For these reason I am of the opinion that there is no substance in the objections which have been taken. I can see no reason for declaring the Act of 1953, to be *ultra vires* of the Constitution. This petition and similar other petitions must, in my opinion, be sent back to the learned Single Judge for disposal in accordance with law.

Khosla, J. I agree.

APPELLATE CIVIL

Before Falshaw, J.

LAL SINGH,—*Appellant*

versus

PUNJAB SINGH AND OTHERS,—*Respondents*

Regular Second Appeal No. 186 of 1951, with Cross-objections.

1956

Sept., 19th

Indian Soldiers (Litigation) Act (IV of 1925)—Section 11—Expression "any party to which is and has been an Indian Soldier"—Whether entitles a plaintiff who had never served in the army to get benefit of the extended period of limitation under section 11 by impleading an ex-soldier as pro forma *defendant*—Res judicata—*Compromise decree between an adopted son under the customary law and some of the reversioners of the adopter—Whether such decree operates as* res judicata *in a subsequent litigation between the adopted son and the same or other reversioners of the last male holder.*

Held, that although section 11 is capable of bearing the interpretation that by impleading an ex-soldier as a *pro forma* defendant the plaintiff is entitled to the benefit of the extended period of limitation thereunder but in view of the objects of the statute as a whole such an interpretation cannot be said to have been intended. The Legislature has every right to have statutes construed in a reasonable manner and it is clear that the object of this statute is to give anyone who has served in the Army on the war time conditions, the benefit of this period of service in any litigation

on which he wishes to embark and also to any party having claim against a soldier and it can surely never have occurred to the mind of the legislators that any plaintiff who himself never served in the Army could, by impleading an ex-soldier as a *pro forma* defendant extend the time of limitation of his suit by claiming the benefit of the military service of such a defendant.

Held, that in view of the previous compromise decree the plaintiffs-reversioners were debarred from bringing the present suit on the principle of *res judicata* as they derived their rights not from the last male holder but from the common ancestor. There is nothing to show that there was any *mala fide* intention. In any case the compromise decree should have been challenged in a proper suit within time by the reversioners if they did not wish to be bound by it.

Kura and another v. Jag Ram and others (1), relied on.

Second Appeal from the decree of Shri B. D. Mehra, Additional District Judge, Ferozepur, dated the 13th October, 1950/1st November, 1950, modifying that of Sardar Rajindar Singh, Sub-Judge, 1st Class, Ferozepore, dated the 22nd December, 1948, dismissing the plaintiffs' suit with half the costs of defendant No. 1 to the extent of granting the plaintiffs-appellants a decree for 17/54 of one-half share of Bhagwan Singh, holding that Khasra Nos. 869/49 and 859/13 are non-ancestral, that excluding 50 Kls 2mls out of the remaining land the rest of the land is ancestral between the plaintiffs and Bhagwan Singh and Nihal Singh, deceased, that Bhagwan Singh's share out of the land declared to be ancestral is one-half, that the plaintiffs will be entitled to the property decreed in their favour on payment of 17/54 of Rs. 1,000 which is a mortgage charge, and leaving the parties to bear their own costs of the appeal.

K. L. GOSAIN, for Appellant.

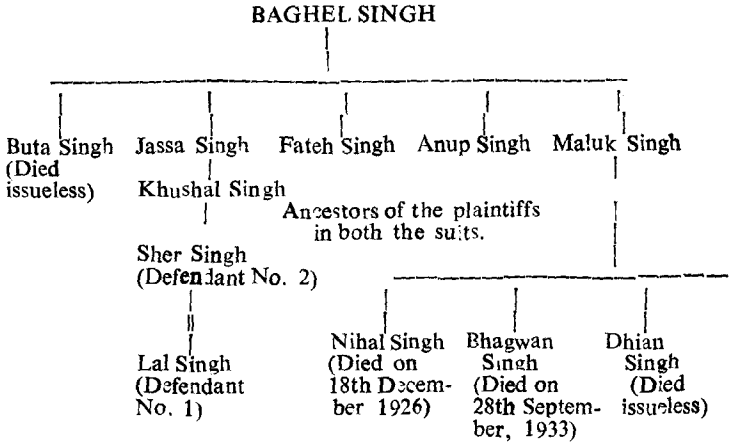
I. D. DUA, for Respondent.

