
(1951) 01 AHC CK 0026
In the Allahabad High Court
Case No : Second Appeal No. 1085 of 1948

Moti Lal and Others	Vs	APPELLANT
Murli and Others and Shah Gaur Saran		RESPONDENT

Date of Decision : 03-01-1951

Acts Referred:

Citation : (1951) 21 AWR 407

Hon'ble Judges : Agarwala, J

Bench : Single Bench

Advocate : Shri S.C. Khare, for the Appellant; Shri I.N. Misra, for the Respondent

Final Decision : Allowed

Judgement

Agarwala, J.—This is a defendants' appeal arising out of a suit for cancellation of a compromise decree.

2. One Lachcha was a tenant of a certain holding. On his death there were two sets of claimants who claimed to be the heirs of Lachcha. One set consisted of Moti Lal, Hukum Lal Bhajan Lal and Sipahi Lal. All of them were minors under the guardianship of Girdhari, brother of Laohoha. The other set consisted of Murli and Jiwan, also minors under the guardianship of their mother Mithana. On behalf of Moti Lal, Hukum Lal, Bhajan Lal and Sipahi Lal, Girdhari filed a suit in the revenue court u/s 59, U.P. Tenancy Act, for a declaration that they, being the sons and heirs of Lachcha, were the tenants of the holding in dispute. Murli and Jiwan were arrayed as defendants to the suit. The defence of Murli and Jiwan was that they and not the plaintiffs of that suit were the real sons of Lachcha and entitled to the holding.

3. During the pendency of the suit, there was a compromise between Girdhari, the guardian of the plaintiffs of that suit, and Mithana, the guardian of the defendants of that suit. By this compromise, it was agreed that Murli and Jiwan, and Moti Lal, Hukum Lal and Bhajan Lal (but not Sipahi Lal) be recognized as tenants of the holding. The guardians presented an application to the revenue

court for leave to enter into a compromise. In this petition they stated that the compromise was not detrimental to the interest of the minors. They did not specifically say that it was beneficial to the interest of the minors. The counsel presenting the application also did not make any statement whether the compromise was for the benefit of the minors. The Court passed the following order.

Allowed to "compromise on behalf of minors" A decree was accordingly passed in terms of the compromise on 18th April 1945.

Then Murli and Jiwan; tunder the guardianship of one Sukhbasi, filed the suit which has given rise to this appeal, in the Civil Court, for the setting aside of the compromise decree passed by the revenue Court on the grounds that the compromise was obtained by fraud practiced upon their mother. Shrimati Mithana, and upon the ground that the Court did not apply its mind whether the compromise was for the benefit of the minors, and that therefore the decree of the Court was passed without jurisdiction. The defence was that no fraud was practiced upon the minors" mother that the compromise was for the benefit of the minors and that the decree passed by the revenue Court was validly passed and could not be set aside by the Civil Court. Various ether pleas were also taken but we are not concerned with them in this appeal.

The trial Court held that this compromise was obtained by means of fraud and that the compromise was not for the benefit of the plaintiffs. It. therefore, decreed the suit. Against this decree there was an appeal. The lower appellate Court came to the conclusion that there was no proof that any fraud was practiced upon Mithna and further that it could not be held that the compromise was, for the benefit of the minors or otherwise. The Court observed that ""there is nothing in this record which might show that any patty had suffered any particular material injury on account of the compromise.

4. The Court, however, dismissed the appeal upon the grounds that it was not brought to the notice of the revenue Court that the compromise was for the benefit of the plaintiff, and that the Court itself did not expressly state in the order permitting the compromise to be entered into that it was for their benefit and that, as such, the minors were not bound by the compromise. Against this decree the defendants have c me up in second appeal to this Court and it has been urged on their behalf that upon the facts found, the Court below had no jurisdiction to set aside the decree of the revenue Court.

5. A decree can be set aside u/s 44 of the Evidence Act upon any one of three grounds, (a) fraud, (b) collusion and (c) want of jurisdiction. There is no proof of fraud or collusion in the present case. It is also conceded that the Revenue Court had jurisdiction to try the suit and to pass a decree in that suit But it is urged that the Court acted without jurisdiction in passing a decree without recording the fact that the compromise was for the benefit of the minors. It is further alleged that Section 44 is not exhaustive of the grounds on which a decree can be set aside, and that a decree against a minor not obtained in accordance with

law can also be set aside.

