APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Devadoss.

1927, February 2.

S. P. M. MUTHIAH CHETTIAR AND OTHERS (DEFENDANTS 1, 2 AND 4), APPELLANTS,

v.

MUTHU K. R. A. R. KARUPPAN CHETTI AND OTHERS (PLAINTIFFS), RESPONDENTS.*

Indian Contract Act (IX of 1872), Sec. 15—Coercion—Ratification—Agent for a term—Refusal to give up accounts, bonds, etc., at the end of his term to a new agent, unless release was given by principal—Release so given, whether voidable for coercion—Authority of counsel to bind clients by making statement ratifying release—Special authority, whether necessary—General authority, whether can be implied and sufficient.

An agent for a term, refused to hand over the account books, bonds, etc., of the business at the end of the term to a new agent sent in his place, unless the principal gave him a release from all liability in respect of his agency; such a release had to be and was given, and the new agent got the account books, bonds, etc., from him. As some of the mortgage bonds, relating to property in the foreign State of Johore, stood in the agent's name, a suit had to be brought, under the law of Johore, to get a transfer to the principal's name and was instituted in the Supreme Court of Straits Settlements; the defendant agreed not to contest the suit, on the plaintiffs' ratifying the original release. Counsel for the plaintiffs therein made a statement embodied in the order of that Court to the effect "that the said release was and is in full force and of full effect," and a consent order was passed by the Court transferring the bonds to the names of the plaintiffs. On a suit being instituted by the principals to set aside the release deed and for directing the defendant to render an account of his agency,

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Held, that the release deed was given by the plaintiffs under coercion of the defendant within the terms of section 15 of the Indian Contract Act, and was voidable at their instance;

but that there was a valid ratification of the release by the plaintiffs by reason of the statement made by the plaintiffs' counsel in their suit in the Supreme Court;

that counsel should, under the circumstances, be held to have been specially authorized to make the statement;

that, even if counsel was not specially authorized, the circumstances of the case fully justified the conclusion that he acted within his authority in making the statement;

and that, consequently, the plaintiffs were not entitled to set aside the release deed and call on the defendant to account.

Rules regarding competency of counsel to compromise suits, make admissions, or confess judgment, so as to bind their clients, discussed.

APPEAL against the decree of R. NARASIMHA AYYANGAR, Subordinate Judge of Sivaganga, in Original Suit No. 27 of 1924.

The material facts appear from the judgment.

C. V. Ananthakrishna Ayyar and *C. S. Rama Rao Sahib* for appellants.

A. Krishnaswami Ayyar for respondents.

JUDGMENT.

DEVADOSS, J.

DEVADOSS, J.—The plaintiffs are a firm of Nattukottai Chetties carrying on banking business in Singapur and other places. They allege in the plaint that they appointed the defendant as their agent to conduct business in Singapur for a period of three years and as his conduct was found not to be satisfactory they sent another agent after the expiry of the three years' period and wrote to the defendant to hand over the business with the account books, documents and cash on hand to the new agent, that the defendant refused to hand over charge of the business to the new agent until and unless the accounts between

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him and the plaintiffs were settled and the letter containing the terms of the agency written by him to the plaintiffs called the salary chit, was returned to him and a release deed was executed in his favour releasing him from all claims against him with reference to his agency, that as the defendant was obdurate and as the plaintiffs feared that they might suffer heavy loss by the stoppage of business they consented to authorize their new agent to give a release to him, that the defendant after getting the release deed and the return of the salary chit handed over the account books, vouchers and cash on hand to the new agent and that the release deed was obtained under coercion and is therefore voidable at their instance. They further allege that the defendant had improperly debited them with the loss sustained by him in his own private transactions in dollars and that he lent large sums of money without proper security and contrary to orders. The plaintiffs pray that the release deed be declared void as having been obtained under coercion and that the defendant be directed to render an account of the transactions during the period he was their agent. The defendant in his written statement denies that the release deed was obtained under coercion and avers that he acted honestly and diligently in his capacity as agent, that he did not wrongly debit the plaintiffs with his losses, that he did not improperly lend money to the customers and that the plaintiffs are estopped by their conduct from denying the validity of the release deed.

The preliminary issues were framed by the Subordinate Judge:—

(1) Whether the acquittance granted to the defendants was done under the circumstances detailed in the plaint and hence voidable; and are the plaintiffs entitled to call for an account of the defendants?