JUDGMENT

Falshaw, J. FALSHAW, J. These two appeals (Regular Second Appeal No. 186 of 1951 and Regular Second Appeal No. 189 of 1951) have arisen in the following

(1) A.I.R. 1954 S.C. 269.

circumstances. First of all it is necessary to set out the following pedigree-table to show the relationship between the parties :—



The present appellant Lal Singh is said to have been adopted by Nihal Singh and his wife Mst. Ratno while still a young child, the adoption being embodied in a registered deed, dated the 15th of May, 1923, though the actual adoption was said to have taken place some years before. The original deed was said to have been lost but proof by secondary evidence was allowed Nihal Singh died on the 18th of December, 1926, and his wife died a few days later on the 29th of December, 1926. Although Mst. Ratno had died so soon after her husband, Nihal Singh's death, his land was at first mutated in her name in February, 1927, but Lal Singh got the land mutated in his name as the adopted son of Nihal Singh in May, 1927. Before the end of that year Bhagwan Singh, the brother of Nihal Singh, brought a suit challenging the alleged adoption of Lal Singh and claiming Nihal Singh's estate. This suit, however, was compromised on the 8th of May, 1928, a decree being passed on the basis of the statement of Bhagwan Singh in which he admitted Lal Singh to be the adopted son of Nihal

Lal Singh
v.
Punjab Singh and others

Falshaw, J.

Singh on the condition that Bhagwan Singh was to be allowed to remain in possession of Nihal Singh's land during his lifetime, and also that in the event of any son being born to Bhagwan Singh the said son should be the owner of one half share of Nihal Singh's land. On the other hand if Bhagwan Singh died without leaving any son, Lal Singh was to be recognized as the owner of both Nihal Singh's and Bhagwan Singh's land.

Bhagwan Singh died without leaving any son on the 28th of September, 1933 and about a year later his land was mutated in the name of Lal Singh, who thus became the owner of the whole of the land formerly held by Nihal Singh and Bhagwan Singh.

The first of the two suits from which these appeals have arisen, i.e., Civil Suit No. 305 of 1946, was instituted by Ishar Singh, etc., on the 28th of November, 1946, claiming possession of 19|54 share of the land standing in the name of Lal Singh, whose natural father Sher Singh is apparently still alive and was impleaded as defendant No. 2, six other reversioners of Bhagwan Singh and Nihal Singh also being impleaded as *pro forma* defendants. It was conceded in the plaint that the suit was brought about one year and two months beyond the period of 12 years following Bhagwan Singh's death, but each of the plaintiffs claimed an extension of limitation on the ground that he had been serving in the Army under war time conditions for periods which in each of their cases considerably exceeded one year and two months. They thus claimed the benefit of section 11 of the Indian Soldiers (Litigation) Act IV of 1925. It was claimed that the land was ancestral *qua* themselves and Bhagwan Singh and that under custom they were entitled to the proportion mentioned above.

The suit was contested by Lal Singh alone on every possible ground, even the relationship of the

plaintiffs being denied. Limitation was pleaded and the ancestral nature of the land was denied, and apart from alleging that he had inherited the land of Nihal Singh as his adopted son, Lal Singh also claimed to have been appointed as his heir by Bhagwan Singh in the compromise in the suit when Bhagwan Singh had challenged his adoption by Nihal Singh and he claimed that in any case as the adopted son of Nihal Singh he was entitled to inherit the land of Bhagwan Singh.

