

Mt. Bashiran Vs. Mohammad Abrar

Mt. Bashiran Vs. Mohammad Abrar

SooperKanoon Citation : sooperkanoon.com/475590

Court : Allahabad

Decided On : Mar-07-1935

Reported in : AIR1935All626; 158Ind.Cas.1

Appellant : Mt. Bashiran

Respondent : Mohammad Abrar

Judgement :

Ganga Nath, J.

1. This is a plaintiff's appeal and arises out of a suit brought by her against the defendant-respondent for the cancellation of the compromise and the decree dated 24th. March 1930, passed thereon and for the hearing of suit No. 433 of 1929, from the stage in which it. was on 24th March 1930. The plaintiff's case was that she had instituted a suit (No. 433 of 1929), against the defendant for an injunction restraining the defendant from flowing water, in the Court of the Munsif of Moradabad, on 4th September 1929. 24th March 1930 was fixed for final disposal. The plaintiff alleged that, she was a pardanashin lady and her son Naqiuddin was looking after the case under her instructions. On 24th March 1930, in the absence of the plaintiff, the compromise in suit was filed in the case without her knowledge and information. On the basis of the compromise her suit was struck off and a decree passed. The defendant contended that the compromise was entered into with the knowledge, information and consent of the plaintiff. The

compromise has been signed by the plaintiff's counsel on her behalf. It does not bear the plaintiff's signature.

2. The only point for consideration is whether the compromise is valid and binding on the plaintiff. The compromise relates to certain matters 'which are outside the scope of the subject-matter of the suit (suit. No. 433 of 1929), in which it was made. There are numerous cases, English and Indian on the question of a counsel's powers to make admissions in or refer to arbitration or compromise suits in which he is instructed. The following propositions are deducible from them: see *Muthiah Chettiar v. Mathu K.R.A.R. Karuppan Chetti* 1927 Mad. 852 :

(1) A counsel has authority to make admissions in Court, on behalf of his client on matters of fact relevant to the issues in the case in which he is engaged. Admissions on questions of law would not bind the client.

(2) A counsel has authority to confess judgment, withdraw or compromise, or refer to arbitration the suit in which he is instructed if his doing so is for his client's advantage or benefit even though he has no express authority from his client.

(3) A counsel cannot without express authority agree to compromise or refer to arbitration matters unconnected with the subject-matter of the suit, in which he is instructed.

(4) Where in the course of a suit a counsel makes an admission as to a collateral matter or gives up a doubtful claim which is not a subject-matter of the suit, there is a presumption that the counsel acts under instructions if the admission or the giving up of the doubtful claim is for the benefit of the client.

(5) It is a question of fact in each case whether the counsel acts under instructions when he compromises or refers to arbitration matters not, involved in the suit and the Court on a consideration of the probabilities and the circumstances of the case can find that, the counsel acted on instructions even though there is no direct evidence on the point.

(6) A counsel has no power to make an admission in, or compromise or refer to arbitration, a suit if he is instructed not to do so, without express authority from his

client.

3. In this case, the compromise relates to certain matters which were not involved in the suit. The question therefore is whether the compromise was made with the authority of the plaintiff. As stated above, it is a question of fact. Both the Courts below have on evidence come to a definite finding that the compromise was read out and explained to the plaintiff by the plaintiff's own soil Naquiuddin, who, according to plaintiff's own admission, was looking after her suit under her instructions. She gave her consent, to the compromise after it had been read out and it was after her consent, that the compromise was filed in Court. The learned Additional Subordinate Judge has observed:

Abdul Rahman and Mohammad Husain who are related to the parties have been produced as witnesses by the defendant and support this case, that the plaintiff Knew and had given her consent to the compromise. The trial Court has believed this evidence and I think from the record it is borne out that the plaintiff knew about the compromise. It is not plaintiff's case that she was unable to understand any of its terms or that there was any misunderstanding about the terms of the compromise. Her case is total want of all knowledge about the compromise. Mohammad Naqi has not been produced by the appellant, I agree with the trial Court that the plaintiff knew about the compromise which was filed with her permission.

4. In *Surendra Nath v. Tarubala Dasi* 1930 P.C. 158, a pardanashin lady was kept fully informed throughout of all various stages of the negotiations of compromise and was fully and intelligently aware that the advocate engaged was clothed with authority to compromise the suit on her behalf and was, in fact, exercising his authority. It was held that, it could not be said that the lady had not been proved to have authorized the agreement.

5. In the face of the concurrent, findings of both the lower Courts that the compromise was made with plaintiff's express consent the plaintiff has no case. There is no force in the appeal. It is therefore ordered that, the appeal be dismissed with costs and the decree of the lower Court be confirmed. Permission to file a Letters Patent, appeal is rejected.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com