(2) Whether the allegations in paragraphs 29 and 30 of the written statement are true, and does it estop the plaintiffs from going behind the acquittance?

The Subordinate Judge held that the release deed was obtained from the plaintiffs' agent under coercion and that they did not ratify the release deed and directed an account to be taken. The defendant has preferred this appeal.

The first question for decision is whether Exhibit IV, the release deed, was obtained under coercion and as such voidable at the instance of the plaintiffs.

[Their Lordships then dealt with the evidence as to coercion and proceeded as follows:]

The question is, do the above facts make out that the defendant got the release, Exhibit IV, from the plaintiffs under circumstances which amount to coercion. He was in possession of the documents, account books and cash belonging to the plaintiffs. After he was asked to hand over charge to Adaikalavan Chetty he had no right to withhold from the plaintiffs' new agent their property. Adaikalavan Chetty remained there for about four months before he could get possession of the account books, etc., in order to carry on the business. The stoppage of the business was likely to cause heavy loss to the plaintiffs. Coercion is defined in section 15 of the Contract Act as "Committing or threatening to commit, any act forbidden by the Indian Penal Code, or the unlawful detaining or threatening to detain, any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement." The defendant, having withheld from the plaintiffs their property which they asked him to hand over to Adaikalavan Chetty, has brought himself within section 15 of the Contract Act, and the release deed he obtained under the circumstances is voidable at the

instance of the plaintiffs. We therefore agree with the lower Court in finding the first issue against the defendant.

Issue II.—Though the defendant in paragraph 31 of his written statement used the word estoppel, what is pleaded is not an estoppel in the ordinary sense, but ratification of the arrangement under Exhibit IV. No doubt, even a ratification may amount to an estoppel; but it would be more correct to put the question in the following form: whether the plaintiffs ratified the arrangement under Exhibit IV and if so, whether they could go behind it? After the execution of Exhibit IV the account books, cash on hand and the voucher were handed over to Adaikalavàn Chetty by the defendant and he executed a power-of-attorney in Adaikalavan Chetty's favour so as to enable him to realize the loans outstanding on mortgages. Adaikalavan Chetty died in August 1922 and the plaintiffs sent a third agent named Arunachellam Chetty. It was necessary that Arunachalam should get a fresh power-of-attorney from the defendant in order to realize the loans outstanding on mortgages. Exhibit O was written by the solicitors of the plaintiffs to Muthiah Chetti on 5th April 1923 in which they informed him of the death of Adaikalavan Chetty in August 1922 and asked him whether he was "willing to execute a fresh power-of-attorney in favour of the present agent to enable him to deal with the mortgages and any other matters that may arise." The defendant's solicitors wrote Exhibit Q on 13th April that their client had no objection to executing transfers of the mortgages in the names of the proprietors meaning the plaintiffs and that before agreeing to do so he required the plaintiffs to personally execute a release deed in his favour and that he was not satisfied with the release executed by Adaikalavan Chetty

in his favour. The plaintiffs' solicitors answered Exhibit Q on 14th April that every thing had been done at the defendant's request and there was no reason why he should require a fresh release and that their clients were unwilling to accede to that request. The defendant's solicitors wrote to say that their client regretted that he could not see his way to execute a transfer of the mortgages unless the proprietors personally executed a release in his favour. An originating summons was then taken out by the plaintiffs' solicitors for a vesting order in respect of the mortgages standing in the name of the defendant, and the vesting order Exhibit V was made by the Supreme Court of the Straits Settlements.

A difficulty arose as regards the mortgage property within the State of Johore as according to the law of Johore a mere vesting order would not entitle the plaintiffs to sue on the mortgages obtained in the name of their agent, the defendant. The plaintiffs' solicitors wrote to the defendant's solicitors on 15th August 1923:

> "We find that there are certain difficulties in connexion with the making of a vesting order in Johore and that it would therefore be necessary to sue for a declaration and an order to execute transfers."

The defendant's solicitors replied

> "that in view of the position he (the defendant) has taken up with regard to the Singapore property he regrets he is unable to execute transfers of the mortgage properties in Johore, and that he will not oppose any order in the action if they undertake not to ask for any costs."