Before this suit was decided, the six other persons impleaded *pro forma* as reversioners in the suit of Ishar Singh, etc., also instituted a suit (No. 82 of 1948) in which, on the same grounds as Ishar Singh, etc., they claimed to be entitled to a 17|54 share of the same land. None of these plaintiffs claimed any military service, but they sought to obtain the benefit as regards limitation of the military service of the other set of plaintiffs on the basis of the wording of section 11 of the Indian Soldiers (Litigation) Act. The two suits were decided together and the findings of the trial Court were that the land was ancestral except for two *Khasra* numbers, that the suits were within time as regards the land of Bhagwan Singh but barred as regards the land of Nihal Singh, that Lal Singh was the adopted son of Nihal Singh but not the appointed heir of Bhagwan Singh, and that under the custom governing the parties,Lal Singh as the adopted son of Nihal Singh was not entitled to succeed to the land of Bhagwan Singh. The suit was, however, dismissed on the finding that the palintiffs were bound by the compromise decision in the suit brought by Bhagwan Singh challenging Lal Singh's adoption, which must be deemed to have been brought by Bhagwan Singh on behalf of the reversionary body as a whole.

In the appeals filed by the plaintiffs, the learned District Judge agreed with most of the findings of the

Lal Singh
v.
Punjab Singh
and others

Falshaw, J.

trial Court although he added an area of 50 *kanals* 2 *marlas* to the 20 *kanals* 11 *marlas* comprised in two *Khasra* numbers out of the land in suit held not to be ancestral. Where he disagreed principally with the trial Court was on issue No. 3-A on which he held that the compromise decree passed in Bhagwan Singh's case against Lal Singh in 1928 was not binding on the present plaintiffs. He, therefore, accepted the appeals to the extent of granting the plaintiffs decrees for possession of 19|54 and 17|54 of the land formerly held by Bhagwan Singh, excluding the land held by him to be non-ancestral. Lal Singh has filed the present appeals against this decision.

One of the first points raised on behalf of the appellant was that, apart from any other considerations, the suit instituted in 1948 by six plaintiffs who had been impleaded as *pro forma* defendants in the suit brought by Ishar Singh, etc., in 1946, and who did not claim any extension of limitation on account of their own military service, was obviously barred by time. The words of section 11 of the Soldiers (Litigation) Act are :—

> "11. In computing the period of limitation prescribed by subsection (2) of section 10 of this Act, the Indian Limitation Act, 1908, or any other law for the time being in force, for any suit, appeal or application to a Court, any party to which is or has been an Indian soldier, or is the legal representative of an Indian soldier, the period during which the soldier has been serving under any special conditions, and, if the soldier has died while so serving, the period from the date of his death to the date on which official intimation thereof was sent to his next of kin by the authorities in India, shall be excluded."

Then follows a proviso making an exception in the case of a suit for pre-emption. The Courts below have held the suit to be within time on the strength of the use of the words " any party to which is or has been an Indian soldier " and it is contended that by impleading the previous set of plaintiffs as *pro forma* defendants in their suit the second set of plaintiffs are entitled to the extension of limitation furnished by the military service of these *pro forma* defendants.

Although, however, the section is capable of bearing this interpretation, I do not consider that in the light of the objects of the statute as a whole such an interpretation was ever intended. The Legislature has every right to have statutes construed in a reasonable manner and it is clear that the object of this statute is to give anyone who has served in the Army on the war time conditions the benefit of this period of service in any litigation on which he wishes to embark and also to any party having a claim against a soldier and it can surely never have occurred to the mind of the legislators that any plaintiff who himself never served in the Army could, by impleading an ex-soldier as a *pro forma* defendant extend the time of limitation of his suit by claiming the benefit of the military service of such a defendant. The matter has in fact come before the Supreme Court in *Kura and another* v. *Jag Ram and others* (1), which deals with a case in which suit was instituted by one of two brothers named Kura, challenging under custom an alienation by his father, and at first his brother Sawan was impleaded as a defendant but subsequently was transposed as a plaintiff. On the matter of limitation, Kura was in a position to claim an extension of the period of limitation on account of his military service but Sawan had no such qualification. The

(1) A.I.R. 1954. S.C. 269.

