
(1990) 09 CAL CK 0023
In the Calcutta High Court
Case No : S.A. No. 151 of 1974

Md. Fakir Mondal

APPELLANT

Vs

Golam Mondal and Others

RESPONDENT

Date of Decision : 14-09-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 2(15)

Citation : 95 CWN 819

Hon'ble Judges : J.N. Hore, J

Bench : Single Bench

Advocate : R.P. Banerjee, for the Appellant;

Final Decision : Dismissed

Judgement

J.N. Hore, J.—This is directed against the decision of the learned Subordinate Judge, Additional Court, Nadia in T.A. No. 146 of 1972 dated 10.8.73 reversing that of the learned Munsif, Ranaghat in Title Suit No. 174 of 1971 dated 3.6.72. Admittedly, Golam Mondal, Joynal Mondal and Pear Mondal who are the present respondent filed Title Suit No. 527 of 1966 in the Court of Munsif, Ranaghat claiming a right of passage over a few plots against the present appellants Fakir Mondal, Danesh and Forman and others. Fakir Mondal was defendant no. 1 and Farman was defendant no. 5 in the said Title Suit no. 527 of 1966. The suit was fixed for hearing on 21.4.71. Admittedly, Fakir did not turn up on the date in court. It is also undisputed that a Solenma was filed by both the parties in the suit to settle the dispute. In the solenama Farman who was defendant no. 5 in that suit signed on behalf of the appellant Fakir Mondal. The Solenama was also counter-signed by the learned Advocates of both " sides. A decree was passed in terms of the solenama.

2. The plaintiff-appellant filed Title suit No. 174 of 1971 for setting aside, the said compromise decree inter alia on the ground that Farman Mondal was never authorised by the plaintiff to compromise the suit on his behalf. According to the plaintiff compromise decree passed in Title suit no. 527 of 1966 was liable to be

set aside because defendant no. 5 Farman Mondal had not been authorised by him to file the. Solenama and as such the solenama decree was not binding on the plaintiff.

3. The defendant-respondents contested the suit by filing a written statement in which it was pleaded inter alia that the plaintiff-appellant Fakir Mondal was fully aware of the compromise to be filed in the suit and at his own instance Farman Mondal signed solenama on his behalf. At any rate the compromise decree could not be set aside inasmuch as the learned Advocate having authority to file the solenama duly signed the same and the compromise decree was binding upon the plaintiff.

4. The learned Munsif has held that Fakir Mondal had no authority to compromise the suit and that Mr. Banerjee, learned Advocate for the defendant no. 2 in that suit signed at the right hand top corner of the petition of compromise only for the purpose of filing it and not for the purpose of compromising the suit. He, therefore, decreed the suit. Being aggrieved the defendant nos. 1 to 3 preferred Title appeal No. 146 of 1972 against the said decision of the learned Munsif. The learned subordinate Judge who heard and disposed of the appeal has held that the learned Advocates had express authority to enter into compromise on behalf of the present plaintiff who was defendant no. 1 in that suit. In terms of the Vokatnama which specifically empowered the learned Advocate to file compromise petition on behalf of him and the compromise as entered is binding on the present plaintiff. He has further found that the circumstances of the case clearly point to the conclusion that the present plaintiff had knowledge and consent in respect of the petition of compromise filed and that Fakir Mondal had at least the implied authority to sign in the petition of compromise on his behalf and that the compromise decree is binding on him. The learned Subordinate Judge, has, therefore, allowed the appeal, set aside the judgment and decree passed by the learned Munsif and dismissed the suit. Being aggrieved by the said decision the plaintiff has preferred this second appeal.

5. Mr. Rouchoudhury, learned Advocate for the appellant has contended that the appointment of an Advocate by a party to conduct a case does not necessarily authorise him to make binding compromise on behalf of his client and the impugned compromise decree cannot be said to be binding on the appellant simply because his Advocate signed in the petition of compromise.

