

## APPELLATE CIVIL.

Before Rankin C. J. and Mukerji J.

SARAJUBALA DEBI

v.

OBAIDULLA.\*

1931

Feb. 3, 10.

*Court of Wards—Suit by disqualified proprietor—Compromise of suit—Commissioner's sanction of such compromise—Court of Wards Act (Beng. IX of 1879), ss. 3, 5, 18, 51, 60, 70—Bengal Wards' Manual (1919), Chap. I, App. VII, rr. 27, 28—Code of Civil Procedure (Act V of 1908), O. XXIII, r. 3—Bengal Practice and Procedure Manual (1918), Chap. II.*

Where in a suit, instituted by certain disqualified proprietors through the Manager of the Court of Wards as their next friend, for recovery of possession of certain lands, there was a proposal for compromise in the following terms, that the suit lands were to be divided between the plaintiff and the defendant in accordance with the *thak* line and also that certain other *chur* land which had formed were to be divided half and half between the parties, and the Legal Remembrancer had approved the compromise subject to some slight variation, but the Commissioner of the Division, on further materials, ordered that the compromise might be concluded as regards the suit lands only,

and the compromise as approved by the Legal Remembrancer was sought to be put in,

*held* that the compromise was invalid, inasmuch as the Commissioner, who was the sanctioning authority in the matter, had not accorded his sanction thereto.

*Held*, also, that the Bengal Wards' Manual, 1919, Appendix, rules 27 and 28, are rules of procedure regulating the conduct of the officers *inter se* and are not to be regarded as affecting the rights of the parties.

APPEAL by the plaintiffs.

The facts of the case appear sufficiently from the judgment.

*Saratchandra Basak*, Senior Government Pleader, *Nasim Ali*, Assistant Government Pleader, and *Kiranmohan Sarkar* for the appellants.

*Rupendrakumar Mitra* and *Kanailal Saha* for the respondents.

*Cur. adv. vult.*

\*Appeal from Original Decree, No. 214 of 1928, against the decree of Narayanchandra Ghosh, Subordinate Judge of Dacca, dated May 31, 1928.

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MUKERJI J. This is an appeal by the plaintiffs from a decree disposing of their suit in accordance with a compromise.

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 plaintiffs' 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 the defendant No. 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 *thák* 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 the 24th May, 1927. On the last mentioned date, the defendant No. 1 filed a petition under Order XXIII, rule 3 of the Code of Civil Procedure, together with a draft petition of compromise, purporting to have been drawn up as a joint petition on behalf of the plaintiffs and the defendant No. 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 these 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.

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 the defendant No. 1.

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, Chapter VII, p. 215 of the Bengal “Wards’ Manual enjoins that the Commissioner and “Collector are the sanctioning authorities, but must “act under the advice of 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

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“observed that the Commissioner approved and, therefore, sent the compromise petition to the Legal Remembrancer. Rules 27 and 28, Chapter I, Appendix VII, 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 XXIII, rule 3.”

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 IX 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.” 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 property and advantage of the Ward, have been vested in the Commissioner (*vide* Bengal Wards' Manual, 1919, pages 99 and 115).

Rules 27 and 28 at page 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 Chapter II of the Bengal Practice and Procedure Manual, 1918, and were incorporated and reproduced in Appendix VII of the Bengal Wards Manual, 1919, under the authority of rule 301 thereof (*vide* page 215), which runs in these words:—

"The Civil Suit Rules contained in Chapter II of "the Bengal Practice and Procedure Manual, 1918 "(reproduced in Appendix VII), 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."

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

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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.

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.

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

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

RANKIN C. J. I agree.

*Appeal allowed.*

O. U. A.