

(1955) 05 MAD CK 0016
In the Madras High Court
Case No : A.A.O. No. 428 of 1954

AL. VR. ST. Ramanathan Chettiar

APPELLANT

Vs

AL. VR. ST. Veerappa Chettiar and others

RESPONDENT

Date of Decision : 06-05-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 32 Rule 6, Order 32 Rule 7

Citation : (1955) 05 MAD CK 0016

Hon'ble Judges : Govinda Menon, J; Basheer Ahmed Sayeed, J

Bench : Division Bench

Advocate : T.M. Krishnaswami Ayyar for M/s O. Radhakrishnan and C.R.S. Chander Rao, for the Appellant; R. Kesava Ayyangar, K. Parasaran and S. Somasundaram, for the Respondent

Final Decision : Dismissed

Judgement

Govinda Menon, J.—O. S. No. 97 of 1952 on the file of the Court of the Subordinate Judge of Devakottai is a suit for partition filed by one AL. VR. ST. Ramanathan Chettiar claiming a 1/3rd share in all the assets of the joint family of which he was a member and pending that suit I. A. No. 34 of 1954 was filed on 6th January 1954 under O. 23, R. 3, C. P. C. to record an adjustment and to compromise the suit, and a document dated 20th November 1952 containing the terms of the agreement was filed along with it. On a contest by the defendants that there was no lawful agreement or compromise by which the suit has been wholly or partly adjusted, the Subordinate Judge, after considering the affidavit evidence, as well as the documents placed before him, came to the confusion that there has been no lawful agreement and though he was satisfied that the contentions of defendants 1, 5 and 7 were not bona fide but were purely on a technical point, dismissed the application. The present civil miscellaneous appeal is by the plaintiff against the dismissal praying that a decree in terms of the compromise in accordance with the document dated 20th November 1952 may be passed. It is worthy of note that though the document of adjustment is dated

20th November 1952, an application for passing a decree in terms thereof was filed Only on 6th January 1954 and on that ground it is contended by the contesting respondents that the document was not intended to take effect though it was signed by some persons under a misapprehension. In view of the fact that in our opinion the application has to fail on legal grounds, it is unnecessary to decide about the merits of the compromise or whether the signatories to it had full knowledge of its contents; or whether there was an equitable and just division of the properties. Before discussing the legal aspects, it is convenient to state briefly the circumstances under which the litigation arose.

2. The following genealogical tree reveals the relationship of the parties to the litigation :

3. The plaintiff's suit was therefore for a one third share of the ancestral properties which were in the management of the eldest brother Lakshmanan Chettiar and after his death in the management of the second brother, Veerappan Chettiar. It may be mentioned that in the plaint the first defendant was proposed as the guardian of his minor children, defendants 2, 3 and 4 but on his expressing his unwillingness to act as guardian, the mother Unnamalai Achi was proposed and appointed as guardian. It is therefore a case where the head and manager of the joint family has not accepted the guardianship of his minor sons who would normally be under his protection. This will have a relevant bearing on the position and capacity of the first defendant with regard to his actions as head and manager of the joint family. Another circumstance is that during the pendency of these proceedings Umayal Anandavalli Achi, the 6th defendant, has filed O. S. No. 25 of 1954 on the file of the same Court claiming a 1/6th share in the entire properties on foot of her right under the Hindu Women's Right to Property Act as being the widow of Lakshmanan Chettiar who was entitled to a one third share and that suit is now pending. On these grounds It is alleged by the other defendants that even if a compromise decree is passed in this suit, since the 6th defendant is not a party to the compromise, there will not be linearity to the contest.

4. Ex. A. 1 is the partition agreement by which the entire properties have been divided into three shares and it is signed by the plaintiff, the first defendant, the 7th defendant as guardian of defendants 2 and 3 and by the 5th defendant. The 6th defendant has not given her assent to this compromise. The two mediators who have brought about the agreement, Muthiah Chettiar and Mayyappa Chettiar, were not examined by either side; nor have they filed any affidavit showing the circumstances under which the agreement was effected, the partition agreement being produced by the plaintiff.