The defendant seems to have changed his mind as is clear from the letter of the plaintiffs' solicitors to his solicitors, dated 24th September 1923. He seems to have insisted that the counsel for the plaintiffs should make a statement that the plaintiffs ratified the arrangement under Exhibit IV before he could undertake not

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to contest the claim and to facilitate the passing of a decree in plaintiffs' favour. As a mere vesting order on originating summons would not satisfy the requirements of the law obtaining in Johore the plaintiffs' solicitors filed suit No. 817 of 1923 in the Supreme Court of the Straits Settlements at Singapore praying

"for an order directing the defendant to execute in the name of Moona Etana Toona Kana Roona Ahna Roona Muthiah Chetty in manner conforming with the law of Johore such memoranda or other documents as may be necessary according to the law of Johore to transfer each of the said charges to the plaintiffs or their present agent Moona Etana Toona Kana Roona Ahana Roona Arunachalam Chetty, son of Annamalai Chetty."

The defendant through his solicitors agreed to accept service of notice and the stipulation was that the draft judgment should be approved by the defendant's solicitors. In accordance with the arrangement the draft judgment was submitted to the defendant's solicitors as appears from the correspondence printed on page 102 of the printed papers. The defendant's solicitors made certain alterations. This was on 28th September 1923. On 10th October 1923 they sent the transfers in duplicate to the defendant's solicitors for his signature. The plaintiffs' counsel ratified the arrangement under Exhibit IV as appears from the order of the Supreme Court of the Straits Settlements of Singapore, dated 2nd October 1923. The relevant passage is as follows:—

"And the plaintiffs by their counsel acknowledging that the said release was and is in full force and of full effect, and by consent, it is this day adjudged and ordered by consent, that the defendant do execute in the name of Moona Etana Toona Kana Roona Ahana Roona Muthiah Chetty . . ."

The question is whether this statement amounts to a ratification of Exhibit IV by the plaintiffs and whether the plaintiffs are bound by the statement of their counsel that the release was and is in full force and of full effect. The defendant knew or had reason to

believe that the plaintiffs would challenge the validity of Exhibit IV and he evidently consulted his solicitors as to the best course to be adopted and on their advice he insisted upon a second release deed from the plaintiffs failing which upon a clear statement that the plaintiffs ratified the arrangement evidenced by Exhibit IV. It is clear from the correspondence that it was finally arranged that the defendant should not contest the suit and that the plaintiffs' counsel should make a statement ratifying the release deed, Exhibit IV, and that the draft judgment should be approved by the defendant's solicitors and thereupon the plaintiffs' counsel made the statement above extracted.

It is contended by Mr. Krishnaswami Ayyar for the plaintiffs that the counsel had no authority to make the statement that "the plaintiffs acknowledge that the said release was and is in full force and of full effect", and that it is for the defendants to show that the counsel was specially authorized to make it. The Subordinate Judge has dealt with this point in an unsatisfactory manner. He observes in paragraph 60 :—

"From the correspondence to which I have referred above (Exhibits O series) it was seen that first defendant wanted to have Exhibit IV established by the execution of a fresh release deed by the principals in person. That was not agreed to and first defendant, I think, has been able to get reference made to the release deed somehow."

and he holds that the admission contained in the judgment does not affect the plaintiffs as an affirmance of the transaction of release.

That the plaintiffs' counsel made the statement contained in the order of the Supreme Court cannot be seriously disputed. The only question is whether he had authority to bind his clients by the statement he made. Mr. Krishnaswami Ayyar contended on the

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authority of *Digbijoy Roy* v. *Shaikh Ata Rahman*(1) *Nando Lal Bose* v. *Nistarini Dassi*(2) and *Swinfen* v. *Swinfen*(3) that the counsel had no authority to make the statement and that the statement would not bind the plaintiffs. In *Digbijoy Roy* v. *Sheikh Ata Rahman*(1), it was held that although a pleader has no power to compromise a suit unless he is specially authorized in that behalf he can bind his client by an admission of a question of fact provided that question of fact falls within the scope of the suit in which he has been retained. In *Nando Lal Bose* v. *Nistarini Dassi*(2), the counsel retained in one case consented to a compromise which affected other suits in which he was not retained. The compromise was objected to and before the decree was drawn up one of the parties applied for an order to stay the drawing up of the compromise decree and to have the alleged compromise set aside and the suit retried. STANLEY, J., dismissed the application; and on appeal MACLEAN, C.J., and two other Judges allowed the application. The learned CHIEF JUSTICE observes at p. 438 :—

"There cannot, I think, be any reasonable doubt at the present day that counsel possesses a general authority—an apparent authority, which must be taken to continue until notice be given to the other side by the client that it has been determined, to settle and compromise the suit in which he is actually retained as counsel, and in the exercise of his discretion to do that which he considers best for the interest of his client in the conduct of the particular case in which he is so retained. Here, however, the compromise extended to collateral matters, to matters quite outside the scope of the particular case in which Mr. Mitter was retained as counsel, and in order to bind the client, it must be shown that Mr. Mitter had, from his client, a special authority to compromise, and compromise upon the definite terms which are set up by the present respondents."