6. It is well settled that an appointed Advocate has an implied authority to enter into compromise on behalf of his client and the compromise so entered would be binding on his client. This implied authority can, however, be countermanded by the client. In Sourendra Nath Mitra vs. Smt. Tarubala Dasi, 34 CWN 453, the Privy Council has held that Advocates in India, i.e. those who can appear without a Vokatnama whatever their qualifications and wherever they may practice, have as much as Advocates in England, Scotland and Ireland, an authority implied and inherent in their position to compromise a suit for which they have been briefed, although such authority can always be countermanded by express

direction of the client in which case they have no power to settle the suit. In that case an Advocate and a member of the English Bar was briefed for a Purdanashin lady on an application for a Receiver before a District Court but it appeared from the circumstances that he had been armed with authority to act as if he had been briefed in the suit-and that the lady was fully and intelligently aware of the negotiations leading to the engagement of the Advocate with complete authority including that to compromise the suit and that he was in fact exercising that authority in the manner that he did, and the Advocate entered into the compromise settling the whole action. It was held that whether or not the Advocate had express authority from the client, he had implied authority and in the absence of any instructions inconsistent with such authority, the compromise he entered into was binding on the client.

7. In AIR 1975 1632 (SC) the memorandum of compromise on the basis of which the appeal was disposed of was signed by Counsel of the respondent who was duly authorised to appear on behalf of the respondent. It was held by the Supreme Court that the compromise was binding on the respondent. In Jamilabai Abdul Kadar Vs. Shankarlal Gulabchand and Others, it has similarly been held that a Pleader (which includes all legal practitioners as indicated in Section 2(15) of the CPC has implied authority to act by way of compromising a case in which he is engaged even without specific consent from client subject undoubtedly to two over-riding considerations :

i) He must act in good faith and for the benefit of his client, otherwise the power fails;

ii) It is prudent and proper to consult his client and take his consent if there is time and opportunity. In any case, if there is any institution to the contrary or withdrawal of authority, the implicit power to compromise in the Pleader will fall to the ground.

8. The case of Jagdish Narain Vs. Rasul Ahmad and Others, (Lucknow Bench) deals with the express authority given in Vokatnama. The Vokatnama was in the following terms: "The Pleader shall have the power to conduct and defend the case..... or to file documents Sanads..... or to file compromise or admission claims on our behalf..... All these done by him shall be acceptable to us as if it was done by ourselves". It has been held that the words used in the Power of Attorney are wide enough to include the power not only to present a petition of compromise signed by the parties themselves but also to enter into a compromise and to file the petition of compromise in court. In the instant case also a Vakalatnama was filed in favour of Mr. A.N. Banerjee. The relevant terms of the Vokatnama are as follows "I do hereby appoint the following Pleaders any of whom shall have authority to file Solenama, Raginama and any agreement and objection on my behalf and whatever will be done by him for my benefit shall be acceptable to be as if it was done by myself". The above will clearly show that Mr. Banerjee was specifically authorised to enter into compromise on behalf of Fakir Mondal in Title Suit No. 527 of 1966 and" the compromise made

to his benefit will be binding on him. There is neither any allegation nor any proof that Mr. Banerjee did not act in good faith in entering into compromise on behalf of Fakir Mondal. Fakir Mondal has on the other hand, admitted in his evidence that Mr. A.N. Banerjee has not caused any mischief to him and he has not suffered any loss by virtue of the compromise decree. The finding of the learned Subordinate Judge that the compromise entered into by the authorised Advocate on behalf of Fakir Mondal was binding on him does not suffer from any legal infirmity and must be accepted. There was no allegation of any fraud or foul play against the other party to the compromise decree namely the plaintiffs in Title Suit No. 527 of 1966 who are respondents before me. There is also no allegation fraud or foul play against Farman Ali Mondal. Farman Ali Mondal was defendant no. 5 in that suit and the present plaintiff-appellant Fakir Mondal and Farman Ali Mondal sailed in the same boat. Farman is also a cousin of Fakir and admittedly he was authorised by Fakir to depose on his behalf on the date fixed for hearing when the compromise petition was filed. Before 21.4.71 on which date the petition of compromise was filed, both the parties took several adjournments on the ground of amicable settlement of their dispute out of court. Admittedly, Fakir Mondal did not suffer any loss due to the compromise decree and Farman Ali Mondal did not gain in any way by the compromise. In these circumstances, the further finding of the learned subordinate Judge that appellant Fakir Mondal was aware of the compromise and Farman Ali had authority to sign the petition of compromise on behalf of Fakir Ali Mondal does not suffer from any legal infirmity and cannot, therefore, be interfered with in the second appeal.

In the result, the appeal is dismissed and the judgment and decree of the lower appellate court are confirmed.