

1883 or a decree for ejectment, which would be operative under s. 52,  
 MUSYATULLA has been passed against him.  
 v. The decrees of the lower Courts will be set aside, and the  
 NOORZAHAN, suit dismissed with costs in all the Courts.

*Appeal dismissed.*

*Before Mr. Justice Prinsep and Mr. Justice O'Keefe.*

1883  
 March 2.

SHARAT CHUNDER GHOSE AND OTHERS (PLAINTIFFS) v. KARTIK  
 CHUNDER MITTER AND ANOTHER (DEFENDANTS).\*

*Suit by minor—Infant—Minor—Compromise of Suit—Leave of Court.*

Where a compromise of a suit is entered into on behalf of an infant defendant, the approval of the Court to such compromise must be express, and will not be inferred from the subsequent passing of a decree in terms of such compromise. Without such approval, the compromise will not bind the infant, and will be set aside at his instance.

*Rajagopal Takhtaya Naiker v. Subramanya Ayyar (1), cited and followed.*

THE facts of this case are as follows: Some time previously to the year 1860 one Raj Kristo Bose died, leaving him surviving one son, Khetter Nath Ghose, and one daughter, Modhumoti Dassee. Khetter Nath died in 1861, and was succeeded by his widow and heiress Showrobini, who died in 1875. The plaintiffs are the three sons of Modhumoti Dassee. On the 25th of November 1873 Showrobini executed a bond in favour of the defendant Kartik Chunder Mitter for Rs. 1,500, who, on the 10th of March 1877, filed a suit for the recovery of the amount of the bond and interest—in all, Rs. 2,388, against Modhumoti as guardian of the plaintiffs, who had succeeded to the estate of Khetter Nath on the death of Sowrobini in 1875. (Modhumoti, it should be mentioned, had been appointed guardian of the minors by the Judge of the District Court under the provisions of Act XL of 1858). On the 18th of March 1877, Modhumoti's pleader filed a deed of com-

\* Appeal from Appellate Decree No. 869 of 1882 against the decree of T. Smith, Esq., Judge of East Burdwan, dated the 1st March 1882, reversing the decree of Baboo Bhupetty Roy, Subordinate Judge of that District, dated the 27th December 1880.

promise, by which Modhumoti agreed to pay in full satisfaction of Kartik Chunder Mitter's claim a sum of Rs. 1,600, payable in three instalments, and a decree was passed in accordance with the terms of this deed. The present suit was filed by the plaintiffs to have it declared that that decree was not binding on the plaintiffs nor on the estate inherited by them from their uncle Khetter Nath.

On the merits the Subordinate Judge fixed the following issues : (1), whether the deed of compromise on which the decree was founded was filed *bonâ fide* on behalf of plaintiffs' mother and with her permission ; and, if so, whether it was for the benefit of the minors ; (2), whether Showrobini contracted the debt for the benefit of Khetter Nath's estate, and whether she was legally competent to do so ; (3), whether the act of Showrobini, who had a life interest, is binding on the reversioners the plaintiffs ; (4), whether the plaintiffs are entitled to the relief sought for, namely, a declaration to set aside the decree. The Subordinate Judge found all the issues in the plaintiffs' favour, and he decreed the suit with costs. On appeal the District Judge reversed the Subordinate Judge's finding on the first issue, and dismissed the suit, citing *Lekraj Roy v. Mahtab Chand* (1). The plaintiffs appealed to the High Court.

Baboo Bhowany Churn Dutt and Baboo Chunder Madhub Ghose for the appellants.

Baboo Tarruck Nath Sen and Baboo Rashbehary Ghose for the respondents.

The judgment of the Court (PRINSEP and O'KINEALY, JJ.) was delivered by

PRINSEP, J.—On the 10th of March 1877 Kartik Chunder Mitter brought a suit against the present plaintiffs, as represented by their mother and guardian Modhumoti Dasse, to recover a sum of money said to have been borrowed by Showrobini, a Hindu widow then in possession of the estate, which has since passed from her hands. Three days later, and before any proceedings had been taken on the plaint to that suit, in fact before even summonses had been issued, Modhumoti's pleader filed a petition

(1) 10 B. L. R., 85 : 14 Moore's L. A., 393.

