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Court : Chennai

Decided On : Feb-23-1939

Reported in : AIR1939Mad814; (1939)2MLJ262

Appellant : S.T.P. Kasi Chetti Alias thenappa Chetti and ors.

Respondent : Minor Nagappa Chetti Lately a Minor Since Declared a Major and Guardian Discharged

Judgement :

Stodart, J.

1. These appeals arise out of certain proceedings had in execution of the decree in O.S. No. 76 of 1925 on the file of the Sub-Court, Sivaganga. That decree was passed on the 21st December, 1932, and was slightly modified in A.S. No. 37 of 1933 of this Court on the 23rd August, 1934. The decree directed the payment of money to the two plaintiffs Palaniappa Chetti and Nagappa Chetti. The first plaintiff became a major in 1931 and the second plaintiff was at all material times a minor. On the 21st January, 1935, the plaintiffs and defendants filed a joint petition in the Sub-Court requesting the Court to sanction a compromise. By that compromise the terms of the decree were varied. The original decree provided that the decretal amount should be paid jointly to the plaintiffs. By the compromise it was provided

that half of it should be paid to the first plaintiff and half to the second plaintiff. Then the amount of the decree was varied. The decree amount was about Rs. 64,000. The plaintiffs in consideration of the defendants refraining from filing an appeal in the Privy Council agreed to receive Rs. 50,000. Lastly and this is the part of the compromise with which we are now concerned, the parties agreed that the money should be paid in four instalments, on the 6th November, 1934, 6th February, 1935, 6th May, 1935 and 6th August, 1935. The first two instalments were to be paid to the first plaintiff and the second two instalments to the second plaintiff. The first two instalments were duly paid, and as provided in the compromise, part satisfaction of the decree was recorded by the Court in respect of them. As regards the third and fourth instalments payable to the second plaintiff the compromise provided that payments should be made to the next friend of the second plaintiff who was at the time of the suit and at the time of the compromise petition his mother Muthayi Achi living in a town in Pudukkottah State. It was also a term of the compromise that these payments should be made not in cash but since the second plaintiff was a minor, it should be made in the shape of Government bonds and postal certificates. Defendants 6 to 8 did not, as a matter of fact, deliver Government bonds and postal certificates to Muthayi Achi on the 6th of May, 1935, for the third instalment nor on the 6th of August for the fourth instalment. What they did was that on the 24th of June, 1935, they paid into Court in money the amount due up to that date in respect of the third instalment and filed an application E.A. No. 222 of 1935 requesting the Court to record part satisfaction of that instalment and on the 5th of August, 1935, they paid into Court the money due in respect of the fourth instalment and made a similar request to the Court, with the further prayer that full satisfaction of the decree should now be entered up. The second plaintiff contested these applications and contended that the terms of the compromise had been broken and that therefore the default clause in the compromise came into operation. The default clause is found in paragraph 7 of the compromise and reads as follows:

If default is made in respect of any instalment out of the instalments stated above, even in the manner stated in paragraph 6, the plaintiffs are at liberty to recover by proceeding in execution the aggregate amount of principal, etc., due as per the appeal decree after deducting such of the amounts as might have been received

subsequent to the High Court decree, as on the respective dates.

2. The Subordinate Judge on the 26th of July, 1933, rejected the defendants' petition holding that the satisfaction tendered was not in accordance with the terms of the compromise and that part satisfaction could not therefore be entered in respect of the third instalment. On the 28th of August on E.A. No. 312 he passed a similar order and also observed that on account of the default of the defendants the default clause in the contract enured to the benefit of the plaintiff. The present appeals are against these orders respectively.

3. The question for our decision is whether there was any default made by the defendants in the payment of the third and fourth instalments of the Rs. 50,000 which they were bound to pay under the compromise aforesaid. It may be explained here that the compromise allowed a period of 30 days grace after the due dates of payments, providing for interest at the rate of Re. 0-4-0 per cent, per mensem during the said period.

4. Learned Counsel for the appellants relies on two circumstances which he says, prevent the payments which defendants made from amounting to a default. His case is that these payments substantially conformed with the terms of the compromise. His first contention is based on the fact that on the 30th of May, the Chief Court in the Pudukottah State where the plaintiffs, and the next friend of the second plaintiff, reside, issued an order of injunction restraining defendants from paying the decree amounts due in this suit to the second plaintiff and restraining the second plaintiff from receiving these amounts. The defendants therefore could not tender the bonds to Muthayi Achi at her residence in Pudukottah by reason of this injunction nor could Muthayi Achi have received them if they have been tendered to her. The defendants point out that though they are residents of British India they were bound at their peril to obey the order of injunction because they had a considerable amount of property within the Pudukottah State, which could have been proceeded against if they had disobeyed the order. The defendants' case therefore is that they did the best they could to carry out the terms of compromise by paying the money into Court. They could not pay it into Court on the 6th May the due date nor on the 6th of June the day when the days of grace

