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BASANT SINGH

v.

JANKI SINGH AND ORS.

August 2, 1966

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[K.N. WANCHOO, J. C. SHAH AND R. S. BACHAWAT, JJ.]

Indian Evidence Act, 1872 (1 *of* 1872), *s.* 17—*Admission made in pleading—Relevancy in another suit.*

The plaintiff tendered in evidence a plaint in an earlier suit and relied on an admission made by the defendants with regard to a fact in issue in the later suit. The High Court ruled that the plaint was not admissible in evidence on two grounds, *viz.,* (i) the plaintiff could not rely on a statement in the plaint as an admission, as she was not prepared to accept the correctness of the other statements in the plaint and (ii) an admission in a pleading could be used only for the purposes of the suit in which the pleading was filed. On appeal to this Court.

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HELD : (1) All the statements in the plaint are admissible in evidence. The plaintiff can rely upon a statement in the plaint with regard to a matter in issue as an admission, though she is not prepared to accept the correctness of the other statements in the plaint. Nor is the Court bound to accept all the statements as correct. The court may accept some of the statements as correct and reject the rest. [3 F]

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(2) Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admissions. An admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive, and it is open to the party to show that it is not true. [4 D]

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D. S. Mohite, v. *S. I. Mohite,* A.I.R. 1960 Bom. 153, *Marianski* v. *Cairns,* 1 Macq. 212 (H.L.) and *Ramabai Shriniwas* v. *Bombay Government,* A.I.R. 1941 Bom. 144, referred to.

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CIVIL APPELLATE JURISDICTION: Civil Appeals Nos. 19 & 20 of 1963.

Appeals from the judgment and decree dated July 31, 1959 of the Patna High Court in Appeals from Original Decree Nos. 30 and 40 of 1953 respectively.

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S. T. Desai and *R. C. Prasad* for appellant.

Sarjoo Prasad and *D. Goburdhan,* for the respondents Nos. 1 to 4 [In C. A. No. 19 of 1963].

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Sarjoo Prasad and *K. K. Sinha,* for respondents Nos. 5—7 and 9 [In C. A. No. 19 of 1963] and 1—3 and 5 [In C. A. No. 20 of 1963].

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The Judgment of the Court was delivered by

Bachawat, J. One Ramyad Singh was a member of a joint family and has eight annas interest in the joint family properties. He was a Hindu governed by the Mitakshara school of Hindu law. He died issueless, leaving his widow, Mst. Bhagwano Kunwar. The date of his death is in dispute. After his death, Bhagwano Kunwar filed the present suit for partition of the joint family properties claiming eight annas share therein. She contended that Ramyad Singh died in 1939 after the passing of the Hindu Women's Rights to Property Act, 1937, and she was entitled to maintain the suit for partition. The defendants contended that Ramyad Singh died in 1936 before the passing of the Act and she was entitled to maintenance only. The trial Court accepted the plaintiff's contention and decreed the suit. The defendants filed two separate appeals to the High Court. On December 15, 1958, Bhagwano Kunwar died. The High Court passed orders substituting one Ram Gulam Singh in her place. Later, the High Court recalled these orders, as it was conceded that Ram Gulam Singh was not her legal representative. By a deed dated March 14, 1958, Bhagwano Kunwar had sold lands measuring 1 bigha 5 kathas to the appellant. The High Court allowed the appellant's application for substitution under O. 22 r. 10 of the Code of Civil Procedure and proceeded to hear the appeals. The High Court accepted the defendants' contention, reversed the decree passed by the Subordinate Judge, and dismissed the suit. The appellant has now filed these appeals under certificates granted by the High Court.

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The main point in controversy is, did Ramyad Singh die in 1936 or did he die in 1939? If he died in 1936, Bhagwano Kunwar was not entitled to maintain the suit for partition and the suit was liable to be dismissed. But if he died in 1939, she was entitled to eight annas share in the joint estate and was entitled to maintain the suit for partition under the Hindu Women's Rights to Property Act, 1937 read with the Bihar Hindu Women's Rights to Property (Extension to Agricultural Land) Act, 1942. Moreover, it is conceded by counsel for the respondents that in that event after 1956 she held her eight annas share in the joint estate as full owner by virtue of s. 14 of the Hindu Succession Act, 1956, and on the strength of the sale deed dated March 14, 1958 executed by Mst. Bhagwano Kunwar the appellant was entitled to continue the suit for partition after her death.

