APPELLATE CIVIL.

Before Edgley J.

1936

Aug. 21.

BARADA PRASAD SHUKUL

v.

SAHAN LAL BOID.*

Guardian—Appointment of guardian-at-litem without notice, if legal—Compromise by minor, when legal—Code of Civil Procedure (Act V of 1908), O. XXXII, rr. 3, 7.

The main object of O. XXXII, r. 3 of the Code of Civil Procedure is to insure that minor defendants are adequately represented in suits which may be instituted against them. If, in the circumstances of a case, it is clearly in the interest of a minor defendant that a person applying to be appointed as guardian of such minor should be appointed forthwith without issuing the notices upon the minor or upon the natural guardian, to which reference is made in O. XXXII, r. 3 (*4*) of the Code, it may be held that failure to serve such notice would merely amount to an irregularity.

Tirumalacharyulu v. *Ammisetti Venkiah* (1) and *Sukha* v. *Lachmi Narain* (2) referred to.

It is the duty of the Court to see that the interests of minors are adequately protected. When a compromise is effected, to which a minor is a party, it is of considerable importance that the compromise is really in the interest of the minor. In ordinary circumstances when the Court records an order to the effect that a compromise has been allowed, it may be assumed, unless there are clear indications to the contrary, that the Court has exercised its judicial discretion in dealing with the matter. In cases, however, in which the circumstances are peculiar or suspicious a heavy duty lies upon the Court to ascertain with care the terms of compromise and the circumstances connected therewith in order that the conscience of the Court may be satisfied on the point that the compromise is really for the minor's benefit.

In a case, where, in view of the peculiar circumstances relating to the appointment of the guardian and the compromise, the Judge's order is not sufficient to show that he applied his mind judicially to the question as to the minor's benefit, it cannot be held that there has been sufficient compliance with the principles underlying O. XXXII, r. 7.

*Appeal from Appellate Decree, No. 431 of 1936, against the decree of A. F. M. Rahman, District Judge of Rajshahi, dated Nov. 26, 1935, reversing the decree of Sailesh Chandra Banerji, Munsif of Boalia, dated Feb. 28, 1935.

(1) [1924] A. I. R. (Mad.) 763. (2) [1928] A. I. R. (All.) 621.

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Manohar Lal v. *Jadunath Singh* (1); *Midnapore Zemindari Co. Ltd.* v. *Gobinda Mahto* (2); *Suresh Chandra Saha Chowdhury* v. *Jogendra Nath Saha Chowdhury* (3); *Gobindasami Naidu* v. *Alagirisami Naidu* (4) and other cases discussed.

APPEAL FROM APPELLATE DECREE by the plaintiff.

The material facts of the case and arguments in the appeal appear fully in the judgment.

Bijay Kumar Bhattacharjya, *Beereshwar Bagchi* and *Phaneendra Kumar Sanyal* for the appellant.

Braja Lal Chakrabarti, *Gunada Charan Sen* and *Radhika Ranjan Guha* for the respondents.

EDGLEY J. In the suit out of which this appeal arises, the plaintiff, Barada Prasad Shukul, sued the defendants for a declaration to the effect that a decree obtained by them against the plaintiff and his brother Kamada Prasad Shukul was fraudulent and inoperative against him, because it had been obtained in contravention of certain provisions of the Civil Procedure Code which have been enacted for the protection of minors. It appears that on September 1, 1926, the defendants instituted a suit (No. 141 of 1926) against the plaintiff and his brother for the recovery of the sum of Rs. 9,779-4-9, which represented a debt which had been incurred by the plaintiff's father on a *hâtchitâ*. The plaintiff was a minor at the time when the suit in question was instituted and, on December 20, 1926, a pleader was appointed to act as his guardian in the suit. This pleader does not appear to have done anything in his capacity as guardian beyond submitting his final reports and, on March 4, 1927, it appears that the plaintiff's uncle, Raghu Nath Shukul, applied to be appointed as guardian-*ad-litem* of the minor plaintiff. He was appointed as such by an

(1) (1906) I. L. R. 28 All. 585; L. R. 33 I. A. 128.
(2) (1907) 8 C. L. J. 31.
(3) (1927) 46 C. L. J. 441.
(4) (1905) I. L. R. 29 Mad. 104.

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order of the Subordinate Judge passed on the day on which the application was filed and the pleader guardian was discharged. On the same day, namely, on March 4, 1927, Raghu Nath Shukul filed a petition of compromise and was allowed to compromise the suit No. 141 of 1926 on behalf of the plaintiff. On March 5, 1927, a decree was prepared according to the terms of the petition of compromise which had been filed by Raghu Nath Shukul. On February 2, 1934, a suit was filed by the plaintiff Barada Shukul, who was still a minor, for a declaration that the compromise which was effected on March 4, 1927, was fraudulent and that this compromise was not binding on him, because it contravened certain provisions contained in O. XXXII of the Code of Civil Procedure.