6. Section 44 of the Evidence Act is not exhaustive of the grounds on which a decree can be set aside. It deals with cases in which a party to a suit or other proceeding has been properly represented. The words in the section "any party to a suit or other proceeding may show etc..." clearly indicate that the section refers to cases in which a person is in fact a party to the suit or other proceeding or that he is properly before the court. The section, therefore, does not cover cases of decrees passed against dead persons and against minors or lunatics who are not represented before the court in the manner required by law or against whom a decree has not been duly obtained. A decree, can therefore, be set aside also on one of these further grounds, but under what safeguards or conditions will be seen later. (2) Further, where a decree is passed on the basis of a compromise, it suffers from the infirmities which attach to a contract because a compromise decree is nothing but an order of the court super-added to the contract between the parties and can be set aside on any ground on which a contract can be set aside, namely, for misrepresentation, undue influence etc. This then would be another ground on which a decree can be set aside. In the present case, we are concerned with a compromise decree passed against minors. As no ground on which a contract can be set aside has been established, the only question is whether the decree obtained against them was obtained in accordance with law.

7. Now Order 32 Rule 7 provides that:

(1) 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 a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.

8. It has already been mentioned that leave of the court for entering into a compromise was expressly recorded in the proceeding. So far, therefore, as Rule 7 itself is concerned, there was no contravention. It is undoubtedly true; and it is now, well settled, that in granting leave to the guardian to enter into a compromise or agreement on behalf of minors, the court must apply its mind to the question whether the proposed agreement or compromise is for the benefit of the minors and that if it does not so apply its mind, it acts illegally and with material irregularity in the exercise of its jurisdiction and, as such, its order may be set aside by an appellate or revisional court.

9. In *Kalavati v. Chedi Lal*, 17 All. 531 was held:--

The court should record the fact that such application was made to it; that the terms of the proposed agreement or compromise were considered by the Court; and that having regard to the interests of the minor, the court granted leave to

the making of the agreement or compromise.

10. Although the learned Judges stated that the Court should record the facts mentioned in the above quotation, they did not mean to lay down that if this was not done) the order itself would be Void, even though the court had other wise considered the matter and granted leave because it thought that the compromise was in the interest of the minor. It may be noted that their Lordships were considering Section 462 of the CPC of 1882 in which the Rule was stated in a somewhat different language. The words were-

No next friend or guardian for the suit shall, without the leave of the court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

11. The section did not require in so many word"s that the leave of the court should be expressly recorded in the proceeding. This section was considered by the Privy Council in Manohar Lal v. Jadunath Singh. 28 All 585 Lord Macnaughten pointed out that

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.

12. His Lordship did not say that there should be an express order that the compromise was for the benefit of the minor.

13. In Seth Ram Gopal v. Lata Shanti Lal, AIR All. 85 at page 89 a Bench of this Court held that ""the Court should before granting leave exercise a Judicial discretion as to the propriety of the compromise or the reference to arbitration in the interest of the minor, The Court must have materials before it and nothing should be concealed from the Court in a matter like this and the materials must satisfy the mind of the Court that the action proposed is for the benefit of the minor or the lunatic It is not possible to lay down any hard and fast rule as to what should be done in a matter like this. In some cases it has been held that there should be an affidavit of the guardian that the compromise or the reference was for the benefit of the minor ; in other cases it has been held that there should be an opinion of the counsel or a statement by the counsel at the bar that the compromise is a proper one and should be sanctioned in the interest of the minor, but there can be no doubt that all facts necessary for the exercise of a judicial discretion by the Court should be placed before the Court and nothing should be concealed, for where the matter is being referred to arbitration and one of the parties is a lunatio there should be abundant good faith."

14. But this was a case of a revision against the order passing a compromise decree and not a case of a separate suit.

15. At the same time it is equally well settled that the mere fact that the court has not stated that the compromise was for the benefit of the minor was not

enough to show that the court did not consider this aspect of the matter. The presumption is that the court did consider that the compromise was for the benefit of the minor.

