

(1926) 07 BOM CK 0043
In the Bombay High Court

Ranchhoddas Laldas and Others

APPELLANT

Vs

Nanji Bhanji and Others

RESPONDENT

Date of Decision : 26-07-1926

Acts Referred:

Citation : AIR 1926 Bom 579

Hon'ble Judges : Marten, C.J

Bench : Division Bench

Judgement

Marten, C.J.—This is a notice of motion before this appellate Court asking for a certain compromise referred to in para. 11 of the affidavit of Ranjit C. Raiji, filed on July 15, 1926, to be approved; and for two immovable properties at Hornby Road and Colaba, forming part of the estate of the deceased Bai Mamubai, to be vested in the Receiver and to be conveyed to the appellants; and for a certain loan to be repaid; and for directions as to custody of certain securities on charity account; and for monthly disbursements out of the interest; and for an order that the Receiver may be allowed to settle and pay certain bills of costs. Prior to this notice of motion being actually taken out, an application was made, by the attorneys for the applicants, to me to fix a date for the hearing of the notice of motion. By two notes made by me, and subsequently communicated to the solicitors, dated July 15 and 20, I stated that it appeared to me that the applicants were applying to the wrong Court, but that if they insisted on the matter being argued, it could be argued in Court at their own risk as to costs.

2. To-day Mr. Desai, who appears for the applicants, admits at once that the application has been made to the wrong Court, and that this Court has no jurisdiction to hear it, but he submits that the application can and should be made to the Court of first instance. Mr. Setalvad for Defendants Nos. 14 and 15 appears here merely to consent, and has nothing further to urge in the matter.

3. There are then two points : (1) whether this application can be made to the appellate Court; and (2) whether it can be made to the Court of first instance. As regards the first point, it is absolutely clear that this notice of motion is wholly

misconceived. One reason is that, as far as this appellate Court is concerned, the matter was finally disposed of by its decree of September 15, 1925, and, consequently, any further application in the suit would have to be made to the Court of first instance in the ordinary way.

4. The suit was one originally for the administration of the estate of Bai Mamubai, and for the construction of her Will, and for the removal of the first defendant as an executor and trustee. It was brought by the plaintiff as one of the two executors and trustees under the Will. The Defendant No. 1, who was eventually removed by the Court's order from the executorship and trusteeship, was an insolvent, and Defendant No. 2 is the Official Assignee. Defendant No. 3 is the Advocate-General; for, under the Will of Bai Mamubai, certain property at Ghatkoper was given in charity, and also a charge in favour of charity was eventually founded by the appellate Court to exist over property (a) at Colaba, and (b) at Hornby Road. Then Defendants Nos. 4 to 13 are the mortgagees of certain property at Tardeo. By the Court's order that property has since been sold, and the mortgagees have been paid off. So, according to the evidence before us, Defendants Nos. 4 to 13 have no longer any interest in the suit. Then, Defendants Nos. 14 and 15 were the alleged purchasers of the Hornby Road property. They were originally the appellants before us, and they succeeded in reversing the judgment of Mr. Justice Shah in matters connected with their purchase.

5. I should have added that by a counterclaim the Advocate-General had asked for a scheme to be framed. But, when the matter came before Mr. Justice Shah he expressly declined to grant an administration decree, or to frame a scheme for the administration of the charity. I refer in particular to p. 82, lines 35 to 40 of his judgment, and also to p. 84 in the Appeal paper book. This is borne out by the terms of the formal decree on p. 87. His judgment further provided that, subject to certain directions which were given, the Receiver was to hand over the estate to the plaintiff subject to all just charges and deductions.

6. The Court of appeal, while reversing the judgment of Mr. Justice Shah on certain points of construction, confirmed his judgment in other respects. Consequently after the appellate Court's decree of September 15, 1925, was passed, there was nothing else to do except to sell the Tardeo Road property, and to pay off the mortgagees thereof, viz., Defendants Nos. 4 to 13. Then, subject to certain other matters which were mentioned in the decree, it was the duty of the Receiver to hand over all the moneys in his hands to the plaintiff, and the plaintiff was to carry on the administration as the sole executor and trustee, having regard to the fact that Defendant No. 1 had been removed from that office.

7. That being so, it is abundantly clear on these facts that there was nothing more for the appellate Court to do, and still less could it sanction sales and compromises which took place many months after the appellate decree had been passed.

8. Passing next to the second point, as to whether the Court of first instance itself could sanction the application, it may be that, as regards certain paragraphs of it, it could : that is to say, as regards certain details it could. But, as regards the main compromise that has now been arrived at by which Defendants Nos. 14. and 15 are to purchase the Colaba property for a certain sum, and, after setting aside a certain fund, are to pay on the above loan, these are really entirely new matters which are not in any way involved in working out the order of Mr. Justice Shah. They amount, in short, to an entirely new compromise on entirely new grounds, and are quite independent of the matters in controversy in the old suit.

9. I wish to make it perfectly clear that, if an administration decree had been passed here, which was still being worked out, or if there had been a scheme in relation to this charity which was being, framed or worked out, or even supposing there was an appeal pending to the Privy Council from the appellate Court's decree, it is possible that, in the first of these cases, if not also in the latter two cases, either the Court of first instance, or this Court would have power to sanction the proposals for a compromise. But that is not what we have got here.

10. Accordingly, it seems to us that the proper procedure is for the parties to seek the sanction of the Court on behalf of charity and on behalf of the estate (whether minors are. involved I do not know) by fresh proceedings. Aid, though it is not for this Court in any way to advise the parties, it would seem prima facie that the procedure by an originating summons is exactly the cheap and speedy procedure which is provided by the rules for cases of this nature. Nor need that involve much extra expenditure, because it would be quite simple to utilize the present evidence by putting, in a short formal affidavit craving leave to refer to and to read the present evidence as evidence in support of the originating summons.

11. Accordingly, I expressly warn the solicitors that there is no need to file another detailed affidavit in support of the application for a compromise, unless of. course new facts are brought to light which are not before us. If, for any. technical reasons, it is necessary that. some order should also be made in this, present suit in relation to certain thing which the Receiver should do, then it would be quite simple to take out a formal chamber summons in this suit, and then bring on these summonses together., But, speaking for myself, I do not regard, this sort of matter as one which should be dealt with by a notice of motion in Court. On the contrary, convenience and economy point to an application in chambers as being the correct procedure.

12. The parties have, in my opinion, adopted an entirely wrong procedure. They do not ask for costs. They would not get them if they did. There will be no order as to costs. The motion will be dismissed.