The case for the defendants was to the effect that the compromise was binding, that the plaintiff was duly represented in suit No. 141 of 1926, and that the case was compromised with the permission of the Court as required by O. XXXII, r. 7 of the Code of Civil Procedure. The learned Munsif held that the decree in suit No. 141 of 1926 should be set aside because the compromise had been obtained in contravention of the express terms of O. XXXII, r. 7 of the Code of Civil Procedure. The lower appellate Court reversed the decision of the learned Munsif and held that the decree was operative.

The first point urged on behalf of the plaintiff appellant is that he was not properly represented in suit No. 141 of 1926 owing to the fact that the provisions of O. XXXII, r. 3 had not been fulfilled. With regard to this matter it appears that, from December 20, 1926 until March 4, 1927, the plaintiff was properly represented in the suit by a pleader guardian and it has not been seriously contended that, as regards his representation before March 4, 1927, there was any illegality or irregularity. It appears, however, that, on March 4,

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1927, the plaintiff's uncle Raghu Nath Shukul suddenly appeared before the Court and asked that he might be appointed as the guardian of the minor Barada Prasad Shukul. The application filed by Raghu Nath Shukul is not forthcoming and it appears that it has been destroyed. It is, however, admitted that no notice to the minor or the natural guardian of the minor was issued as required by O. XXXII, r. 3 (*4*) of the Civil Procedure Code and without issuing these notices, the Court passed an order forthwith to the effect that Raghu Nath Shukul should be appointed guardian of the minor in place of the Court guardian, Shisir Kumar Ghosh.

The main object of O. XXXII, r. 3 of the Code of Civil Procedure is to ensure that minor defendants are adequately represented in suits which may be instituted against them. It may well be that circumstances may arise in connection with a particular suit which would be sufficient to satisfy the Court that a person who had applied to be appointed as guardian of a minor defendant was really a proper person to be the minor's guardian for the suit within the meaning of O. XXXII, r.3 (*1*) of the Code and, if it was clearly in the interest of the minor that such person should be appointed forthwith without issuing the notices upon the minor or upon the natural guardian, to which reference is made in O. XXXII, r. 3(*4*) of the Code, it might be held that failure to serve such notices would merely amount to an irregularity. In this connection, it has been held by the Madras High Court in the case of *Tirumalacharyulu* v. *Ammisetti Venkiah* (1), that

> no irregularity by way of an omission to send a notice as required by O. XXXII, r. 3 shall operate to render void the presumed representation of the minors in a suit, unless such an omission has in fact prejudiced their defence, and such prejudice is not a matter of assumption or presumption but of proof.

Similarly, it was held by the Allahabad High Court in the case of *Sukha* v. *Lachmi Narain* (2)

(1) [1924] A. I. R. (Mad.) 763. (2) [1928] A. I. R. (All.) 621.

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that the appointment of a guardian without issuing notices to all the parties concerned merely amounts to an irregularity and that the decree should not be set aside on this account by means of a separate suit except upon proof of fraud or collusion on the part of the guardian.

In view of the principles laid down in the cases cited above, it would appear that under the order, dated March 4, 1927, which was passed in Suit No. 141 of 1926, the minor Barada Shukul was formally represented in the suit, although it would appear that his representation had been obtained by means of a procedure which was distinctly irregular. This being the case, it was certainly incumbent upon the learned Subordinate Judge to take careful steps to satisfy himself that any compromise which might be proposed by Raghu Nath Shukul on behalf of the minor defendant was really in the interest of the minor and it was doubly incumbent upon him to do this having regard to the very unusual circumstances in which Raghu Nath Shukul was appointed as the guardian of the minor after the suit had been pending for several months and also in view of the fact that, on the very day on which he was appointed to act as the minor's guardian, he filed a petition on behalf of the minor asking that the suit might be compromised. These circumstances would appear to indicate that Raghu Nath Shukul was appointed as guardian of the minor not mainly for the purpose of safeguarding the minor's interest in the suit, but primarily for the purpose effecting a compromise.

It now remains to be seen whether the compromise should be set aside on the ground that the order of the learned Subordinate Judge, dated March 4, 1927, under which this compromise was permitted fails to comply with the requirements of O. XXXII, r. 7 of the Code of Civil Procedure, or with the principles of law which have been laid down with reference to compromise decrees.

The leading case with regard to the manner in which a compromise on behalf of a minor should be recorded appear to be the case of *Manohar Lal* v. *Jadunath Singh* (1). In that case Lord Macnaghten stated that—

> There ought to be evidence that the attention of the Court was directly called to the fact that a minor was a party to the compromise, and it ought to be shown, by an order on petition, or in some way not open to doubt, that the leave of the Court was obtained.

Further, in the case of the *Midnapore Zemindari Co. Ltd.* v. *Gobinda Mahto* (2), it appears that there was no formal order on the record appointing a minor's mother to act as his guardian. In due course the mother effected a compromise on behalf of the minor but there was no decree which stated in so many terms that the Court had considered the matter and had found that the compromise was for the benefit of the minors. In that case Woodroffe J. said—

> I think it must be assumed, in the absence of any evidence to the contrary, that the Court did its duty in the matter and was satisfied before giving permission, that the compromise was for the benefit of the minors concerned.

