

APPELLATE CIVIL.

*Before Sir S. Subrahmania Ayyar, Officiating Chief Justice,
and Mr. Justice Sankaran Nair.*

1905.
September
6.
October 2.

GOVINDASAMINAIDU AND ANOTHER (PLAINTIFFS), APPELLANTS,

v.

ALAGIRISAMI NAIDU AND OTHERS (DEFENDANTS) RESPONDENTS.*

Compromise. Compromise presented but not decreed—Order to proceed with suit puts an end to such compromise—Procedure in sanctioning compromise on behalf of minors.

When a compromise had been presented but no decree had been passed in accordance with its terms, and the Court subsequently, at the instance of one of the parties, ordered the suit to be proceeded with on the issues framed before the compromise and on other issues, the compromise must be deemed to have been put an end to, and the Court cannot, at a subsequent stage, treat the compromise as subsisting and proceed to pass a decree upon it.

In sanctioning compromises on behalf of minors, the order should state in terms that the question whether the compromise was for the benefit of the minors was considered.

SUIT by the first plaintiff on behalf of himself and as guardian of his minor son, the second plaintiff, for partition of joint properties belonging to the plaintiffs and the first and second defendants; for an account, etc.

The facts necessary for this report are set out in the judgment.

Mr. C. Krishnan for appellants.

Mr. Joseph Satya Nadar for third and fourteenth respondents.

V. Krishnaswami Ayyar and *C. V. Krishnaswami Ayyar* for first and second respondents.

JUDGMENT.—We agree with the first of the contentions urged on behalf of the appellants—plaintiffs—that when the Subordinate Judge proceeded to pass an order on the compromise upholding it, it was not competent for him to do so having regard to what had happened in the suit between the presentation of the compromise and the said order upholding it. The application for leave to enter into the compromise on behalf of the minor, the second plaintiff, on the terms set forth in the compromise was made on the 9th January 1902 and sanction was granted on the same day.

* Appeal No. 3 of 1903, presented against the decree of M. R. Ry. B. Camaran Nair, Subordinate Judge of Tuticorin, in Original Suit No. 23 of 1901.

There was thus, no doubt, nothing to prevent the compromise being at once followed by a decree so far as the plaintiffs were concerned. But no decree according to the compromise was then passed. On the 7th February 1902, the second defendant, brother of the first plaintiff, who was entitled to a share under the compromise though he had not signed the compromise, presented a petition to the Court to set aside the order declaring him *ex parte* and to allow him to put in a written statement with reference to his claim. In this petition he urged that the compromise put in was not in accordance with the decision of the mediators who had settled the differences between the parties out of Court. The petition stood over until April when the Subordinate Judge held an enquiry into the matter, set aside the order declaring the second defendant *ex parte*, and directed the suit to be posted for trial on the *merits* with reference to the issues raised before the mediation took place and the compromise was entered into, as well as certain *additional* issues framed with reference to the written statement filed by the second defendant after he was allowed to put in his defence.

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This necessarily involved the view that the compromise sanctioned on behalf of the second plaintiff and entered into on behalf of both the plaintiffs was at an end, and upon this view both the parties proceeded until August when the first defendant got the second defendant to accept the compromise which he had refused to do before. But the first plaintiff was at this time unwilling to act upon the compromise on the ground that the existence of outstandings due to the family to the extent of Rs. 16,000 had been withheld from the knowledge of the mediators; that the terms of the compromise were consequently unfair; and that he was therefore not prepared to validate it by giving a fresh consent to its being accepted and acted upon. The Subordinate Judge however directed that a decree be drawn up in accordance with the compromise, proceeding on the assumption that it remained open to him at that stage to treat it as one subsisting between the parties thereto and requiring only a formal order of the Court for a decree in accordance therewith to be passed. In other words, he overlooked the effect of his previous proceedings which amounted to a rejection of the compromise as the basis of a decree. In this view it is not necessary to consider whether the Subordinate Judge should not have allowed the appellants an opportunity of proving their allegation that the compromise was obtained by wilful

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suppression of a material fact from the mediators and the plaintiffs by the first defendant, the managing member of the family.

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. The Court should also ascertain and record that in the opinion of the pleaders, if any, representing the infant, the compromise was one entered into in the interests of the minor and fit and proper to be sanctioned. See *Kalavati v. Chedi Lal*(1), *Virupakshappa v. Shidappa and Basappa*(2) and *In re Birchall, Wilson v. Birchall*(3).

The order passed in this case on the 9th January sanctioning the compromise does not satisfy these conditions.

We set aside the decree of the Subordinate Judge and remand the suit for disposal according to law. Costs will abide and follow the result.

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Before Mr. Justice Subrahmania Ayyar and Mr. Justice Benson.

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October 24,
25, 26,
30, 31.

CHIDAMBARAM CHETTIAR AND OTHERS (DEFENDANTS), NOS. 2, 4 AND 5 AND 59), APPELLANTS IN APPEAL SUIT No. 188 OF 1902 AND RESPONDENTS IN APPEAL SUIT No. 19 OF 1903.

v.

SRI RANGACHARIAR AND OTHERS (PLAINTIFFS), RESPONDENTS IN APPEAL SUIT No. 188 OF 1902 AND APPELLANTS IN APPEAL SUIT No. 19 OF 1903.*

Right of suit—Religious endowment suit concerning—Person interested as worshipper can be added as party.

Persons interested as worshippers in a public religious institution may be added as parties to a suit instituted by a trustee on behalf of the institution against third parties, if such joinder is considered by the Court as desirable in the interests of the trust.

Narayanasami Gurukkal v. Irulappa, (12 M.L.J., 355), followed.

(1) I.L.R., 17 All., 531. (2) J.L.R., 26 Bom., 109 at p. 115.

(3) L.R., 16 Ch.D. 41.

* Appeals Nos. 188 of 1902 and 19 of 1903, presented against the decree of R. D. Broadfoot, Esq., District Judge of South Arcot, in Original Suit No. 10 of 1899.