

(1935) 03 MAD CK 0009
In the Madras High Court

Subramania Pillai

APPELLANT

Vs

S.V. Bairavaperumal Pillai and Others

RESPONDENT

Date of Decision : 19-03-1935

Acts Referred:

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

Citation : 158 Ind. Cas. 713

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 1st defendant therein. In the course of the suit both Sivasankaran 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 Order 8. No. 439

of 1922 asking for relief with regard to certain other properties. Both these suits were offered 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. Krishnasawmy Iyer on behalf of the appellant is that for the compromise which was entered into before the

arbitrators permission of the Court had not been obtained and that, therefore, it is invalid having regard to the provisions of Order XXXII, 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 XXXII, Rule 7, and

that order passed by the Court is, therefore, invalid. That argument was never advanced in either of the lower Courts. Here Mr. T.M.

Krishnaswamy Ayyar 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 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 Chinnakesavalu v. Veeraswami 65 M.L.J. 755 : 149 Ind. Cas. 778 : AIR 1933 Mad, 862 : 38 L.W. 927 : 6 R.M. 658, 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. Krishnasawmy Iyer brought to my notice the decision in Muthalakkammal v. Narappa Reddiar 56 M.

430 : 142 Ind. Cas. 622 : AIR 1933 Mad. 456 : 37 L.W. 414; Ind. Rul. (1933)

Mad. 231 : 64 M.L.J. 437; (1933) M.W.N. 189 . It was held in that case that Order XXXII, Rule 7 of the First Schedule of the CPC applies to execution proceedings. It is this order (O. XXXII, 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 XXXII, Rule 7, would apply only to the determination of suits in Court and not with respect to awards passed by the arbitrators and Order XXXII, 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 not enquire into the question whether the adjustment is a proper adjustment and dispose of the matter according to law"". I understand that the learned Judgement 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 XXXII, 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 Nos. 48 and 319 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 XXXII, Rule 7. This is all what the learned Judges in the last paragraph of their judgment in Muthalakkammal v. Narappa Reddiar 56 M. 430 : 142 Ind.

Cas. 622 : AIR 1933 Mad. 456 : 37 L.W. 414; Ind. Rul. (1933) Mad. 231 : 64 M.L.J. 437; (1933) M.W.N. 189 called upon the lower Court to

do, i.e. to find out whether the 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.