4. In the normal course of things, since almost all the persons interested in the litigation are parties to the compromise, there would have been no difficulty in passing a decree in terms of that document, if the legal requirements had been complied with. As the first and 5th defendants have not shown that their signatures were obtained under a misapprehension or false inducement, the

lower Court would have been justified in passing a decree had it not been for the fact that the guardian of the minor defendant had repudiated the settlement though she had affixed her signature and no certificate had been given by the Counsel appearing for those defendants that the compromise was beneficial to the interests of the minors. It need hardly be said that the 7th defendant does not affirm that the compromise is in the best interests of the minors. On the ground that the provisions of O. 32, R. 7 have not been complied with, the teamed Judge has dismissed the application.

5. If the Court were satisfied that the suit has been adjusted wholly or in part (in this case wholly) by a lawful agreement or compromise, then the natural result would be a decree in terms thereof. It is now urged on behalf of the opponents to the passing of the decree that there has been no lawful agreement or compromise for the reason that the provisions of O. 32, R. 7 have not been complied with. The provisions of this rule, which are imperative, may be considered :

Sub R. (1A) of O. 32, R. 7. Madras Amendment: Where an application is made to the Court for leave to enter into an agreement or compromise or for withdrawal of a suit in pursuance of a compromise or for taking any other action on behalf of a minor or other person under disability and such minor or other person under disability is represented by Counsel or pleader, the Counsel or pleader shall file in Court, with the application, a certificate to the effect that the agreement or compromise or action proposed, is, in his opinion, for the benefit of the minor or other person under disability. A decree or order for the compromise of a suit, appeal or matter, to which a minor or other person under disability is a party, shall recite the sanction of the Court thereto and shall set out the terms of the compromise as in Form No. 24 in App. D to this schedule.

6. It will be seen that R. 7 (1-A) is a Madras Amendment not in the original Code. Therefore no next friend or guardian for the suit shall without the leave of the Court expressly recorded in the proceedings, enter into any agreement or compromise on behalf of the minor with reference to the suit in which such a person acts as next friend or guardian. Such being the case, the argument is put forward that Ex. A-1 in so far as the minors are concerned, has not fructified itself into a lawful compromise since not only has there been no leave of the Court obtained before the agreement was signed, but also the same has not been expressly recorded in the proceedings.

7. Mr. Kesava Aiyangar for defendants 2, 3 and 7 contends that whatever might be the validity of the document with regard to the executants who are capable of acting, so far as Ex. A-1 is concerned it has taken no legal shape whatever by the 7th defendant merely signing because the necessary condition prerequisite, viz., the obtaining of leave of the Court in entering into the compromise, has not been fulfilled. There is soundness in this argument. Granting that leave ex post facto can be granted, there is no application for the grant of such permission by the 7th defendant who repudiates the agreement and that being the case, the

Court cannot compel her, even if satisfied about her signature, to apply for leave to the Court. Then comes the imperative provisions of Sub-R. (1 A) as to what are the essential formalities to be gone into before such leave can be granted. The first requirement is that along with an application for leave to enter into an agreement or compromise on behalf of a minor, where such a person under disability is represented by Counsel or pleader, the Counsel or pleader shall file into Court with the application a certificate So the effect that the agreement or compromise is for the benefit of the minor. The rule also states that the Court should, in its decree or order, recite that sanction has been granted and set out the terms of the compromise. It is admitted that in the suit the 2nd and 3rd defendants by their guardian the 7th defendant were represented by an Advocate and he has not filed a certificate to the effect that the compromise is in the best interests and to the benefit of the minors. There is no necessity to mention that a legal practitioner appearing for a person under a disability cannot be compelled by the Court to file a certificate and in the absence of such a certificate and also when no application for leave to enter into the compromise has been made by the 7th defendant, there is no difficulty in concluding that the imperative provisions of O. 32, R. 7 have been transgressed. As has been held in *Md. Amin v. Vakil Ahmed A. I. R. 1952 S.C. 858 at 360=66 L.W. 3.*, unless the Court grants permission there is no compromise at all so far as the minors are concerned and there is therefore nothing on which a decree can be passed- If, therefore, confronted with this difficulty, the plaintiff had applied to the lower Court to dismiss the suit against the minor defendants and exonerate them from the effects of this decree by a proper application and thereafter has asked for a decree against the major executants alone, probably something could have been done for him. But he has not adopted that course, though the major defendants strenuously oppose recourse being had to such a step, because the compromise is one and entire and if some of the parties fall out of it, it would be impossible to have a decree on its footing by some of the executants alone. For this purpose reliance is placed on *Naraindas v. Abinash Chander 44 M.L.J. 728=16 L. W. 780 (P.C.)*, and *Nalini Kanta Lahiri v. Sarnamoyi Debya 27 M.L.J. 76*.

