Present: De Sampayo and Schneider JJ.

1922.

PHILIPPU *et al.* *v.* GNAPRAKASAM.

107—D. C. (Inty.) Jaffna, 15,367.

Judgment in favour of three plaintiffs for Rs. 450—Compromise by one plaintiff to accept Rs. 350 in full satisfaction—Is compromise binding on other plaintiffs?—Payment to one plaintiff of more than his share—Right of co-plaintiff to move in this action to bring money overpaid into Court—Separate action necessary—Civil Procedure Code, s. 344.

Three plaintiffs brought an action against defendants claiming Rs. 725. By consent, decree was entered for Rs. 450. The first and third plaintiffs (appellants) left the district, and the second plaintiff entered into another compromise with defendants agreeing to accept Rs. 350 instead of Rs. 450, and actually received Rs. 280. The first and third plaintiffs moved that second plaintiff be ordered to bring the money received by him into Court; and, further, to show cause why writ of execution should not issue against the defendants for the entire balance.

Held, that the appellants must bring a separate action against the second plaintiff for the money received over and above his share, and that the *ex parte* compromise made by the second plaintiff was not binding on the other plaintiffs.

Section 344 of the Civil Procedure Code does not enable the Court to adjudicate on claims between the plaintiffs *inter se*.

THE facts appear from the judgment.

Ranawaka, for appellants.

J. Joseph, for respondent.

October 19, 1922. De Sampayo J.—

The first and third plaintiffs, who appeal, would appear to have some sort of grievance. They have certainly misconceived their remedy. Three plaintiffs brought this action against two defendants, claiming some Rs. 725 odd as due to them from the defendants

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on an agreement, but a decree by consent was entered for Rs. 450. There is no dispute between the plaintiffs so far, but it would seem that the first and third plaintiffs thereafter left Jaffna and went on some business of their own to another part of the country, leaving the second plaintiff to carry on the litigation. What the second plaintiff did was to enter into another compromise, and agreed to accept Rs. 350 instead of Rs. 450, and he actually received Rs. 280 out of the lesser sum so agreed upon. This payment of Rs. 280 has since been recorded as satisfied. The first and third plaintiffs now came into Court and applied that the second plaintiff be ordered to bring into Court the Rs. 280; and, further, to show cause why writ of execution should not issue against the defendants for the entire balance.

The first and third plaintiffs do not appear to have authorized the second plaintiff to enter into this second compromise, or to receive from the defendants less than the amount decreed. They do appear to have entrusted the business of recovering what is due in the case to him when they were leaving Jaffna, but that does not justify what the second plaintiff appears to have done. The first and third plaintiffs have been thrown out, so far as their present application is concerned, on the ground first, that any contribution they claim from the second plaintiff must be the subject of a separate action; and, secondly, that writ could issue for no more than Rs. 70, being the balance out of the Rs. 350 which the second plaintiff had agreed to accept.

As regards the first ground, I agree with the District Judge that our procedure does not allow the first and third plaintiffs to claim a portion of the money which they allege the second plaintiff to have received over and above what fell to his share. I think they must have recourse to a separate action, although, possibly, they are helpless people, and may not be able to incur the expense of another action, but that cannot be helped so far as the Court is concerned. Mr. Ranawaka, who appears for the appellants, justify their application in this case, and refers us to the provisions of section 344 of the Civil Procedure Code. No doubt that section has been broadly construed, and it has been laid down by the Indian Courts, and I think also by the Privy Council, that broad effect should be given to it, but no Court has so far applied that section to claims between plaintiffs *inter se*. I think the argument is not sustainable.

As regards the second matter, the order of the District Judge would appear to us to have proceeded on a recognition of the binding effect of the compromise made by the second plaintiff as co-plaintiff, but neither the evidence which is called in the case nor any principles of law would make an *ex parte* compromise made by one of the plaintiffs valid as against the other plaintiffs. I think, therefore, the appellants are entitled to recover from the defendants,

not merely Rs. 70, but the entire balance of Rs. 170. But for that purpose, however, they must make an application to the Court to issue writ against defendants, who, I may observe, are no parties to the present proceedings at all.

Having indicated what remedy is available to the appellants, I think I must hold that their present application is ill-founded. The appeal must, therefore, in our opinion, be dismissed with costs. In order to make matters clear, I would set aside so much of the District Judge's finding that only Rs. 70 was recoverable from the defendants.

Schneider J.—I agree.

Set aside.