

(1923) 04 AHC CK 0082
In the Allahabad High Court

Radha Krishun Shukul and Others

APPELLANT

Vs

Nokh Lal Shukul and Another

RESPONDENT

Date of Decision : 17-04-1923

Acts Referred:

Citation : (1923) 04 AHC CK 0082

Final Decision : Dismissed

Judgement

Daniels, J.—The suit out of which this appeal arises was brought by the plaintiffs to set aside as not binding on them a compromise in a previous suit, dated 12th January 1920, entered into by their elder brother Sita Ram as their guardian ad litem. The plaintiffs and their elder brother Sita Ram are the sons of one Ram Sunder. There had been a partition between Ram Sunder and his brother Nokh Lal, the answering defendant in the present case. Subsequently, Nokh Lal brought a suit against the plaintiffs and their elder brother alleging that the partition was vitiated by fraud and that the sons of Ram Sunder had, in consequence, obtained possession of more than their proper share. This suit was ultimately compromised Sita Ram entering into the compromise on his own behalf and also as guardian ad litem of his minor brothers, the plaintiffs. The only ground on which the plaintiffs in their plaint sought to set aside the compromise is contained in paragraph 3 of the plaint in which they allege:

Defendant No. 1 (i.e., Nokh Lal), having practised deception upon the plaintiffs and the defendant No. 2 (i.e., Sita Ram) and having colluded with him filed a regular suit in this Court in respect of the cultivatory holdings with which the defendant No. 1 had no concern and made the plaintiffs also a party to the suit under the guardianship of defendant No. 2. Defendant No. 2 transferred the land in question to defendant No. 1 under an invalid compromise filed in the said suit.

2. The learned Munsif dismissed the suit on the ground that the compromise was a bona fide settlement of a family dispute which had been fairly arrived at and had subsequently been acted upon by all the parties, and that it was binding on them. It would perhaps have simplified matters if the learned District Judge in

appeal has given a finding on this issue. He considered, however, that was unnecessary to do so as no specific fraud vitiating the compromise had been either alleged or proved to the case. He also considered that, until some ground for impeaching the compromise had been made out or at least alleged, he was entitled to adopt the maxim *omnia rite acta esse proesumuntur* and to assume the validity of a compromise which was accepted by the Court and embodied in its decree. The appellants contention is that if a minor on coming of age comes forward to challenge a decree passed against him on the basis of a compromise, even though he does not allege in what way the compromise was invalid, the burden is immediately thrown upon the opposite party of establishing that sanction to the compromise was duly given and that all the proceedings in the suit in which the decree was passed were regular. This is very bold, not to say a startling proposition to put forward, and I know of no authority which can be adduced in support of it. It is certainly not borne out by the authorities on which the learned Counsel has relied. The cases relied on are *Kunwar Partab Singh Vs. Bhabuti Singh*, *Ganesha Row Vs. Tuljaram Row*, and *Badri Prashad v. Gopal Behari Lal* 50 Ind. Cas. 752 : 41 A. 553 : 17 A.L.J. 789. The facts of these cases are altogether different. In the first it was found as a fact that there was no proper appointment of a guardian ad litem and that leave to enter into the compromise had not been obtained from the Court. On these facts the compromise was naturally set aside. In the second case also it was an admitted fact that no sanction to enter into the compromise on behalf of the minor was given that it was contended that the compromise was validated because the defendant executed it in another capacity as defendant to the suit. In the third case also it was found as a fact that there was no order giving permission to the next friend to compromise the suit on behalf of the minor. Here there is neither finding nor evidence, nor indeed any allegation either in the proceedings in the Munsif's Court or even in the plaintiffs appeal to the Court below, that permission to enter into a compromise was not given. The plea is raised for the first time in second appeal. As regards the other point, no proposition is better established than that if it is sought to set aside a decree on the ground of fraud the allegation of fraud must be clear, definite and specific, There are numerous cases on the point but it is sufficient to refer to *Nanda Kumar Howladar v. Ram Jihan Howladar* 23 Ind. Cas. 337 : 41 C. 990 : 18 C.W.N. 681 : 19 C.L.J. The rule is embodied in Order VI, Rule 4 of the Code of Civil Procedure. Here, as has been already found, no specific fraud whatever was alleged. The suit has been rightly dismissed by the Court below. and I dismiss the appeal with costs including fees on the higher scale.