Lal Singh
v.
Punjab Singh
and others

Falshaw, J.

matter was dealt with in the following manner by Bose, J, delivering the judgment of the Court:—

> "Before we go further we may say at once that it was conceded that Sawan who was transposed as a plaintiff can in no event be given a decree. Any rights he had in the property are long time-barred and they cannot revive simply because his brother, who was under a personal disability, was enabled to sue after the normal period of limitation had expired. The plaintiff Kura was on military service and as such obtained an extended period of limitation. That is not disputed. But the privilege is a personal one and his brother cannot take advantage of it."

The suit of Punjab Singh, etc., must therefore be held to be barred by time even as regards the property of Bhagwan Singh.

The learned counsel for the appellant has not attempted to challenge the correctness of the findings of the Courts below that Lal Singh was not adopted or appointed as heir by Bhagwan Singh in any form recognized by custom or that, as the adopted son of Nihal Singh, Lal Singh would have been entitled under the custom governing the parties to succeed collaterally to the estate of his uncle Bhagwan Singh. He has, however, argued that even the plaintiffs in the first suit are bound by the compromise decree between Bhagwan Singh and Lal Singh, as was held by the trial Court. It is contended that any suit brought by a reversioner to challenge the appointment of an heir is brought in a representative capacity on behalf of the reversionary body as a whole, whether the remoter reversioners are impleaded or not, and remoter reversioners are bound by the decision in such a suit even when it is based on compromise. A

Lal Singh
v.
Punjab Singh
and others

Falshaw, J.

number of decisions of the Chief Court and the High Court at Lahore to this effect are mentioned on page 338 of Om Parkash Aggarawala's edition of Rattigan's Digest of Customary Law and, although these cases in general refer to challenges of alienations, at least one of them appears to lay down a principle which is applicable in the present case and is an answer to the argument of the learned counsel for the respondents that the decision in the suit brought by Bhagwan Singh alone against Lal Singh is not binding on the present plaintiffs because they were not parties to that suit and that because although they are claiming the estate of Bhagwan Singh, their right to claim the estate of Bhagwan Singh derives not from the latter himself but from the common ancestor. This case is *Devi Dial and others* v. *Uttam Devi and another* (1), a decision by Robertson and Lal Chand, JJ. In that case an alienation by a widow had been challenged by a suit brought within time by a number of reversioners and the case was compromised by giving the plaintiffs immediate possession of certain land, which they would not have been entitled to during the widow's lifetime, and recognizing her as the absolute owner of some other land. About 30 years later, the sons of one of the original plaintiffs and two of the original plaintiffs themselves again challenged the alienation. It was held that the suit was barred as *res judicata* and under rules of estoppel and that it was quite immaterial whether the compromise did or did not have the effect of improving the widow's estate as regards the property left to her and also, what is most important for the purpose of the present case, it was held that the principle that in respect of ancestral land, succession is a right derived from the common ancestor who first acquired the land, is not one which interferes with the ordinary applica-

(1) 37 P.R. 1907.

Lal Singh
v.
Punjab Singh
and others

Falshaw, J.

tion of the principles of *res judicata,* limitation and the like.

Reliance was also placed on the decision of Teja Singh and Khosla, JJ., in *Laxmi Narain Gododia* v. *Mohd. Shafi Bari and others* (1), in which it was held that a consent decree has to all intents and purposes the same effect as *res judicata* and it raises an estoppel as much as a decree passed *in invitum.* To the same effect was the decision of Broomfield and Wadia, JJ., in *Basangouda Giriyeppagouda Patil* v. *Basalingappa Mallangouda Patil and others* (2), which is an extreme case as it was held that the plea of estoppel by *res judicata* may prevail even when the result of giving effect to it will be to sanction what is illegal in the sense of being prohibited by statute. Apparently under the compromise decree relied on in that case certain hereditary rights had been transferred in contravention of the provisions of a statute called the Hereditary Offices Act.

