

(1939) 09 PAT CK 0007

In the Patna High Court

Sheonandan Gope and Another

APPELLANT

Vs

Shahdeo Khatik and Others

RESPONDENT

Date of Decision : 12-09-1939

Acts Referred:

Citation : AIR 1940 Patna 671

Hon'ble Judges : Agarwala, J

Bench : Division Bench

Judgement

Agarwala, J.—This is an appeal from a decision of the District Judge of Patna reversing a decision of the Munsif. The appellants sued for rent of a house occupied by the defendants on a monthly rent of Rs. 10. The defendants remained in occupation of the house in spite of the notice to quit. The suit was for recovery of ten months arrears of rent and for mesne profits from the date of the determination of the tenancy. On 30th April 1937, a petition of compromise purporting to be on behalf of both parties was filed. By this agreement the defendants undertook to vacate the house on 15th May and to pay Rs. 84 to the plaintiffs by 5th May in settlement of the plaintiffs' claim. It was also agreed that if this amount was not paid by the due date the plaintiffs would have a decree for the full amount claimed, which was Rs. 250. The house was vacated on 15th May as agreed, but the sum of Rs. 84 was not paid on the stipulated date.

2. It appears that among the parties was a minor plaintiff and three minor defendants. The guardians of these minors had not been permitted by the Court to enter into the compromise on behalf of their wards. On 5th May, defendant 1 applied to the Court to discharge the guardian ad litem of the minor defendants and to be appointed in his place and to be permitted to compromise the suit on behalf of the minor defendants. The Court directed this application to be heard on 10th May which was the date fixed for considering the compromise petition.

3. No orders however were passed on 10th May but the defendants were permitted on that date to deposit Rs. 84 in spite of the plaintiffs' objection. On 27th May, the Court directed the compromise to be recorded and held that as

time was the essence of the contract between the parties and the money had not been paid on 5th May as agreed, the plaintiffs were entitled to a decree for the full amount claimed. Against that decree the defendants appealed to the District Judge. He held that the compromise was not for the benefit of the minor defendants and time was not the essence of the contract and he dismissed the plaintiffs' suit. The plaintiffs have preferred the present appeal without including the minor defendants.

4. A preliminary objection was taken that the appeal has abated. This objection must be overruled. As the plaintiffs are satisfied with a decree against the major defendants there is no bar to their obtaining such relief. It may be observed that the trial Court had not by the 5th May, which was the date fixed for the payment of the stipulated sum, permitted the guardian of the minor defendants to enter into the compromise and that no such permission had been given to the guardian of the minor plaintiff either.

5. The compromise, therefore, is voidable against all parties other than the minors. The major defendants, however, cannot escape the liability which they undertook. In *Jamnabal Mohitai v. Vasanta Rao Anand Rao* AIR 1916 PC 2 the Privy Council held that the mere fact that a joint bond executed as a part of a compromise is not enforceable against a minor executant of a bond does not absolve the major executant from liability.

6. The proper order that should be passed in this case, therefore, is that, the decree of the Court below is set aside, the plaintiffs' claim for Rs. 120 for rent is decreed against the major defendants and also his claim for mesne profits which will be ascertained when he applies to the Court for that purpose. As this litigation has been prolonged owing to the negligence of the parties in omitting to obtain the permission of the Court to compromise on behalf of the minors, each party will bear his own costs throughout up to date.