8. In the former case the Privy Council held that where a lease was entered into by the managing member of a family which provided for certain contingencies and in a suit by a minor to set aside the lease as regards his share of the family estate it was held that the lease must be regarded as a whole and that it must be construed as if it was drawn on the date it bore and that when so regarded it was of such a character that it would not justify the manager of a joint family estate binding the joint family property by means of its terms. The ratio decided of their Lordships' decision is that if the transaction is found to be unsuitable or unfavorable from the minors' point of view, then it cannot be upheld with regard to the major executants. The plaintiff has not, even now, applied for exonerating the minor defendants and striking out their names. Nor is he satisfied with a compromise decree in which the minors do not figure at all. Therefore the consideration of the question just outlined does not arise.

9. The main argument of Mr. T. M. Krishnaswami Iyer for the plaintiff-appellant is that in a suit for partition of joint family estate where, in addition to the manager and other adult members, the minor coparceners are so nomine parties, the manager does not lose his capacity as such and therefore if the manager and other members enter into a lawful compromise it must be binding on the minors as well, even if their guardian has not joined the compromise and leave of the Court has not been granted. In other words it would be as if the minor members are not parties to the suit and though in name they appear on the record they should be deemed to be non-existent. It is also contended that the addition of the minor members to such a suit is unnecessary and not essential to the proper form of the suit, and, therefore, if the plaintiff had not added the minor defendants, it would have been perfectly proper and a decree in such a suit would be binding on the minors unless in subsequent proceedings they are able to have it set aside on grounds of its being void or having been brought about by fraud or collusion. The plaintiffs' contention therefore is that if he had not impleaded defendants 2 and 3 but had contented himself with impleading the major members alone, there would have been no legal impediment whatever in having a decree in terms of the compromise; and by the mere fact that he had ex abundanti cautela impleaded certain unnecessary though not improper parties, the legitimate redress which he could get should not be denied to him because of his act. Reliance is placed on Mayne's Hindu Law, 11th Edn. p. 561, paragraph 459 and page 371 paragraph 301. At page 561 after stating generally that in a partition suit all the coparceners must be before the Court either as plaintiffs or as defendants, the learned author states that where the partition claim is between branches of the family, only the heads of all the branches need be made parties. It is further stated that those members of the family who are entitled to maintenance could be proper parties to a suit for partition. In the present case defendants 2 and 3 did not claim their share separately; nor has any request been made to the Court to ascertain whether such partition is beneficial to their interests. Even the fifth defendant has not claimed a one-third share for the branch of the family to which he belongs and the 6th defendant does not put forward the claim that out of the 1/3rd share to be allotted to her husband's branch she should be given a life estate in half the properties under the Hindu Women's Right to Property Act so far as this suit is concerned. That the managing member can sue and be sued in all matters affecting the family without joining the other members of the family is a well settled proposition. But in a partition suit, as already stated, the entire joint family must be represented either expressly or impliedly. Various authorities are cited to support the contention that the heads of branches alone need be made parties to a suit like the present one. At pages 423 and 424 of the report in Subbarao v. Subba Rao 71 M.L.J. 419=44 L.W. 515, Venkataramana Rao J. observes that the father is only person entitled to represent his sons at family partition and it is only through the father that the sons take their share in the joint family property. Mr. T. M. Krishnaswami Aiyar relies upon this dictum for his argument. This is answered by the respondents' Counsel by stating that where the father has

