

(1920) 12 BOM CK 0011
In the Bombay High Court

Nakimo Dewani

APPELLANT

Vs

Musammat Pemba Dichen

RESPONDENT

Date of Decision : 13-12-1920

Acts Referred:

Citation : (1921) 23 BOMLR 698

Hon'ble Judges : Phillimore, J;Lawrence Jenkins, J;John Edge, J;Buckmaster, J;Ameer Ali, J

Bench : Full Bench

Final Decision : Dismissed

Judgement

Buckmaster, J.—The sole question in this appeal is whether a guardian appointed by the Court of Wards on behalf of infants has power to compromise proceedings in the Civil Court, to which those infants are defendants. It is alleged on behalf of the appellants that such a compromise cannot take place unless the agreement for compromise has been examined by the Civil Court and the Civil Court has assented to its terms. Section 375 of the CPC of 1882 provides that if a suit is wholly or in part compromised by any lawful agreement, such agreement shall be recorded "and the Court shall pass a decree in accordance therewith so far as it relates to the suit, and such decree shall be final. "That section received qualification by Section 462, which enacted that" 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"; but by the Code as it was originally passed it was expressly enacted that Section 462 shall not apply to any minor for whose person or property a guardian or manager has been appointed by the Court of Wards or by the Civil Court under any local law.

2. The position, therefore, under the Code was this: By p. 375 the Court was compelled to register the agreement that had been come to for the compromise of the suit, and the necessity for the examination of the terms of the compromise on behalf of the infant did not arise where the infant was represented by a guardian or manager who had been appointed by the Court of Wards or by the

Civil Court under any local law.

3. Alterations were made in that Code in 1888 and 1890, and instead of excluding in terms Sections 400 to 462, as provided in the earlier Code, Section 464 extended it by providing that:?

Nothing in this chapter applies to a Sovereign Prince or ruling Chief suing or being sued in the name of his State or being sued by direction of the Governor-General in Council or a local Government, in the name of an agent or in any other name, or shall be construed to affect, or in any way derogate from, the provisions of any local law for the time being in force relating to suits by or against minors or by or against lunatics or other persons of unsound mind.

4. The Court of Wards Act of Bengal is admittedly a local law within the meaning of that section, and, as already pointed out by the provisions of that law before the passing of the Codes of 1888 and 1890, the guardian so appointed was the only person who could assent to the agreement for the compromise of the litigation, and that agreement, when assented to was necessarily recorded u/s 375, and there is nothing in the later provisions to take away this power.

5. For these reasons, in their Lordships opinion this appeal fails and should be dismissed with costs and they will humbly advise His Majesty accordingly.