

(1935) 03 MAD CK 0044
In the Madras High Court

Subramania Pillai alias Pillaimuthu Pillai	APPELLANT
Vs	
S.V. Biravaperumal Pillai and Others	RESPONDENT

Date of Decision : 19-03-1935

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 32 Rule 7

Citation : AIR 1935 Mad 1068 : (1936) ILR (Mad) 149 : (1935) 42 LW 612 :
(1935) 69 MLJ 523

Hon'ble Judges : Madhavan Nair, J

Bench : Division Bench

Judgement

Madhavan Nair, J.—The plaintiff is the appellant. The suit out of which this second appeal arises was instituted for a declaration that the

decrees in O.S. Nos. 48 and 349 of 1922 are not binding upon him and to have them avoided.

2. O.S. No. 48 of 1922 was filed by one Sivasankaram Pillai and his wife (the alleged adoptive father and mother of the plaintiff herein) against his

brother's son Piraviperumal Pillai and another for a declaration that certain properties were their own, even though the patta was allowed to stand

in the name of the first defendant therein. In the course of the suit both Sivasankaram Pillai and his wife died and the present plaintiff who claimed

to be the adopted son came on record represented by his natural father as his next friend. In the same capacity as a minor he filed O.S. No. 439 of

1922 asking for relief with regard to certain other properties. Both these suits were referred to the arbitration of three men. The arbitrators did not

have to take evidence to decide the suits for they were settled by a compromise. The compromise was signed by the plaintiff's father as his next

friend but afterwards he wanted to resile from the compromise. When notice was

given to him, he did not appear. Finally the arbitrators accepted the compromise and passed an award in accordance with it. In the present suit the plaintiff seeks to set aside the decrees on the ground of gross negligence on the part of the guardian. As a matter of fact it has been -found by both the lower Courts that the guardian has not been negligent at all and the compromise cannot be said to be unfair to the plaintiff. The arguments here advanced have not been pressed against the findings of the lower Courts on these matters.

3. The main argument of Mr. T.M. Krishnaswami Aiyar on behalf of the appellant is that for the compromise which was entered into before the arbitrator's permission of the Court had not been obtained and that therefore it is invalid having regard to the provisions of Order 32, Rule 7, Civil Procedure Code. At this stage I may point out that it was not argued in either of the lower Courts nor is there any issue on it that when the award came before the Court the Court did not consider whether the award was beneficial to the minor or not under Order 32, Rule 7 and that the order passed by the Court is therefore invalid. That argument was never advanced in either of the lower Courts. Here, Mr. T.M. Krishnaswami Aiyar has put that argument also before me for consideration. I overruled it on the simple ground that the case before the lower Courts proceeded on the assumption that so far as the decretal orders of the Court were concerned there was no such objection the objection being based only on the ground as I have already pointed out that for the compromise accepted by the arbitrators no sanction of the Court had been obtained. Therefore the only question for consideration in this second appeal is, whether the compromise entered into by the parties before the arbitrators before it was accepted by them should receive the sanction of the Court to make their award valid in law. No authority directly bearing on the question has been brought to my notice.

4. One decision in *Chennakesavulu v. Veeraswami* (1932) 65 M.L.J. 755 was referred to, by the learned Counsel for the appellant. But in that case the facts show that the arbitrators proceeded beyond the terms of the reference made to them by the Court, with regard to all the questions and the observations have to be accepted in the light of those facts. Towards the later stage of the argument Mr. T.M. Krishnaswami Aiyar

brought to my notice the decision in Muthalakkammal Vs. Narappa Reddiar by mother and next friend Nagammal, . It was held in that case that

Order 32, Rule 7 of the first schedule of the CPC applies to execution proceedings. It is this order (Order 32, Rule 7) which says that before a

decree is passed the Court should consider whether the compromise is advantageous or beneficial to the minor. The decision in the case relates

solely to the point whether that order applies to execution proceedings but emphasis is placed on the last paragraph of the judgment. In that case a

compromise of a suit which was passed by the arbitrators was pleaded in defence to the execution of a decree and the question was whether

satisfaction of the decree can be recorded or not. It was argued that Order 32, Rule 7, would apply only to the determination of suits in Court and

not with respect to awards passed by the arbitrators and Order 32, Rule 7 applies to agreement or compromise with reference to a suit i.e., a

pending suit. That argument was overruled by the learned Judges. After overruling the argument in the last paragraph of the judgment the learned

Judges refer to a submission made by the Counsel; ""The learned Advocate for the appellant now applies to us for sanction of the adjustment. The

respondent opposes this on the ground that the award and the decree on the award are collusive. The Subordinate Judge will now enquire into the

question whether the adjustment is a proper adjustment and dispose of the matter according to law"". I understand what the learned Judges meant

to order in this paragraph was whether the adjustment which was pleaded in defence was a proper adjustment or not, that is to say, whether it was

passed by the Court after considering that it is advantageous or beneficial to the minor having regard to the duty placed upon the Court under

Order 32. Rule 7. As I have said at the beginning that question is not now before me; viz., whether the Court, when it accepted the compromise

passed by the arbitrators" award and made that award a decree of the Court in the two suits 48 and 349 considered whether it was advantageous

or beneficial to the minor or not. The Court can refuse to accept the award on the ground that in its opinion it is not advantageous or beneficial to

the minor and this function of the Court will be discharged under Order 32, Rule 7. This is all what the learned Judges in the last paragraph of their

Judgment in Muthalakkammal Vs. Narappa Reddiar by mother and next friend Nagammal, called upon the lower Court to do, i.e., to find out

whether that adjustment of the decree is a proper adjustment having regard to the allegations made in the case. The present question whether the compromise was passed by the arbitrators without getting the previous sanction of the Court has nothing to do with the enquiry suggested by the learned Judges in the last paragraph of the judgment. I therefore hold that the compromise in this case cannot be said to be bad because at the time when it was approved by the arbitrators no sanction of the Court had been obtained. I have already accepted the findings of the lower Court on the merits of the case that there is nothing to show that the guardian was negligent or that the compromise was not advantageous or beneficial to the minor.

5. In the result the second appeal is dismissed with costs.