refused to act as the guardian of his minor sons, it cannot be said that despite his unwillingness he continues to represent his sons. If, as a matter of fact, the father alone were added, then there may be a legal presumption that he represented his sons also. But it is difficult in the present case to draw that presumption. The decision in *Bishambad Das v. Kanshi Prasad* 13 Lah.483, does not help the appellant. What happened there was that in an appeal is a suit for partition among the members of a joint Hindu family what was claimed was only a division between two branches of the family though all the members were made parties to it and when it so happened that one of the members, who was not the kartha, died and an application to bring the legal representatives on record was dismissed and the appeal abated as against him, it was contended that the entire appeal has abated on account of the death of one coparcener. The Bench held that as there was no prayer for partition between the head of one branch, his sons and grandsons inter se but the relief was only for division among two branches, the fact of the, death of a junior member of one branch would not put an end to the whole proceedings as the kartha could take the share of the entire branch. It was further held that if the kartha had been the sole plaintiff and the head or heads of the other branches had been the sole defendants, then any decree passed in the suit would have been binding upon their descendants. This is, certainly, not a case where there was any necessity for the application of O. 32, R. 7, at all for, as is seen from the report, the guardians of the minors were their natural guardians and there was no question of compromise decree under O. 23, R. 3. What was held in *Digamtar Metha v. Dhanraj Metha* 1 Pat. 361. is that in a suit for partition instituted by a member of a joint Hindu family, even though the grandsons may be proper parties they are not necessary parties if their interests are represented in the suit by their father. It is difficult to see how this could in any way help the appellant's contention. Likewise the discussions of the learned Judge in *Jamna Prasad and Others Vs. Mt. Durga Dei and Another*, that when a partition is effected between brothers in a joint family who have minor sons, each brother is responsible for his branch consisting of himself and his sons, cannot help the appellants. The proposition is undisputed, as stated in *Mayne on Hindu law and Usage*, that if the division is between branches inter se without the individuals claiming their separate share, then it is sufficient to make the heads of the branches alone parties.

10. But in deciding what the consequence will be if every member is made a party and the minors are represented by persons other than their natural guardians, none of these cases render any help. In this respect, the observations of the Privy Council at page 78 in *Nalini Kantalakiri v. Sarnamoyi Debia* 27 M.L.J. 76 (P.C.) are useful. Their Lordships say that if any co-sharer applies for partition of property, he must make the other co-sharers defendants, because the partition which is made in his favour is a partition against his co-sharers. That which gives him a portion of the property takes away all the right which they (the other co-sharers) would otherwise have to that portion and therefore it is a decree against them, and in favour of himself. It is on this principle that the

decisions have proceeded that in a suit for partition every member is as much a plaintiff as he is a defendant and when shares are allotted, each one of them gives up his undivided right in the rest of the property in lieu of his getting absolute rights in the properties allotted to him. There is therefore reciprocity and mutuality which cannot be the case where some members alone are made parties. The exception is where the heads of branches alone are joined in which case the head of each group represents all the members of his branch for the purpose of the relief. We do not therefore think that after the joinder of the minor defendants, the first defendant can alone, act for his branch. The learned Counsel for the appellant brings to our notice, three decisions from which he argues that despite the fact that the minors are so nomine parties, it is possible for the manager to act on behalf of the entire joint family and if on that footing a compromise is effected and a decree passed thereon, it would be a valid disposal of the suit by which the minors are bound.

