

(1917) 04 MAD CK 0021
In the Madras High Court

Thenal Ammal and Another	Vs	APPELLANT
Sokkammal and Others		RESPONDENT

Date of Decision : 11-04-1917

Acts Referred:

Citation : 41 Ind. Cas. 429

Hon'ble Judges : Seshagiri Aiyar, J;Kumaraswami Sastri, J

Bench : Division Bench

Judgement

1. A preliminary objection is taken by Mr. Narasimha Aiyangar that no second appeal lies as the compromise was recorded without protest and as

subsequently a decree was passed in terms of the compromise. This objection should be overruled, as the very foundation of the compromise,

namely, the authority to enter into it is impeached.

2. Following Auyagiri Veerasalingam v. Kovvuri, Basivireddi 25 Ind. Cas. 56 : 27 M. L. J. 173 : 16 M. L. T. 125 : 1 L. W. 541. we hold that the

appeal is competent.

3. The Courts below have held that the plaintiffs were bound by the compromise as the takalat given by them to their Vakil expressly enabled him

to enter into a compromise. We do not think that the word avasiamanal (if necessary) supports this conclusion. We understand the expression to

mean that the Vakil is to do certain acts when and if the occasion arises. The acts themselves are subsequently-enumerated. They are (a) to sign

the petition for entering into the compromise or for withdrawing the suit and to sign the final compromise petition to the Court. These two

enumerated powers show that the plaintiff did not intend that the Vakil should have unlimited powers to settle the claim of his clients.

4. Mr. Narasimha Aiyangar contended that the ordinary power of the Vakil to enter into compromises and to withdraw suits in which he is

engaged is inherent in him by the engagement and cites Justice Sadasiva Aiyer's decision in *Kollipara Venkamma*, in re 17 Ind. Cas. 391 : 23 M.

L. J. 38 : 12 M. L. T. 348. in support of this contention. In *Jagapati Mudaliar v. Ekambara Mudaliar* (3) Subramania Aiyar and Benson, JJ.

pointed out that the practice prevailing in England by which Counsel and Solicitor are clothed with extensive powers to agree to terms on behalf of

the client should not be imported into this country. We are inclined to agree with this view. It is not the ordinary duty of an Advocate to negotiate

terms, without reference to his client, with the opposite party. Such an action is calculated to place the practitioner in a false position We do not

think it desirable that such a power should vest in him in the interests of the profession. From the point of view of the client, we think that it is not

safe that he should be regarded by engaging a Vakil to have given him authority to dispose of his rights in any way he chooses. Therefore we think

that the general power claimed is not in consonance with the highest ideals of the profession or of justice. For these reasons we think that a very

strict interpretation should be placed upon vakalats containing powers of this kind. The learned Vakil quoted *Mathews v. Munster* (1888) 20 Q.

B. D. 141 : 57 L. J. Q. B. 49 : 57 L. T. 922 : 36 W. R. 178 : 52 J. P. 260. to show that Counsel was allowed to settle the amount of the damages

awardable to his client. Lord Justice Bowen points out in that case that the client asked the Counsel to do the best he can in the case: such an

inherent authorisation might have justified the view taken in that case. It is pointed out by all the Lords Justices that the Court has plenary powers in

any case to enquire into the justness or bona fides of the settlement reported to it. In this country such a power should be exercised by the Court

even more largely than in England. It is for that reason that the intermediate stage of recording the compromise is introduced in the Code. We are

afraid that Courts seldom appreciate the significance of this provision. At any rate, we are satisfied that in this case, the importance and necessity of

recording the compromise was not realised by the Subordinate Judge.

5. We must hold that there has not been a sufficient enquiry into the question whether the compromise was authorised by; the appellants, especially

as we hold that the vakalat does not give authority to the Vakil to enter into the compromise without reference to his clients.

6. We must set aside the decrees of the Court below and remand the case to the Court of first instance for ascertaining whether the compromise is

binding on the plaintiffs. If he comes to the conclusion that it is not binding, he must proceed to dispose of the case in the usual way. Costs will

abide the result.