

Sarajubala Devi and ors. Vs. Obaidulla

Sarajubala Devi and ors. Vs. Obaidulla

SooperKanoon Citation : sooperkanoon.com/855816

Court : Kolkata

Decided On : Feb-10-1931

Reported in : AIR1932Cal137

Appellant : Sarajubala Devi and ors.

Respondent : Obaidulla

Judgement :

Mukerji, J.

1. This is an appeal by the plaintiffs from a decree disposing of their suit in accordance with a compromise.
2. The plaintiffs are disqualified proprietors and the suit was instituted by them through the Manager of the Court of Wards as their next friend. The suit was for declaration of title to and recovery of possession of certain lands on the allegation that they formed part of the plaintiff's estate. The defendants, amongst other pleas that they took, claimed the lands as appertaining to their own estate. A commissioner was deputed to hold a local investigation. After the report and map of the commissioner were submitted, there was a talk of compromise between the plaintiffs and defendant 1, the other defendants not being really interested in the suit, the terms of which were that, so far as the suit lands were concerned, they would be divided between the parties in accordance with the that line, and that certain other char lands, which had newly reformed, and of which neither party had

yet taken possession would be divided half and half between the parties. The terms of the compromise having been settled between the plaintiffs' law superintendent and the defendant's pleader, the suit was adjourned from time to time on joint applications of both the parties from January 1927 till 24th May 1927. On the last mentioned date, defendant 1 filed a petition under Order 23, Rule 3, Civil P.C., together with a draft petition of compromise, purporting to have been drawn up as a joint petition on behalf of the plaintiffs and defendant 1. On this application being put in, summons was issued on the Collector and the Manager of the Court of Wards to produce certain documents. On those being produced and marked as exhibits on the admission of the parties, the Subordinate Judge recorded the compromise and disposed of the suit in accordance therewith.

3. So far as the recording of the compromise is concerned, the appellants' case in the Court below was that the compromise could not be given effect to as it had not received the sanction of the Commissioner. Their case was that the terms were submitted to the Legal Remembrancer, who approved of them with some slight variations, but as it then transpired that the negotiations had proceeded on the erroneous assumption that the newly reformed char lands, which were outside the scope of the suit, were not in the possession of either party, whereas as a matter of fact these lands were in the possession of the plaintiffs, the Government Pleader, who was appearing on behalf of the plaintiffs, made a report about the matter to the Commissioner, and on that the Commissioner wrote, in reply, that the compromise might be concluded, so far as the suit lands only are concerned, if such a compromise was accepted by defendant 1.

4. The Subordinate Judge was not inclined to believe that the plaintiffs or their men were not aware of the true facts concerning the newly reformed char lands. He held further, upon a consideration of certain rules, to be found in the Bengal Wards' Manual 1919, and to which reference will presently be made, that, although the Commissioner and the Collector are the sanctioning authorities, they are bound to act under the advice of the Legal Remembrancer and cannot act contrary thereto and so the Legal Remembrancer is the sanctioning authority. He held also that, inasmuch as the Legal Remembrancer had sanctioned the compromise, and the Commissioner, in forwarding the compromise to him for his sanction, must be

regarded as having recommended its approval, it should be held that there was a valid sanction to the compromise. His judgment as regards this matter runs thus:

Section 301, Ch. 7, p. 215 of the Bengal Wards' Manual enjoins that the Commissioner and Collector are the sanctioning authorities, but must act under the advice or the Legal Remembrancer. They cannot act contrary to the advice of the Legal Remembrancer. In the present case the Legal Remembrancer has sanctioned. It must also be observed that the Commissioner approved and therefore sent the compromise petition to the Legal Remembrancer. Rules 27 and 28, Ch. 1, App. 7, p. 360 of the said Manual enjoin that the Commissioner cannot send the papers to the Legal Remembrancer without recommendation. It must be held therefore that the Commissioner recommended. The Legal Remembrancer is the sanctioning authority. In his letter, Ex. 2, the Commissioner states that the compromise may be concluded as far as the suit lands are concerned, and he refers to the letter of the Government Pleader. The Commissioner does not say that he cannot compromise. Regard being had to the facts and circumstances stated above, it must be held that the compromise is lawful and is to be recorded under Order 23, Rule 3.

5. Now, on the question whether the plaintiffs or their men had in fact proceeded under a misapprehension as regards the possession of the newly reformed char no evidence appears to have been taken, and it is impossible either to agree with or dissent from the finding of the Subordinate Judge which is against the appellants, But the question, in my view, is immaterial; because, in my opinion, the compromise had not received the sanction of the Commissioner and was therefore not valid. It is not disputed that under the provisions of the Court of Wards Act (Bengal Act 9 of 1879), especially the provisions contained in Sections 18, 51 and 60 of the Act, the compromise of a suit by a disqualified proprietor to be valid would require the sanction of the Court as defined in that Act. Section 3 of the Act says:

The 'Court' means the Court of Wards; or, when the Court of Wards has delegated any of its powers to a Commissioner or Collector or any other person, it means, in respect of such powers, the Commissioner or Collector or person to whom they

are delegated.

6. Section 5 enacts that the Board of, Revenue shall be the Court of Wards for the territories to which the Act extends. Section 70 authorizes the 'Court' to frame rules, consistent with the Act, for the better fulfilment of the purposes of the Act. Under the rules so framed estates are divided into three classes, and in view of the class to which the present estate appertains, the powers exercisable under Section 18 of the Act, namely the power of directing the doing generally of all things most for the benefit of the property and advantage of the ward, have been vested in the Commissioner: vide Bengal Wards Manual 1919, pp. 99 and 115.

7. Rules 27 and 28 at p. 360 of the [Manual, on which the Subordinate Judge has relied, are rules for the conduct of civil suits instituted by Government; as the heading of the chapter, in which they are contained, itself shows. They are rules of procedure regulating the conduct of the officers inter se and are not to be regarded as affecting the rights of third parties for whose guidance they are not meant. Besides, these two rules were previously contained in Oh. 2 of the Bengal Practice and Procedure Manual 1918, and were incorporated and reproduced in App. 7 of the Bengal Wards Manual 1919, under the authority of Rule 301 thereof (vide p. 215), which runs in these words:

The civil suit rules contained in Oh. 2 of the Bengal Practice and Procedure Manual, 1918 (reproduced in App. 7), apply generally to all cases connected with the Court of Wards. It must be remembered however that in respect of wards' estates, the Commissioner and the Collector are the sanctioning authorities, but must act under the advice of the Legal Remembrancer. The power to sanction the institution, defence or compromise of suits * * * rests with the Court of Wards and officers to whom it has delegated its powers.

8. In the present case, all that the respondent was able to prove was that the Legal Remembrancer had approved of the compromise, subject to some slight variations, and that both the parties, on the assumption that the Commissioner either had sanctioned or would sanction it, had proceeded with the matter up to a certain point, But it has not been proved that the Commissioner had, in fact, accorded his sanction to the proposed compromise,

9. In my judgment therefore the Subordinate Judge was wrong in recording the compromise and disposing of the suit on its terms. The appeal therefore should be allowed and the decree appealed from being set aside it should be ordered that the recording of the compromise be refused and the plaintiffs be allowed to proceed with the suit.

10. The appellants are entitled to their costs of the appeal. Hearing-fee, ten gold mohurs.

11. The connected application is not pressed and is dismissed without costs.

Rankin, C.J.

12. I agree.

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