11. Great reliance is placed upon the observations contained in *Ramalingam Chetti v. Radhakrishna Chetti* 70 M.L.J. 700=43 L.W. 390 where it was held that the provisions of O. 32, Rr. 6 and 7 C.P.C., do not restrict in any way the powers of the father or manager of a joint Hindu family where such father or manager is not the next friend of the minor members who are co nomine parties to the suit. That was a case where, in execution of a decree to which the members of the joint family were parties and in which the minor was represented by somebody else as guardian, the father manager received certain monies without the leave of the Court and it was contended that that would not be a valid discharge, because no leave of the Court was obtained to act on behalf of the minor, The learned Judges held that the father or the manager does not lose his representative capacity as such to act on behalf of the family where he was not the guardian of the minor. The learned Judges referred to *Ganeshrao v. Tuljaram Rao*, *Latchmana Chetti v. Subbiah Chetti* 47 Mad. 920=20 L.W. 342 and *Vijayaramayya v. Venkatasubbarao* 39 Mad. 353. In *Ganeshrao v. Tuljara Rao* 86 Mad. 295., their Lordships of the Privy Council held that where a minor is a party to the suit and a next friend or guardian has been appointed to look after his interests concerning the suit, the acts of such guardian are subject to the control of the Court and they left open the question how far the acts of the father or managing member may affect a minor who is a party to the suit represented by another person as next friend or guardian ad litem. But the point to be considered is that this case did not relate to sanction being accorded for a compromise so as to bind the minor. At page 705 it is stated definitely that in that case there was no question of any compromise being effected by the managing member of the family without obtaining the leave of the Court under O. 32, R. 7 of the Code and they distinguished the case in *Vijayaramayya v. Venkatasubba Rao* (supra). What would have been the situation if in the present suit, defendants 2 and 3 were dismissed out of the record and thereafter a compromise was entered into by the remaining parties and a decree passed thereon might resemble the facts of *Ramalinga Chetti v. Radhakrishnan* (supra),

but the Court cannot be asked to give its sanction to a compromise and pass a decree therefrom so as to bind the minors in case where O. 32, R. 7 has not been complied with. This case is authority only for the position that the mere fact that the minor members are parties to the suit would not deprive, or detract from the managing, member's capacity to act on behalf, of the family, Varadachariar, J. in *Maganbai Galada and Others Vs. Mool Chand Jain*, , referred to this case and held that there is no justification for extending the provisions of O. 32. R. 7 C. P. C., by analogy or considerations of policy to a case where a suit was brought on a mortgage executed by a father in compromise of a certain earlier suit but no sanction of the Court was obtained for effecting the compromise The learned judge held that the disability imposed by O. 32, R. 7 C.P.C. applied only to a father who was also the guardian-ad-Item of his minor son. Where someone else was the guardian, the father does not lose his capacity as manager. Here also, as we have stated, there is no question of asking the Court to pass a decree in terms of a compromise to which the minors are made parties after ignoring the provisions of O. 32, R. 7.

12. Great reliance is placed by the learned Counsel on a judgment of Leach C, J. and Lakshmana Rao J. in *Udayammai Achi v, Umayal Achi* (1944) 1 M.L.J. 182=57 L. W. 134., where the learned Judges held that O. 32. R. 7, C.P.C. does not apply to a father or manager of a joint Hindu family who is not the guardian or next friend of the minor. In such a case his powers are unaffected. Reference is made to *Ganeshrao v. Tuljaram Rao* 36 Mad. 295 *Ramalingam Chettiar v. Radhakrishna Chettiar* 70 M.L.J. 700=43 L. W. 390. and *Marwadi Vannaji (deceased) and Others Vs. D.H. Ranga Rao and Others*, who delivered the judgment felt bound by the decision in *Ramalingam Chettiar v. Radhakrishna Chettiar* 70 M.L.J. 700=43 L. W. 390.

13. The line of decisions exemplified by the above cases clearly lays down that the father or manager does not lose his capacity as such. But we are not able to find any passage from which it can be held that a decree binding on a minor who is represented by someone else other than the father can be passed when the compromise is entered into by the father or manager alone and the minor's guardian has not applied to the Court for leave to enter into the compromise after filing the necessary application and his pleader filing the necessary certificate. As has already been observed it may be possible that if the minor has not been a party a bona fide compromise entered into by the manager would be binding on him unless set aside. But the manager's right to represent the minor in the suit for the purpose of a compromise has been taken away by some one else acting as guardian or next friend. The argument of the learned Counsel for the appellant comes to this, that O. 32, R. 7, C. P. C. can have no application and no leave of the Court is necessary in order to bind the minor when the actions are not of the minor's guardian in the suit but of someone else who, under the general law has the capacity to represent the minor, if he is a member of a joint family. It seems to us that O. 32, R. 7 overrides any general or customary law and should be strictly construed so that the minor's interests may not be

jeopardised put protected. None of the cases above referred to arose out of an application to pass a decree in terms of the compromise where the imprimatur of the Court is asked for to make the compromise binding on the minor. The policy underlying O. 32. R. 7 is that the Court has to protect the interests of the minor in settlement of suits where he is a party and that is "best provided by the safeguards of an application for leave to enter into compromise with a certificate from the pleader that the proposed settlement is in the best interests of the minor. When the legislature says that the guardian should conform to these provisions before a compromise is said to be binding on the minor, how can it be said that actions of a person other than the guardian who, under the customary law, might represent the minor, be binding on the minor ? We do not therefore think that these cases have any application to the present case.