This extreme view was not shared by a Full Bench of the Lahore High Court consisting of Harries, C.J., Din Mohammad and Abdur Rahman, JJ., in *Prem Parkash* v. *Mohan Lal and another* (3), which was relied on on behalf of the respondents. The view taken in that case was that where a decree is passed in consequence of a compromise and is a mere record of the will of the parties, it cannot be regarded as having acquired any greater sanctity than the compromise itself on the ground that it was adopted by the Judge or that the command of the Judge had been added to it, as the Judge was not called on to consider the validity or legality of the compromise, and in the absence of any determination of those questions, a decree in such cases is liable to the same attack and

(1) A.I.R. 1949 E.P. 141.
(2) A.I.R. 1936 Bom. 301.
(3) A.I.R. 1943 Lah. 268.

suffers from the same infirmities which the compromise is open to or subject to. Beyond this, however, this decision does not seem to me to help the respondents' case as the point being considered was to what extent a Court in execution can go behind the decree and it was held that the executing Court could go behind a compromise decree where the terms of the compromise contravened the provisions of section 60, Civil Procedure Code.

It does not seem to me that the other case cited on behalf of the respondents, the decision of the Full Bench in *Sundar* v. *Salig Ram and others* (1), has any applicability to the present case as it related to the period of limitation for a suit challenging an alienation which had been left unchallenged by the nearest reversioner during his lifetime. On these matters the law has, in any case, changed since the enactment of the Punjab Limitation (Custom) Act, I of 1920.

In my opinion the present plaintiffs are debarred from challenging the compromise decree under which Lal Singh ultimately inherited not only the land of Nihal Singh but also of Bhagwan Singh. There is nothing to show that there was any *mala fide* intention. In any case the compromise decree should have been challenged in a proper suit within time by the reversioners if they did not wish to be bound by it. As a matter of fact they might ultimately have benefited under the compromise since, according to its terms, if Bhagwan Singh had produced a son, the son on Bhagwan Singh's death would have been entitled not only to Bhagwan Singh's land but also to half of Nihal Singh's estate, and if the son had died issueless all this land would have gone to Bhagwan Singh's reversioners, who would undoubtedly not have been too slow to take advantage of the compromise decree if events had turned out that way. In

(1) 26 P.R. 1911.

Lal Singh
v.
Punjab Singh
and others

Falshaw, J.

the circumstances I am of the opinion that even the plaintiffs, whose suit could otherwise have been in time cannot claim any of the lands of Bhagwan Singh and I accept both the appeals and dismiss the plaintiffs' suits with costs throughout. The cross objections of the respondents are also dismissed.

CIVIL WRIT

Before Bishan Narain, J.

S. J. S. UPPAL, P.C.S.,—*Petitioner*

versus

CHIEF SETTLEMENT COMMISSIONER, MINISTRY OF REHABILITATION AND OTHERS,—*Respondents*

Civil Writ No. 232 of 1955.

1956

Sept., 27th

Displaced Persons (Claims) Act (XLIV of 1950) and Displaced Persons (Claims) Supplementary Act (XII of 1954)—Officers acting under—Functions of—Nature and extent of—Proceedings and decisions of—Whether subject to controlling jurisdiction of High Court under Article 226 of the Constitution—Act XII of 1954—Section 5(1)(b) and rule 18(iv)—Two officers verifying the same claim at different figures at different times—Settlement Commissioner, whether competent to decide the claim—Omission to bring instances relied on to the notice of the petitioner—Effect of—Whether merely a formal or technical error.

Held, that although the officers acting under the above Acts do not function as courts in the technical sense of the word they are under an obligation and duty to observe the provisions of the Code of Civil Procedure in their proceedings. They have no administrative or executive functions to perform. They must register, verify and value claims on evidence made available to them, decide titles to properties left by displaced persons in Pakistan and scrutinise the claims in a judicial manner and not according to their whims. These officers, thus, discharge quasi-judicial functions and their proceedings and decisions under the said Acts