This observation was cited with approval in the subsequent case of *Krishna Pershad Roy* v. *Romes Chunder Mandol* (3). The principle laid down in the *Midnapore Zemindari Co., Ltd.* v. *Gobinda Mahto* (2) was also followed by Mr. Justice Shadi Lal in the case of *Janki* v. *Naunilal Lal* (4). Further, in the case of *Subramanian Chettiar* v. *Raja Rajeswara Dorai* (5), their Lordships of the Privy Council pointed out that the provisions making it necessary to obtain the leave of the Court was of great importance to protect the interests of a minor and they quoted with approval the remarks of Lord Macnaghten in *Manohar Lal* v. *Jadunath Singh* (1), to which I have already referred.

(1) (1906) I. L. R. 28 All. 585 ; L. R. 33 I. A. 128.
(2) (1907) 8 C. L. J. 31, 33.
(3) (1908) 8 C. L. J. 274.
(4) [1917] A. I. R. (Lah.) 113.
(5) (1915) I. L. R. 39 Mad. 115.

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The principles which have been laid down in the cases cited above seem, therefore, to be that it is the duty of the Court to see that the interests of minors are adequately protected, that when a compromise is effected to which a minor is a party, it is of considerable importance that the conscience of the Court should be satisfied that the compromise is really in the interest of the minor and that, in ordinary circumstances, when the Court records an order to the effect that a compromise has been allowed, it may be assumed, unless there are clear indications to the contrary, that the Court has exercised its judicial discretion in dealing with the matter. In cases, however, in which the circumstances are peculiar or suspicious as they appear to have been in the case with reference to which the present appeal arises, it is clear that a heavy duty lies upon the Court to scrutinise with care the terms of the proposed compromise and the circumstances connected therewith in order that the conscience of the Court may be satisfied on the point that the compromise is really for the minor's benefit. This appears to have been the view taken by B. B. Ghose J. in the case of *Suresh Chandra Saha Chowdhury* v. *Jogendra Nath Saha Chowdhury* (1). In that particular case the Court appears to have allowed a compromise to be made on behalf of certain minor plaintiffs, but no order was recorded to the effect that the compromise was really for the benefit of the minors. The circumstances were also peculiar, because it would appear that, with reference to the compromise which it was proposed to effect, an application had to be made to the District Judge in order that the guardian might obtain permission to effect a lease in respect of some property and, although application for the sanction of the District Judge had been made, no such sanction had been obtained. This being the case, B. B. Ghose J. pointed out:—

> Under this circumstance the Subordinate Judge should have carefully considered the question whether the proposed compromise was for the benefit of the infants.

(1) (1927) 46 C. L. J. 441, 447, 448.

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The learned Judge then referred to the case of *Kalavati* v. *Chedi Lal* (1), in which it had been held that the Court should record the fact that an application had been made to it, that the terms of the proposed agreement of compromise were considered by the Court, and that, having regard to the interests of the minors, the Court granted leave to the making of the agreement of compromise. He also referred to the case of *Govindasami Naidu* v. *Alagirisami Naidu* (2), in which the learned Judges stated :—

> We wish to point out that in sanctioning a compromise on behalf of an infant the order granting the sanction should in terms state that the question whether the compromise was for the benefit of the infant was considered.

B. B. Ghose J. then refers to the practice followed in the High Court under which the Court determines judicially on the materials placed before it whether a compromise would be for the benefit of the infant. His Lordship also points out that it is important that there should be a guarantee that the interest of the minor had been properly considered. In this connection he says :—

> The spirit of the rule should be observed and not the mere form. In my opinion, therefore, the provisions of O. XXXII, r. 7, sub-rule (*1*) were not properly complied with in this case.

In the case with reference to which the present appeal arises, the order of the learned Subordinate Judge under which the compromise was accepted is as follows :—

> 4-3-27. The guardian of the minor defendant No. 2 is permitted to compromise the suit on behalf of the said minor defendant as prayed for.

Having regard to the principles which have been laid down in the cases cited above and also in view of the peculiar circumstances in which Raghu Nath Shukul was appointed as guardian of the minor Barada Prasad Shukul, I do not think it can be said

(1) (1895) I. L. R. 17 All. 531. (2) (1905) I. L. R. 29 Mad. 104, 106.

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that the order of the learned Subordinate Judge quoted above is sufficient to show that he applied his mind judicially to the question as to whether or not the compromise was really for the benefit of the minor and, this being the case, and I do not think that there has been sufficient compliance with the principles underlying O. XXXII, r. 7 of the Code of Civil Procedure.

This being the case, I am of opinion that the plaintiff is entitled to succeed in this appeal. The appeal will accordingly be allowed. The judgment and decree of the lower appellate Court will be set aside and those of the Court of first instance will be restored with costs in this Court as well as in the lower appellate Court.

The cross-objection which has been filed in this case has not been pressed and it is, therefore, dismissed with costs.

Having regard to the order passed above, the plaintiffs in suit No. 141 of 1926 will now be at liberty to proceed with that suit from the point at which Raghu Nath Shukul was appointed guardian of the minor, Barada Prasad Shukul.

Leave to appeal under s. 15 of the Letters Patent is refused.

Appeal allowed.

A. C. R. C.