14. It is then urged that since the Supreme Court in *Bishundeo Narain and Another Vs. Seogeni Rai and Jagernath*, has laid down that a compromise without the leave of the Court and a decree passed thereon are not nullities but are merely voidable at the option of the minor and it is not necessary that the guardian should obtain the sanction even before he begins negotiations with the other side, this Court might now pass a compromise decree leaving it to the minor to avoid it on a later occasion. But when closely looked into, the facts of that case do not show that their Lordships gave any countenance to the theory that without the leave of the Court a compromise can be entered into so as to bind the minors where the minor guardian does not act. Their Lordships after enunciating the proposition that leave is necessary under O. 32, R. 7 state if a decree is passed in a suit where the minor is properly represented it is binding on him as on the adult member unless the minor can show fraud or negligence on the part of the guardian-ad-litem or next friend. We are unable to see that there are any passages in this judgment which would help the contention of the appellant.

15. Representation of minors in suits by the kartha or manager was considered by Venkataramana Rao, J. in *Adinarayana v. Venkata Subbayya* AIR 1937 Mad. 869= 46 L.W. 761., which was referred to before us. In that case it was a contract entered into by the manager on behalf of the minor. The learned Judge held that the kartha alone could represent the minor member and the entire family. There was no question about the applicability of O. 32, R. 7, at all. If at all the decision in *Jamna Bai v. Vasautarao* 39 Mad. 409=3 L.W. 549 (P.C.), is helpful it is in justification of the view taken by us. The other case on which reliance was placed for the appellant viz., *Gangadhar Balkrishna Vs. Dattatraya Baliram*, which lays down that an agreement entered into in contravention of O. 32, R. 7, is not altogether void, but is voidable only at the option of the minor and if it is so avoided, the parties will naturally be restored to the position which they occupied before the agreement was made, does not relate to a case where the Court is asked to pass a decree in terms of a compromise without granting leave. The facts of the case show that where a decree had been passed and objection had been taken on a later occasion with regard to its void nature on account of non-

compliance with O. 32, R. 7, it was held that such a decree was only voidable. The circumstances relate to events occurring after the passing of the decree; but where the Court knowing fully well that O. 32, R. 7, is not complied with is asked to pass a decree, this decision does not lay down that the Court should pass a decree.

16. The respondents' Counsel has cited a large body of case law to show that when, for the purpose of a litigation, the father or manager has divested himself of the guardianship or the next friendship of a minor coparcener in a joint family then, in such instances, he does not retain his authority to function as father or manager so as to bind the minors in entering into a compromise. Observations of their Lordships of the Judicial Committee in *Subramania Chettiar v. Raja Rajeswara Dorai* 39 Mad. 115=3 L. W. 149 (P.C.), which arose out of the judgment of the Court in *Subramania Chetti v. Rajeswara Dorai* 32 Mad. 490, are brought to our notice. In that case the facts show that in the suit the first defendant was then Rajah of Ramnad, the 2nd defendant was a trustee appointed by him for the management of the estate which the first defendant had settled upon his minor son, the 3rd defendant, and which trustee for that litigation was the guardian- ad-litem of the minor. In a previous litigation, a compromise had been entered into in pursuance of which certain mortgages were executed which compromise did not comply with the terms of S. 462, C.P.C. (O. 32, R. 7 of the present Code). In discussing the validity of that compromise, their Lordships observe as follows :

If on the other grounds the deed of compromise could be supported, it is invalid in not complying with the condition" imposed by S. 462 C.P.C, applicable when the compromise was made.. In the present case the leave of the Court was not obtained, and in the absence of such leave the compromise cannot be supported. Their Lordships regard the provision making it necessary to obtain the leave of the Court as of great importance to protect the interests of a minor. It clearly applies to the compromise in question in the present appeal. It may be well to quote the language used by Lord Macgaghten in *Manohar Lal v. Jadunath Singh*. 28 All. 585. "It is not sufficient that the terms of a compromise are before the Court. There ought to be evidence that the attention of the Court was directly called to the fact that a minor was a party to the compromise, and it ought to be shown by an order on petition, or in some way not open to doubt, that the leave of the Court was obtained." Reference may also be made to the more recent case of *Ganeshrow v. Tuljaratarao* 36 Mad. 295.