expired since both days fell within the vacation of the Court; but they paid it with the accrued interest on the date when the Court reopened, namely, the 24th of June, 1935. Then when the 6th of August came round the injunction was still in force and they adopted similar procedure, paying the instalment even before the due date, namely, on the 5th of August, into Court. The Subordinate Judge has held agreeing with the defendants that they were bound to obey the injunction of the Chief Court, Pudukottah, but that that did not prevent them from tendering the Government bonds and postal certificates to the second plaintiff's mother and next friend. The finding is not attempted to be supported by the learned Counsel for the respondents. It is clear that the injunction in the Pudukottah Chief Court extended to the payment and satisfaction of the decree in the suit in whatever manner it was sought to be effected.

5. The defendants' second contention is that in any case it would not have been lawful to tender the bonds, etc., to the minor's next friend because in so doing they would have been doing an unlawful act, unlawful, that is to say, by reason of Order 32, Rule 6, Code of Civil Procedure. That rule is:

A next friend or guardian for the suit shall not, without the leave of the Court, receive any money or other movable property on behalf of a minor either (a) by way of compromise before decree or order or (b) under a decree or order in favour of the minor,

and the second part of that rule is:

Where the next friend or guardian for the suit has not been appointed or declared by competent authority to be guardian of the property of the minor, the Court shall, if it grants him leave to receive the property require such security and give such directions, as will, in its opinion, sufficiently protect the property from waste and ensure its proper application.

6. Learned Counsel for the defendants points out that, though in the compromise it was provided that the bonds should be handed over to Muthayi Achi direct, it would have been unlawful for her to receive them since first of all she could not do so without the leave of the Court and secondly the leave of the Court could not be

granted without first calling upon her to furnish security. We are informed that she is not the guardian of the property of the minor within the meaning of the second part of Order 32, Rule 6.

7. We agree with both these contentions of learned Counsel and we are satisfied that the defendants substantially complied with the conditions laid down in the compromise for the payment of the third and fourth instalments. The object of the compromise so far as the plaintiffs were concerned was to secure prompt payment of the decree in the shape of money or easily realisable securities. The manner of the payment of the third and fourth instalments, namely, in the shape of Government bonds and postal certificates, was not in our opinion very material. It is true that the defendants could have complied more strictly with the terms of the compromise by bringing into Court, on the days on which they brought into Court the money, Government bonds and postal securities purchased in the name of the minor, but that, in our opinion, is the full measure of the default committed by the defendants and we do not regard it as a material breach of the terms of the compromise. There is ample authority for the position that when money becomes payable under the compromise decree on a day when the Court is closed it is not a breach of the compromise to pay the money into Court on the first day when the Court reopens. See the case reported in *Sankaran Unni v. Raman* (1924) 48 M.L.J. 596.

8. We are not inclined to accept the argument of the learned Counsel for the respondent that the injunction of the Pudukotta Chief Court could have been and should have been disobeyed by the defendants, nor are we impressed with his argument that in this case there was no necessity for the second plaintiff's next friend to get the leave of the Court to draw out or to receive the money or the bonds which had to be paid under the compromise. This last argument is based on the fact that the Court sanctioned the compromise holding it beneficial to the minor. Such a sanction however has nothing at all to do with the provisions of Order 32, Rule 6. When a decree provides that the payment shall be made to the plaintiff's next friend it must be understood as meaning that the payment shall be made under the provisions of the Code and that the next friend must apply to the Court to receive the money and, if not a statutory guardian, must furnish the

requisite security. Order 32, Rule 6 is imperative on this point. Again it is obvious that the next friend at the time of payment of the money need not be the same person who was the next friend when the compromise decree was sanctioned. It is necessary therefore that the Court sanctioning the receipt of money on behalf of the minor should apply its mind to circumstances as they exist at the time of the receipt and not as they existed at the time when the decree was passed.

9. In the course of the very interesting argument which we have heard in this case, learned Counsel for the appellant has pointed out that apart from the two main considerations on which he has based his appeal the defendants were fully justified in acting as they did on the analogy of the terms of Section 56 of the Indian Contract Act. Section 56 is:

An agreement to do an act impossible in itself is void. A contract to do an act which, after the contract is made, becomes impossible, or, by reason of some event which the promisor could not prevent, unlawful, becomes void, when the act becomes impossible or unlawful.

10. Here the compromise included certain lawful acts, but in respect of the payment of the third and fourth instalments it included acts which were unlawful, namely, making the payment direct, out of Court, to the second plaintiff's next friend. That part of the contract by way of analogy to Section 56, the defendants were entitled to ignore as being unlawful and therefore void. In the result we allow these appeals with costs throughout here and in the Court below and direct that satisfaction be entered of the third instalment and of the fourth instalment and that the decree be recorded as fully satisfied.