

(1890) 03 PRI CK 0008

In the Privy Council

Rani Hemanta Kumari Debi

APPELLANT

Vs

Brojendra Kishore Roy Chowdry

RESPONDENT

Date of Decision : 25-03-1890

Acts Referred:

Citation : (1890) 17 IndApp 65

Hon'ble Judges : Macnaghten, Barnes Peacock, Richard Couch, JJ.

Judgement

Richard Couch, J. 1. This is an appeal from a decree of the High Court at Calcutta in a suit for enhancement of the rent of a talook which was instituted in July, 1882. The Plaintiff is entitled to a ten annas share of the zemindari on which the talook was dependent; and another person is entitled to a four annas share. 2. The only ground of defence which it is necessary now to notice is that a deed of compromise was executed in August, 1825, by virtue of which the Defendants allege that the rent of the talook was permanently settled. That deed was executed by Bhubanmoyi Debi, who was the widow of Raja Juggut Narain, to whom the property had belonged, and who had adopted, before the execution of the deed, Harendra Narain Roy, the grandfather or the Plaintiff. 3. The circumstances under which this deed of compromise was executed are these. Some time before March, 1823, a suit was brought by Rani Bhubanmoyi Debi and Krishen Indra Narain Rai, the owner of the other four annas of the zemindari, for enhancement of the rent of the talook; and the defence set up to that suit by the ancestors of the present Defendants was that the mouzahs had been granted to them in permanent mokurrurri, and that the rent was not liable to be enhanced. The suit was brought in the Zillah Court, and a decree was made in favour of the Plaintiffs, deciding that the rent was liable to be enhanced, and that if the Defendants did not pay the rent demanded, the mehals in dispute should be measured according to the hustbood jarib stated by the Plaintiffs, and the jumma be assessed thereon. An appeal from this decree to the Civil Appellate Court was dismissed on the 11th of May, 1824. In that state of things the deed of compromise was made in August, 1825. It was addressed to Joygobind Mozoomdar, the ancestor of the Defendants, and was executed by Rani

Bhubanmoyi; it states that the Defendants were paying the annual *istimrari* rent of Rs. 399 odd, with progressive increase added, that, in appeal to the Court of the Zillah and the provincial Court at Jahangirnuggur, a decree was passed for measurement and ascertainment of gross rents, and that for amicably settling with the Defendants for an increase in the rent, the rent was fixed at *sicca* Rs. 600, including the old rent. The balance payable by the Defendants, after certain named deductions on account of their share, was fixed in perpetuity. The Defendants also presented a petition to the Court, saying that they assented to that compromise. 4. Nothing more appears to have taken place, except that the rent was regularly paid according to the compromise, until about 1854, and then a suit was again brought for enhancement of rent. That passed through various stages of appeal until it reached the Sudder Court. In the judgment of two of the Judges of the Sudder Court (three being present) it is stated that Rani Bhubanmoyi executed a deed of compromise, and from that time up to the period of the adopted son, Harendra Narain Boy, attaining his majority, the rent was collected according to the deed of compromise, and after that time until the institution of that suit in 1853. 5. Then they say: "Under these circumstances we are of opinion that the Rajah is bound by the act of his mother done in 1832, as his guardian, and acquiesced in by him since he reached his majority, unless he can show that it was done in contravention of her duty to him as his guardian: in other words, unless he can show that with reference to the circumstances under which, and to the then capabilities of the tenure regarding which the compromise was made, such compromise was clearly and unmistakably to his detriment." There is a clear finding by the Sudder Court upon the question whether Rani Bhubanmoyi was acting as guardian when she signed this deed of compromise that she was so acting. It must, therefore, now be taken that she did it as guardian. 6. The circumstances existing at the time of the compromise must next be considered. The parties were litigating not merely as to whether the rent was of the proper amount, or ought to be enhanced, but the Defendants were contending that they had a perpetual tenure at a then fixed rent, and this was a settlement which was to put an end to the litigation, and which would also prevent the expense, and delay, and the uncertainty of the result, which was dependent upon the investigation that the Court had ordered to decide what the amount of rent, if it were to be enhanced, should be. Apparently it is a compromise which it cannot be said would not be beneficial to the infant, the adopted son, but is one which might fairly and naturally be come to as putting an end to the litigation and deciding once for all the matter which was in dispute between the parties; because it must not be forgotten that although there had been a decree affirmed on appeal that the rent was liable to be enhanced, that was subject to a further appeal, and the case might have been carried further by the Defendant if this compromise had not been entered into. 7. The first Court before which the present suit came held that the compromise was binding, and dismissed the suit. It then went by appeal to the District Judge, who reversed that decree, and held that the compromise was not binding; it then came before the High Court by what is called a second appeal, or an appeal from an appellate

decree, and as the High Court in its judgment states what the judgment of the District Judge was, it. will be convenient to refer to the judgment of the High Court. They say, "We are of opinion that although the dismissal of the suit of Harendra Narain Roy, under Section 1, Act XXIX. of 1841" (meaning the dismissal of the suit which was brought in 1854, and which was finally dismissed, after being remanded to the lower Courts for further hearing, on account of the non-appearance of both, of the parties), "did not preclude a fresh suit, still if any such suit be brought, the parties would be bound by the decision of the Sudder Dewani Adawlut, so far as it decided any material issue. The District Judge in this case is in error in re-opening that question. We must therefore take it that the ruffanamas" (deeds of compromise) "were executed by Rani Bhuhanmoyi as the guardian of Harendra Narain Roy. We find also that the same rent fixed by the ruffanamas has been received by successive owners of the zemindari for about fifty-seven years. We further find that since the last suit for enhancement was dismissed in 1858, no attempt was made to repudiate the ruffanamas till 1882." Then they speak of the principle laid down in the case of Hunooman Pershad Panday v. Babooee Munraj Koonweree 6 Moore's Ind. Ap. 393, and go on to say that the District Judge, upon the question whether the compromise was beneficial or not to the adopted son, "refers only to the decree of 1851 passed in favour of the owner of the four annas share of the zemindari. But that decree which was passed in 1851 has no bearing upon the question whether the ruffanamas executed in the year 1825 were clearly and unmistakably to the detriment of Harendra Narain Roy." Now the decree in 1851 was obtained by the Government after there had been a purchase at a sale for arrears of revenue not paid by the owner of the four annas share, and the District Judge appears to have been in error in treating that as a decree passed in favour of the owner of the four annas share. The Government was in a different position from that in which the owner of the four annas share would be, and there is no evidence in the case upon which the District Judge could found his judgment reversing the decree of the first Court, and deciding that this compromise was not beneficial to the adopted son, an infant at the time it was made. When the judgments come to be looked at, it appears that he has reversed the decree of the first Court in the absence of any evidence-certainly in the absence of any evidence upon which he might reasonably come to the conclusion that the deed of compromise was not for the benefit of the adopted son. This appears to be a case in which, under the provision of the law that there is a second appeal where there has been a substantial error or defect in the procedure of the lower Court, the High Court was right in reversing the decree of the District Judge, and leaving, as it did, the decree of the first Court-which held that the deed of compromise was a binding one, and therefore the suit for the enhancement of rent ought to be dismissed-to stand. 8. Their Lordships will therefore humbly advise Her Majesty to dismiss this appeal, and to affirm the decree of the High Court. The Appellant will pay the costs.