17. From these observations it is clear that when the head of the family was a party to the suit he does not retain in himself the right to be a guardian of the minor in order to bind him if somebody else was the minor's guardian. Mr. T. M. Krishnaswami Aiyar sought to distinguish this case on the ground that the compromise in question took place prior to the parsing of the Impartible Estates Act and as such it cannot be said that the then Rajah of Ramnad who made the settlement was the head and manager of a joint Hindu family with his minor son.

We do not think that this contention is acceptable, because despite the decision in *Sartaj Kuari v. Deoraj Kuari* 10 All 272., the relationship of coparceners existed between members of a family in which the Raja was the head though their Lordships of the Judicial Committee held in that case that it was open to the holder for the time being to deal with the estate as he pleases. The facts which gave rise to *Vijayaramayya v. Venkatasubbarao* 39 Mad. 858,, are very much similar to the present case and great emphasis is put upon what Ayling & Hanny JJ, observed before calling for a finding in that case. An award by arbitrators was sought to be impugned on the ground that the reference was illegally made. In the suit which was referred to arbitration the minors were represented not by their father as guardian but by their brother and no sanction was obtained for referring the matter to arbitration and when that award was impugned the learned Judges stated as follows :

The first point argued for appellant is that as the compromise was entered into by plaintiffs' father and not by their guardian ad litem (who was their brother, the present 2nd defendant) no sanction of the Court was necessary under S. 462 of the old C.p.C. Reliance is placed on *Ganeshrao v. Tutjaram Rao* 36 Mad. 295, which, however, affords no support for such a contention. It is not denied that if plaintiffs' father had been representing the interests of his sons in App. No. 504 of 1907 he could not have entered into a valid compromise on the behalf without the leave of the Court so as to bind them. We cannot accept the suggestion that whim he had no responsibility for them, and when their interest's were entrusted to another person he should have larger powers to bind them. We have no hesitation in rejecting this contention.

18. The observations above quoted are apposite. If the contention of the appellant in the present appeal is accepted, the first defendant would have larger powers to bind his minor sons than what he would have if he had been their guardian, We are of opinion that this decision directly applies to the facts of the present case. That the Court cannot compel the 7th defendant to ask for leave to enter into the compromise, and compel the pleader to file a certificate is clear from *Rangarao v. Rajagopala Raju* 20 Mad. 378., where the decision was as follows:

The guardian ad litem of three minora having agreed to compromise a suit and having signed a petition embodying the term arrived at, undertook to present the petition at the next sitting of the Court, Leave of the Court had not been obtained; and at the time appointed, the guardian declined to present the petition and opposed a decree being passed in its terms. Upon the plaintiff seeking to have the compromise enforced,

Held: that inasmuch as leave of the Court had not been asked for, and the guardian had objected to the Court passing a decree in terms of the compromise, the Court had no power to enforce the compromise, even though the terms of it might appear to be beneficial to the minors.

19. The rules contained in O. 32 make it quite clear that where a next friend or guardian ad litem has been appointed, he and he alone can represent the minors and therefore if a guardian ad litem has been appointed for a minor then the kartha of the family or the father of the minor cannot enter into a compromise so as to bind the minor unless the guardian-ad- litem is a party to it. The above principle laid down in *Awadhesh Prasad Missir and Others Vs. Widow of Tribeni Prasad Missir and Others*, directly applies to the facts of the present case. The learned Judges there have referred to a number of cases in support of this proposition. The Privy Council in AIR 1946 72 (Privy Council) . referred to the fact that R. 7 of O. 32 is imperative in its terms and must be strictly complied with and therefore an agreement to refer a matter to arbitration in a suit where minors are not represented can be done only with the permission of the Court as the interests of the minor might well be sacrificed by improper reference and it is necessary that the minor's interests are protected by the Court. Such being the case, if a minor successfully challenges an agreement to refer as not made in compliance with R. 7, it is avoided against all parties. The suit in question was one for partition; but here there was no question of any conflict between the natural guardian and the guardian ad litem That a Court will not record a compromise against a minor entered into by a person other than the guardian on record and that too without the leave of the Court is clear from the decision in *Marwadi Vannaji (deceased) and Others Vs. D.H. Ranga Rao and Others*, ,