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There is conflicting oral evidence with regard to the date of death of Ramyad Singh. The appellant relied strongly upon an admission made by the main contesting defendants, Janki Singh and Kailashpati Singh, in a plaint signed and verified by them and filed in Title Suit No. 3 of 1948. In that plaint, Janki Singh and Kailashpati Singh claimed partition of the joint family properties, implead-

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A ing Bhagwano Kunwar as defendant No. 8 and other members of the joint family as defendants Nos. 1 to 7. In this plaint, Janki Singh and Kailashpati Singh stated:

> "2. That the properties described in Schedule 1 to 2 in the plaint belong to the joint family. As the said
> B Babu Ramyad Singh died in 1939 the defendant No. 8 also became entitled to life interest in the poperties of the joint family. The defendant No. 8 surrendered her life estate to the plaintiffs and the defendants Nos. 1 to 7 and she gave up her possession of the joint family properties. The plaintiffs and the defendants Nos. 1 to 7 have been coming in joint possession of the properties under partition.
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> C 6. That the defendant No. 8 is also made a defendant in this suit as she is entitled to maintenance."

The plaint contained a clear admission that Ramyad Singh died in 1939. The High Court ruled that Bhagwano Kunwar could not rely on this admission. The High Court said that she
D could not rely upon the statement that Ramyad Singh died in 1939, as she was not prepared to admit the correctness of the statement that she had surrendered her estate and was entitled to maintenance only. We are unable to accept this line of reasoning. It is true that Bhagwano Kunwar relied only upon the statement that Ramyad Singh died in 1939 and was not prepared to accept the
E statement that she had surrendered her share to the other members and was entitled to maintenance only. But she tendered the entire plaint, and she did not object to the admissibility or proof of any of the statements made therein. All the statements in the plaint are, therefore, admissible as evidence. The Court is, however, not bound to accept all the statements as correct. The Court may accept some of the statements and reject the rest. In the present
F suit, it is common case that Bhagwano Kunwar did not surrender her share in the estate. We must, therefore, reject the statement with regard to the alleged surrender and the consequential allegation that she was entitled to maintenance only. The statement in the plaint as to the date of death of Ramyad Singh must be read as an admission in favour of Bhagwano Kunwar.

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The High Court also observed that an admission in a pleading can be used only for the purpose of the suit in which the pleading was filed. The observations of Beaumont, C.J. in *Ramabai Shriniwas* v. *Bombay Government*(1) lend some countenance to this view. But those observations were commented upon and explained by the Bombay High Court in *D. S. Mohite* v. *S. I. Mohite*(2). An
H admission by a party in a plaint signed and verified by him in a prior suit is an admission within the meaning of s. 17 of the Indian

(1) A.I.R. 1941 Bom. 144. (2) A.I.R. 1960 Bom. 153.

Evidence Act, 1872, and may be proved against him in other litigations. The High Court also relied on the English law of evidence. In Phipson on Evidence, 10th Edn, Art. 741, the English law is thus summarised:

> "Pleadings, although admissible in other actions, to show the institution of the suit and the nature of the case put forward, are regarded merely as the suggestion of counsel, and are not receivable against a party as admissions, unless sworn, signed, or otherwise adopted by the party himself."

Thus, even under the English law, a statement in a pleading sworn, signed or otherwise adopted by a party is admissible against him in other actions. In *Marianski* v. *Cairns*(1), the House of Lords decided that an admission in a pleading signed by a party was evidence against him in another suit not only with regard to a different subject-matter but also against a different opponent. Moreover, we are not concerned with the technicalities of the English law. Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admissions. Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive, and it is open to the party to show that it is not true.