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 SEARAT  
 CHUNDER  
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of *ekbaljamaah*, consenting to a decree in favor of Kartik Chunder for a portion of the amount sued for. A few days later a decree was passed in accordance with this petition. One of the three minor defendants in that case has now attained majority, and for himself, and also on behalf of his minor brothers, sues to get rid of the effect of that decree in consequence of its having been put into execution against him by the attachment of some of his property.

The District Judge on appeal has merely considered the manner in which the compromise was effected in which the decree was passed. On the facts, which have been stated, and also because he considered that the minors were sufficiently advised by their maternal uncle Brojendro Ghose and their relative Bishembur Bose, the District Judge has held that the decree was binding against them.

Whatever may have been the practice of our Courts regarding their duty in accepting compromises on behalf of minors in pending suits, and in embodying them in the terms of the decree, it is quite clear to us that since July 1871, that is to say, since the decision of the Privy Council in the case of *Abdul Ali v. Mozuffer Hossein Chowdhry* (1), the procedure of our Courts should have been guided by the rule laid down by their Lordships in that case. Their Lordships state that, "if there really had been an honest compromise made, the practice of the Court is quite plain as to how that compromise ought to have been carried out. It ought to have been carried out by proper deeds and filed in Court, particularly where infants were concerned, so as to have had the assent of the Court at the time instead of its being totally concealed from them." The rule laid down in that case has since been adopted by the Legislature in enacting s. 462 of the present Code of Civil Procedure. It has been laid down by the Madras High Court in *Rajagopal Takkaya Naiker v. Subramanya Ayyar* (2), that the approval of the Court of a compromise thus effected must be express, and cannot be inferred from the subsequent passing of a decree in accordance with the terms of the compromise. We agree with that judgment,

(1) 16 W. R., P. C., 22.

(2) I. L. R., 3 Mad., 103.

and in applying it to the present case we think that the decree of the 27th March 1877 is inoperative as against the plaintiffs in the present case. The parties consequently will be placed in the position that they occupied before that decree was passed, but with the consent of the pleader for the respondents, we think that the liability of the plaintiffs to the debt incurred by Showro-bini, which can be conveniently tried in the present suit on the second and third issues, should be so tried. These issues have been determined by the Court of first instance, and therefore it remains for the lower Appellate Court to come to a distinct finding on them. For this purpose we direct that the case be remanded to the lower Appellate Court for trial on its merits. We would add that, in the event of the debt being found binding on the present plaintiffs, they will be liable for the whole amount, and not merely for the amount stipulated on their behalf in the compromise.

Costs will abide the result.

*Case remanded.*

*Before Mr. Justice Prinsep and Mr. Justice O'Keenaly.*

BACHARAM MUNDUL (DEFENDANT) v. PEARY MOHUN  
BANERJEE (PLAINTIFF)\*

1882  
March 2.

*Onus probandi—Resumption, Suit for—Lakheraj—Rent-free lands—Land-lord and Tenant.*

In suits for the resumption of lands alleged by the defendant to be lakheraj, the burden of proof is in the first instance on the plaintiff to show that the lands are *mal*. The fact that the defendant is a tenant of the plaintiff's is a matter to be taken into consideration by the Court in determining whether, on the facts of the case, the plaintiff has made out a *prima facie* case; but unless the Court finds that the plaintiff has made out a *prima facie* case, judgment should be given for the defendant.

*Hurryhur Mukhopadhyaya v. Madhub Chunder Baboo* (1); *Akbar Ali v. Bhy Ea. Lall Jha* (2); and *Newaj Bundopadhyaya v. Kali Proshunno Ghose* (3), cited.

\* Appeal from Appellate Decree No. 708 of 1882, against the decree of Baboo Promotho Nath Mukerjee, Subordinate Judge of Burdwan, dated the 27th March 1882, reversing the decree of Baboo Chunder Coomar Dass, Munsiff of Boodhood, dated the 4th January 1881.

(1) 8 B. L. R., 566; 14 Moore's I. A., 153. (2) I. L. R., 6 Cal., 666.

(3) I. L. R., 6 Calc., 543.