pointed out in Mst. Hiran Bibi's(1) case in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties. It is not necessary, as would appear from the decision in Rangasami Gounden v. Nachiappa Gounden(4) that every party taking benefit under a family. settlement must necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or (1) A.I.R. 1914 P.C. 44.

(2) IL..R. 33. An. 356. (3) L.R. 53 I.AII.

(4) L.R. 46 I.A. 72 even a semblance of a claim on some other ground as, say, affection. In the second place, in the case relied upon by Mr. Sinha there was no question of the transaction being a family settlement. It was sought to be supported upon the ground that it was a surrender. The Privy

Council, however, held that it was not a bona fide surrender evidently because the widow was to get a very substantial amount for maintenance from the reversioners in whose favour she had purported to surrender the estate and also held that there was in fact no necessity for a surrender of interest of the widow. Since it was not a bona fide surrender it was regarded as one creating only an interest in the property which was under the superintendence of the Court of Wards. Had' it been a bona fide surrender s. 60 of the Bihar Court of Wards Act upon which reliance was placed in that case would not have been attracted. Indeed, reliance was placed before the Privy Council on the decision in Sureshwar Misser v. Maheshrani Misrain(1) in support of the appellant's contention that the transaction was valid. While distinguishing this case the Privy Council observed:

> "In that case there were serious disputes in the family as to title, and the next reversioners to the son sued the widow and her daughters to set aside the will of her husband under which the daughters were entitled to succeed to the immovable property on the death of the son without issue. A family compromise was agreed to, and in performance of it the widow surrendered all her rights of sucession to the immovable property, and the plaintiff the next reversioner and her daughters gave her for her life a small portion of the land for her maintenance. The Board held that the compromise was a bona fide surrender of the estate and not a device to divide it with the next reversioner, the giving of a small portion of it to the widow for her maintenance not being objectionable, and' consequently that the transaction was valid under the principles laid down by the board in Rangasami Gounden v Nachiappa Gounden (L. R. 46 I.A.
>
> 72)".

We may further point out that this decision does not refer to their decisions in Mst. Hiran Bibi v Mst. Sohan Bibi(2) and Khunni Lal v. Govind Krishna Narain(3) and it cannot be assumed that they intended to depart from their earlier view.

Apart from that it may be pointed out that the two suits which were then pending were compromised with the full knowledge of the Court of Wards which was also a party to both the suits and (1) L.R. 47 I.A. 233.

(2) A.I.R. 1914 P.C. 44.

(3) .I.L.R. 33 All. 356.

the Court of Wards in fact released the estate by accepting from Gopinath monies which were due to it. In these circumstances we hold that the plaintiff is not entitled to press in aid the provisions of s. 37(a) of the U.P. Court of Wards Act.

For all these reasons we uphold the decree of the trial Court as affirmed by the High Court and dismiss the appeal with costs throughout.

Appeal dismissed.