

PRIVY COUNCIL.

P.C.^o
1921

April 19.

GOBINDA CHANDRA PAL (A LUNATIC)
AND OTHERS

v.

KAILASH CHANDRA PAL AND OTHERS.

[ON APPEAL FROM THE HIGH COURT AT CALCUTTA].

*Practice—Judicial Committee—Compromise of Appeal—Parties not sui
juris—Certificate of High Court.*

When a person not *sui juris* is a party to an appeal to His Majesty in Council and, an agreement by way of compromise having been made, it is desired to obtain leave to withdraw the appeal, the regular and usual course is to obtain a certificate from the High Court from which the appeal is preferred that the agreement is for the benefit of that party. It is only in rare cases that the Judicial Committee will itself make the necessary inquiries and grant leave without a certificate, as was done in *Sakinbai v. Shri-ni-bai* (1).

PETITION.

The appellants in the above-mentioned appeal from the High Court at Calcutta petitioned the Judicial Committee for leave to withdraw the appeal upon the terms of an agreement by way of compromise. The appellants included a lunatic and a minor, and another minor was one of the respondents; the lunatic appeared by his next friend, and the minors were duly represented by guardians *ad litem*.

The proceedings out of which the appeal arose were taken by the appellants in execution of a decree which they had obtained against the respondents in

^o *Present* : LORD BUCKMASTER, LORD DUNEDIN, LORD SHAW and SIR JOHN EDGE.

1906 upon a bond hypothecating certain properties to secure a sum of Rs. 25,000. The respondents raised objections under Order XXXIV, rr. 14, 15, to the execution. The trial Judge held that the objections were valid, and that the proper remedy was by a suit; his decision was affirmed on an appeal to the High Court.

The present appeal was preferred to His Majesty in Council.

The parties, or their representatives in the litigation, having entered into an agreement by way of compromise, petitioned the High Court for a certificate that the compromise had been arrived at and that it was for the benefit of the lunatic and the minors.

The learned Judges in delivering their judgment on April 7, 1919, said: "The learned vakils, who appeared for the lunatic decree-holder and the minor judgment-debtor respectively, expressed their opinion that the compromise was for the benefit of their clients, but we think that it is a matter in which we should not express any opinion; and that it is for the Judicial Committee, before whom the appeal now is, to decide this matter. We accordingly direct that the petition be sent as a supplement to the record to the Registrar of the Privy Council."

Dube, for the appellants (petitioners).

E. B. Raikes, for the respondents.

[Reference was made to *Sakinbai v. Shri-ni-bai*(1) and footnote thereto.]

The judgment of their Lordships was delivered by LORD BUCKMASTER. Their Lordships are unable to entertain this petition and regret that a procedure should have been adopted by the High Court which

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will delay the ultimate judgment and increase the expense. In truth, their Lordships are not in a position to decide whether the terms of compromise which they are asked to sanction are beneficial to the parties who are under a disability, nor can counsel who appeared before them give them the requisite assurance that they have been able to investigate all material matters, and that the Board can safely act in making the desired order. All such questions are essentially and necessarily the proper subject for consideration of the Courts in India, who are in a position to institute the inquiries, to ask the questions, and to obtain the information which must always be required before sanctioning proceedings on behalf of people who are unable to assent for themselves. In rare cases it may be possible that this could be done here, and in their Lordships' desire to avoid the multiplication or prolongation of proceedings, they may occasionally accept the burden, as was done in the case of *Sakinbai v. Shri-ni-bai* (1), but this is not the regular and usual course, and in this case they are unable to adopt it. In all cases where it is desired to bind persons under disability by a compromise, it is of the utmost importance that there should be a clear expression of opinion by the proper Court in India that such compromise is a beneficial one for those persons.

The petition must stand over until the proper certificate has been obtained from the High Court.

A. M. T.

Solicitors for the appellants: *Birrow, Rogers & Nevill*.

Solicitors for the respondents: *T. L. Wilson & Co.*

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