20. Mr. N. R. Raghavachariar appearing for the first defendant has cited a few rulings to show that if Ex. A. 1 cannot form the basis of a settlement as far as defendants 2 and 3 are concerned, then no compromise decree based on that can be passed even as against the first defendant. In *Lakshmana Chetti v. Chinnothambi Chetti* 24 Mad. 826, the award on which a decree was sought to be passed was made on a reference in a partition suit in which the minors were parties without the leave of the Court having been obtained and when it was prayed that a decree should be passed based on the award at least so far as the major members are concerned, that prayer was refused. At pages 330 and 331 there are observations to show that such an award could not be made the foundation for a decree. At page 331 we find the following: "It was then urged for the plaintiffs that the adjustment should at all events be held binding upon the parties thereto who were not minors. But the suit was a suit for partition among the members of an undivided Hindu family, and partial adjudication in such a suit is impossible. In these circumstances the agreement must be held to be altogether incapable of being acted upon under S. 375, C. P. C.

20. Decisions of other High Courts dealing with the same topic reveal a similar strain of thought. The observations at page 587 in *Abhay Kumar v. Kirit Narait* AIR 1951 Pat. 584 show that such a compromise cannot form the basis of a decree. In a case, where some only of the parties to a suit joined in a petition to compromise, the other parties are entitled to object to the compromise being recorded and if they had good cause, the Court has discretion to refuse to grant a decree in terms of the compromise. See *Gopika Raman Roy v. Atal Singh* AIR

1926 Cal. 193 at 193. The decision in *Durga Charan v. Akkari Das* A.I.R.. 1949 Cal. 617 also lays down a similar principle that it is impossible to have a compromise that can remain effective or operative when one of the contracting parties drops out of it by reason of the fact that it is not binding on him and if it is not binding on one party it ceases to be an effective and operative compromise even so far as the remaining parties are concerned. Here also it was a case of the compromise not being binding on the minor. It is unnecessary to multiply authorities which show that if a compromise is not binding on some of the parties it is impossible to pass a lawful decree against those who have assented to it. See AIR 1925 280 (Lahore) *Maqboolon v. Habibullah* 102 I.C. 470 and *Chellaram v. Kimatram* AIR 1920 Sind, 101. In these cases, the Court refused to pass a decree on a compromise not assented to by all the parties so as to bind others who are parties to it. Where an adjustment of a suit is invalid so far as some of the parties are concerned and it is impossible to separate the interests and liabilities of others, the adjustment fails in its entirety. *Maqboolan v. Habibullah* 102 I.C. 470.

21. But Mr. T.M. Krishnaswami Aiyar cited the observations of Venkatasubba Rao J. in *Tiruvengada v. Thangavelu* (supra), to the effect that a compromise of a partition suit is not necessarily ineffectual because every party to the action does not join in it and though in some cases it may not be valid as a lawful compromise unless all the parties join in effect to it, each case must depend on its own facts. It is clear from the facts of that case that the compromise was severable and separable and a decree could be passed as regards persons bound by it. It is impossible to apply the decision in that case which depended on special circumstances to the facts of the present case. We would therefore hold, with the learned Subordinate judge, that there has been no lawful adjustment or compromise of the suit so far as defendants 2 and 3 are concerned and O. 23, R. 3 cannot be invoked by the plaintiff to have a decree binding on defendants 2 and 3. In any event the suit being one for partition and in view of the large body of case-law which hold that such a compromise cannot be cut into pieces and made effective as regards parties bound by it, we cannot pass a decree with regard to that portion alone- In the result, the decision of the Subordinate Judge is correct and the appeal is dismissed in the circumstances without costs.