
(1949) 09 MAD CK 0034
In the Madras High Court

Kanumarla Polamma (died) and Others APPELLANT
Vs
Dandaga Sooramma and Others RESPONDENT

Date of Decision : 15-09-1949

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1949) 2 MLJ 817

Hon'ble Judges : Mack, J

Bench : Division Bench

Judgement

Mack, J.—The facts of this case are rather unusual. The petitioner is the plaintiff who sued her mother as the 1st defendant, her sister as the

2nd defendant and her sister's husband as defendant 3 to recover property on the basis of a settlement deed executed by her mother. The suit

O.S. No. 640 of 1941 was resisted by the third defendant who claimed full rights as an illegitimate son-in-law. The suit was decreed in terms of a

compromise Ex. D-2, dated 20th November, 1941, filed into Court on that date. The plaintiff and the third defendant, presumably with their

lawyers, were present and signed it. The third defendant filed O.S. No. 81 of 1943, on the file of the District Munsiff's Court of Markapur to set

aside this compromise on the ground that the real compromise, copy of which he produced, Ex. P-4, entered into by all the parties on 14th

November, 1942, had been suppressed and that this compromise, Ex. D-2, which was filed into Court was fraudulently substituted. That suit was

dismissed, but the third defendant who is the contesting respondent succeeded in A. S. No. 54 of 1946 in having the compromise set aside on the

ground of fraud, by the learned Subordinate Judge of Kurnool. Differing from the learned District Munsiff, he found that the petitioner and her

henchmen:

had forged the name of P.W. 3 as an attester in the original of Exhibit D-2 in addition to the fraud played against the plaintiff;

the plaintiff in the context of that judgment being the contesting respondent. The learned Subordinate Judge set aside the compromise decree in

O.S. No. 640 of 1941 on the file of the District Munsiff's Court of Markapur, on a finding of fraud which is binding on all the parties. The

petitioner filed an application u/s 151 of the CPC before the District Munsiff to restore O.S. No. 640 of 1941, to file. This revision is filed against

his order of dismissal.

2. I am quite unable to follow on what principles either of law or justice, such a petition could have succeeded. The CPC makes no provision for

any such application before the trial Court to restore a suit to file which has been decreed on the basis of subsequent findings in another, suit.

Section 151, Civil Procedure Code, gives the Court inherent powers to makes orders as may be necessary for the ends of justice, and can

scarcely be invoked by the present petitioner who has been found guilty of a fraud on the court. My attention has been drawn to a decision by

Spencer, J., in Arumuga Goundan v. Peria Vanjiappa Goundan (1923) 46 M.L.J. 348 in which a decree against minors not validly represented by

guardian was held in a subsequent suit, to be not binding on them. Subsequent to this finding, the court which passed the prior decree restored the

suit to file u/s 151, CPC and proceeded to try the suit after making the minor a properly represented party to this suit. Following a decision of the

Privy Council in Manoharlal v. Jadunath Singh (1906) 16 M.L.J. 291 : L.R. 33 IndAp 128, the District Munsiff's Order was set aside and the

parties remitted to their original rights. In the Privy Council decision, a suit was filed to set aside a compromise on the ground that one of the

defendants was a minor and that leave of the court to enter into it had not been obtained. The resulting decree which their Lordships considered in

the appeal was a very wide one directing the compromises and decrees in the suit to be set aside in their entirety and further more went on to

declare that the result would be that those suits would "" have to be decided afresh. "" It was held that it would be quite sufficient if there is a

declaration that the compromises and decrees are not binding upon the minor

and that he is remitted to his original rights. That decision is not directly in point here though the decision lends support to the position that when a compromise decree in a suit is set aside in a subsequent suit, the court that first tried the suit had no powers to restore that suit to file and proceed with its trial. There is no decision on all fours with the present case, as I said the facts being somewhat peculiar and the astonishing feature about them being, how such a fraud was perpetrated on the court in the presence of lawyers and the parties if the compromise petition was read out, as it should have been in "extenso, in court. The learned Subordinate Judge in dealing with the compromise, Ex. D-2, however made the following observations:

Even trained lawyers have not been able to follow the terms of the compromise mentioned in Exhibit D-2 and so it is no wonder that an illiterate man like the plaintiff was not able to discover the fraud when the compromise was read out in open Court.

This compromise is not before me nor have even the learned advocates on both sides who have argued before me perused it. It is not impossible for such a fraud in a compromise drawn up by unauthorised legal advisers in the village to have been perpetrated on the learned advocates and the court, with the former doing no real acting work and concentrating mainly on forensic argument. The learned Subordinate Judge has also described the terms of the compromise which he set aside as being meaningless. It is difficult to follow why the trial court allowed this meaningless compromise to become a decree. I cannot too strongly emphasise the need for not only the advocates on both sides but also the trial court reading through carefully, the terms of a compromise before making it a decree of the court, for obvious reasons. Compromise decrees which have to be executed, should be in the clearest terms, free from ambiguity, which the executing court can easily understand and carry out. So far as the present petition is concerned, there is only one disposal to give it and that is dismissal. Had the position been reversed and had the plaintiff sued to set aside a fraudulent compromise decree filed into court, by defendants, one which was detrimental to her rights in the suit, it would be manifestly inequitable to say that the plaintiff would have no right to have her original suit retried. Consequential relief arising out of her suit to set aside the

compromise decree on the round of fraud could have been asked for in that suit either in the shape of damages or by a prayer for retrial of her original suit. In such a case, I think it would have been quite competent for the second court to grant this relief and in this way, the original suit could legally have been restored to file. With these observations, the petition is dismissed with costs.