16. In *Midnapur Zamindari Co. Ltd. v. Govinda Mahto*, 8 C.L.J. 31 it was held that it must be assumed, in the absence of evidence to the contrary, that the court did its duty in the matter, that is, had considered the compromise and was satisfied that the compromise was for the benefit of the minors concerned.

17. In *Kanungo Krishun Prasad Ray Bhro Mosbar v. Romesh Chunder Mundul*, 13 O.W.N. 163 it was again held that when the court permitted a compromise it must be presumed that-

In the absence of evidence to the contrary it gave due consideration to the matter.

18. The presumption thus raised is, however, rebuttable. In the case before me the court below did not raise the presumption referred to above but passed its judgment upon the ground that the permission granted did not clearly state that the compromise was beneficial to the interest of the plaintiffs. This is not the correct position in law. As already pointed out Order 32, Rule 7 does not require a court to state expressly in its order that the compromise was for the benefit of the minors. It must, therefore, be held that the presumption that the compromise was for the benefit of the minors has not been rebutted in the present case.

19. But assuming for the sake of argument that it could be shown that the revenue court did not apply its mind to the question whether the compromise was for the benefit of the minors or not and gave the permission in a routine manner, could the decree be set aside in a suit brought for that purpose without further proof that the compromise was against the interest of the minors ?

20. In *Aman Singh v. Narain Singh*, ILR 20 All 98 it was held,

Although in appeal such a decree would be held to be invalid as against a minor it could not after it had become final and been acted upon be set aside unless it were shown to be prejudicial to the minor.

21. This was followed by the Calcutta High Court in the case already cited, *Kanungoe Krishun Prasad Ray Bhro Mosbar v.. Romesh Chunder Mundul*, 13 O.W.N. 163.

22. In AIR 1943 26 (Nagpur) it was held:

If there is an omission to record the granting of leave, then the compromise or agreement can be avoided, but if leave is recorded and the only "defect is that no reasons are disclosed then, in the absence of fraud upon the Court, it cannot, because there is then only an irregularity and not an illegality. An irregularity can be set right by a superior tribunal in appeal or revision but not by a tribunal of like status in a separate suit because no court has power , to sit in judgment

over its own orders or those of its compeers. The only grounds on which a former decision can be attacked in a subsequent suit are fraud on the Court; or some jurisdictional defeat or some defeat so fundamental as virtually to amount to that. No doubt the recording of reasons will enable an appellate or revisional authority sitting in judgment over the order to consider whether the Court really applied its mind to the matter at issue and whether it proceeded along lines which a revising authority or an appellate court could uphold, but an omission to record reasons will not make the order recording leave under R. 7 a nullity any more than an omission to state the reasons for a judgment will render the decree which follows a nullity. That would be an excellent point to make before a revising authority, or an appeal, and, might even amount to a "material irregularity" within the meaning of Section 115 (c) but the order however bad and however irregular is not a nullity. Such an order cannot be avoided by separate suit.

23. It is also necessary for me to go the whole length of the above ruling. It is, however, clear that

(1) where no order granting leave to compromise has been passed and expressly recorded, the compromise is not binding on the minor and the decree can be set aside, so far as the minor is concerned, without any further condition, and that

(2) where an order granting leave to compromise has been expressly recorded, but the Court did not apply its mind to the question whether the compromise was for the benefit of the minor, then

(a) the compromise decree would be set aside in appeal or revision, and

(b) the compromise decree would not be set aside in a separate suit unless it is further proved that the compromise was against the interest of the minor.

24. The finding of the court below is that this has not been proved. In the circumstances, it was not possible to set aside the compromise decree.

25. It may further be stated that the Civil Courts will be very reluctant in setting aside decrees of revenue courts, because these decrees are passed by Courts in the exercise of a jurisdiction which is exclusively vested in them.

26. I allow this appeal, set aside the decrees of the courts below and dismiss the plaintiff's suit. In the circumstances of the case, however, I order the parties to bear their own costs throughout

27. Leave to appeal under the Letters Patent is granted.