

(b) In (1883) 7 Bom. 459, the period of limitation for application for re-execution was held affected by the new Act.

See (1888) 12 Bom. 449.

See also (1912) M. W. N. 652 under the Madras Estates Land Act and also (1912) 12 M. L. T. 437.

For an exhaustive treatise on the subject See Ch. XI., S. ii of " Interpretation of Statutes " by Ghose and Ghose.]

[103] APPELLATE CIVIL.

The 14th January, 1881.

PRESENT :

SIR CHARLES A. TURNER, KT., CHIEF JUSTICE, AND MR. JUSTICE INNES.

Rajagopal Takkaya Naiker and two others, Minors, by their Guardian
Subramanya Ayyar.....Petitioners.

versus

Muttupalem Chetti & another.....Counter-Petitioners.*

Compromise of suit on behalf of minor by next friend—Leave of Court must be actually, not impliedly, given—Decree in terms of compromise not sanctioned set aside.

The conditions of Section 462† of the Civil Procedure Code, requiring the sanction of the Court to compromises entered into by the guardian *ad litem* of an infant suitor, are not sufficiently complied with by the Court passing a decree in the terms of a compromise presented by the guardian *ad litem*.

A decree passed under such circumstances should be set aside.

IN Suit 469 of 1877 before the District Munsif of *Kulitalai*, the counter-petitioners sued the petitioners, three minor sons, upon a mortgage-deed executed by their deceased father. The suit was compromised on behalf of the minors by their mother, who was their guardian *ad litem* and who signed and presented to the Court a compromise on their behalf. A decree was passed in the terms of this compromise on 23rd January 1878.

On 8th April 1880 the minors by their mother presented a petition to the District Munsif of *Kulitalai*, under Section 249 of the Civil Procedure Code, objecting to the decree being executed against the minors' property on the ground that the sanction of the Court had not been obtained, under Section 462 of the Code, to the compromise, and that the minors' interests were prejudiced thereby.

This petition was rejected by the Munsif, and the Munsif's decision was confirmed by the District Judge, who considered that the sanction of the Court had been impliedly given when the compromise was embodied in the decree.

* C.M.P. 562 of 1880 against the decree of the District Munsif of *Kulitalai*, dated 23rd January 1878.

Next friend or guardian *ad litem* not to compromise without leave of Court.

† [Sec. 462:—No next friend or guardian for the suit shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor, with reference to the suit in which he acts as next friend or guardian.

Compromise without leave voidable.

Any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor.]

The minors by their next friend thereupon petitioned the High Court under Section 622 to set aside the decree which had been [104] given in accordance with the terms of the compromise and to appoint for them a guardian *ad litem*.

Mr. *Johnstone* and *C. G. Kuppusami Ayyar* for the Petitioners.

A. Ramachandrayyar for the Counter-Petitioners.

The Court (TURNER, C.J., and INNES, J.) delivered the following

Judgment :—The provisions of Section 462 of the *Civil Procedure Code* are intended to protect the interests of minors. They declare that no guardian *ad litem* shall enter into any compromise without the leave of the Court, and by implication require the Court to consider whether the proposed compromise should be sanctioned. The circumstance that the Court has passed a decree on the alleged compromise is not a substantial compliance with the provisions of Section 462.

When it is brought to the notice of the Court that the compromise has not received its sanction, the Court ought to set aside the decree.

We set aside the decree accordingly. The costs of this application will abide and follow the result of the new trial.

NOTES.

I. STATUTORY CHANGES—

The old Section 462 of the C. P. C. of 1882 has been substituted by Or. 32, R. 7, which runs thus :—

Or. 32, R. 7 :—(1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor.''

II. SANCTION MUST BE EXPRESS AND NOT IMPLIED FROM THE DECREE—

See (1883) 9 Cal. 810; (1906) 29 Mad. 104; (1906) 28 All. 528; (1902) 26 Bom. 109; (1901) 3 C. L. J. 119; (1911) 14 I. C. 6; (1912) 15 I. C. 161.

III. DECREE OF COURT WITHOUT SANCTION CAN BE SET ASIDE—

If the decree is passed on the minor without such sanction, it can be set aside at the instance of the minor by means of a review or by suit :—(1901) 3 C. L. J. 119; (1913) 25 M. L. J. 150 P. C.

IV. FATHER AS GUARDIAN FOR SUIT AND AS GUARDIAN OF MINOR SON CANNOT BIND THE SON WITHOUT SANCTION—

(1913) 25 M. L. J. 150 P. C.

V. WHEN FATHER OR MANAGING MEMBER IS NOT GUARDIAN OR NEXT FRIEND OF MINOR—

This question has been left open by the Privy Council in (1913) 25 M. L. J. 150 P. C.]