The explanation of Janki Singh and Kailashpati Singh that the plaint was drafted by their lawyer Ramanand Singh at the instance of the panchas including one Ramanand and they signed and verified the plaint without understanding its contents cannot be accepted. There is positive evidence on the record that the plaint was drafted at the instance of Janki Singh and was filed under his instructions. The plaint was signed not only by Janki Singh and Kailashpati Singh but also by their lawyer, Ramanand Singh. Neither Ramanand Singh nor the panch Ramanand was called as a witness. Even in this litigation, Ramanand Singh was acting as a lawyer on behalf of some of the defendants. Kailashpati Singh is a Homeopathic medical practitioner and knows English. The plaint was read over to Janki Singh. Both Janki Singh and Kailashpati Singh signed the plaint after understanding its contents and verified all the statements made in it as true to their knowledge. They then well knew that Ramyad Singh had died in 1939 after the passing of the Hindu Women's Rights to Property Act. It is not shown that the admission in the plaint as to the date of death of Ramyad Singh is not true or that it was made under some error or misapprehension. This admission must be regarded as a strong

(1) 1 Macq. 212 (H.L.).

piece of evidence in this suit with regard to the date of death of Ramyad Singh.

Bhagwano Kunwar and her witnesses, Ram Gulam Singh, Ram Saroop Singh and Sheo Saroop Singh gave evidence in September, 1952. They all swore that Ramyad Singh died 13 years ago. In agreement with the trial Judge, we accept their testimony. Learned counsel commented on the testimony of Sheo Saroop Singh, who had said that the last earthquake took place 15 to 16 years ago and Ramyad Singh died 2 years 8 months thereafter. The last earthquake took place on January 15, 1934, and counsel, therefore, argued that Ramyad Singh could not have died in 1939. Clearly, there is some confusion in the evidence of Sheo Saroop Singh. He gave evidence in September, 1952, and his statement that the earthquake took place 15 to 16 years ago could not be correct and his further statement that Ramyad Singh died 2 years 8 months after the earthquake was not accurate. He swore positively that Ramyad Singh died 13 years ago. Bhagwano Kunwar said that there were receipts to show that Ramyad Singh died 13 years ago. On her behalf rent receipts for 1339, 1341, 1342, 1343, 1345, 1348, 1356 and 1359 faslis were tendered. The rent receipts are in respect of certain lands held by her as a tenant. The first four rent receipts show that up to 1343 fasli corresponding to 1936 the rent used to be paid by her through Ramyad Singh. Payment of the rent for 1345 fasli was made in 1346 fasli corresponding to 1939 through Janki. The rent for the subsequent years was paid through Janki and other persons. The High Court thought that the rent receipts showed that Ramyad Singh died in 1936 and because of his death, rent was subsequently paid through other persons. But the rent receipt for 1344 fasli is not forthcoming, and it is not known who paid the rent for 1344 fasli (1937). Moreover, assuming that Ramyad Singh did not pay rent in 1937 and 1938, it does not follow that he must have died in 1936. Kailashpati Singh, Janki Singh and other witnesses called on behalf of the defendants said that Ramyad Singh had died 16 years ago. In agreement with the trial Court, we do not accept their testimony. Janki Singh and Kailashpati Singh gave false explanations with regard to the admission made by them in the plaint in the previous suit. Morover, for the purpose of defeating the title of Bhagwano Kunwar they set up a compromise decree passed in that suit. The trial Court found that the compromise decree was obtained by them by practising fraud on Mst. Bhagwano Kunwar, and this finding is no longer challenged.

We, therefore, hold and find that Ramyad Singh died in 1939. It follows that Bhagwano Kunwar was entitled to eight annas share in the joint family estate, and was entitled to maintain the suit. The trial Court, therefore, rightly decreed the suit.

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But in view of the death of Bhagwano Kunwar during the pendency of the appeal in the High Court, the decree passed by the trial Court must be modified. The appellant purchased from Bhagwano Kunwar 1 bigha 5 kathas of land under the deed dated March 14, 1958, and he can claim only the rights of an alienee of a specific property from a co-owner on a general partition of the undivided properties. All the parties appearing before us conceded that on such a partition the appellant is entitled to allotment and separate possession of the lands purchased by him under the deed dated March 14, 1958. The deed is not printed in the Paper Book. It will be the duty of the trial Court now to ascertain full particulars of the aforesaid lands.

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The appeals are allowed with costs in this Court and in the High Court. The decree passed by the High Court is set aside. There will be a decree in favour of the appellant allotting to him the lands purchased by him under the deed dated March 14, 1958 and awarding to him separate possession thereof. The trial Court will draw up a suitable decree after ascertaining the particulars of the aforesaid lands.

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Y. P. *Appeals allowed.*