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(1) (1912) 17 C.W.N., 156. (2) (1900) I.L.R., 27 Calc., 428.
(3) (1857) I.C.B. (N.S.), 364; s.c. (140 E.R., 150).

and refers to *Strauss* v. *Francis*(1), *Swinfen* v. *Swinfen*(2) and *Matthews* v. *Munster*(3), for the authority of a counsel to compromise on behalf of his client. This case is distinguishable on the facts. Here, there was no settlement of collateral matters. It was necessary to prove to the Court that the mortgages which were standing in the name of the defendant were taken for the benefit of the plaintiffs, that the defendant was a trustee for the plaintiffs and that the agency having terminated he was bound to make over the mortgage deeds to the plaintiffs. It cannot therefore be said that the ratification of the release deed, Exhibit IV, was a matter collateral to the subject matter of the suit in which the statement ratifying the deed was made. The defendant insisted upon his being given a full discharge as regards the agency and he was not satisfied with the release executed by the agent of the plaintiffs, and it was necessary for obtaining the order prayed for to make out that the defendant had ceased to be the plaintiffs' agent; and if for obtaining the relief therein prayed the statement insisted upon by the defendant with reference to the agency during the currency of which the mortgage deeds were obtained is made, it cannot be said that the counsel settled a matter collateral to the suit. In *Swinfen* v. *Swinfen*(2), the power of a counsel for compromising matters in dispute was considered at length. There are some observations of CROWDER, J., which may be taken as lending support to Mr. Krishnaswami Ayyar's contention. He observes at 461:—

"I am not aware that any counsel engaged in making terms, ever supposed for a moment that his opponent had power to bind his client without express instructions."

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(1) (1866) L.R., 1 Q.B., 379. (2) (1857) 1 C.B. (N.S.), 364.
(3) (1887) L.R., 20 Q.B.D., 141.

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There are a number of cases which take a liberal view of the authority of a counsel to compromise suits in which he is engaged. In *Elworthy* v. *Bird*(1), Sir John Leach, M.R., observes,

"In the absence of evidence, a Court will conclude that he had authority, for it is not to be presumed that counsel would enter into an agreement without authority. There is in this case evidence on both sides, but after duly considering it I *come* to the conclusion that counsel had authority which would bind his client."

In *B. N. Sen & Bros.* v. *Chuni Lal Dutt & Co.*(2), the plaintiffs instituted a suit for the recovery of the price of goods sold and delivered to the defendants and for damages in respect of goods of which it was alleged the defendants had refused to take delivery making a total claim of Rs. 25,508. The defendants admitted that there was due from them to the plaintiffs a sum of Rs. 12,611 in respect of goods sold and delivered but claimed that there was due to them from the plaintiffs a sum of Rs. 58,000 in respect of various transactions between the parties. At the hearing of the suit the defendants' counsel in the absence of the defendants and without their express authority, assented to a decree in favour of the plaintiffs for Rs. 22,117, without prejudice to the right of the defendants, if any, to proceed with their claim in their own suit. It was admitted that the attorney for the defendants, who was present in Court never asked the learned counsel to settle the suit, nor did he put any limitation on the authority or discretion of the learned counsel in any respect to compromise the suit. SANDERSON, C.J., and RICHARDSON, J., held that the settlement was a matter within the apparent general authority of the counsel and was binding on the defendants. The following observation of the

(1) (1829) Tamlyn, 38; 48 E.R., 16. (2) (1924) I.L.R., 51 Calc., 335.

learned CHIEF JUSTICE may well be applied to the present case :—

"In my judgment there is no evidence in this case that there was any limitation placed upon the authority of the learned counsel . . . I have a strong suspicion that the course which the learned counsel took on behalf of the defendants was a wise one, having regard to the nature of the suit and the admissions which the defendants made in the suit. At all events I am satisfied that the settlement was made within the authority of the learned counsel."

There are numerous cases, English and Indian, on the question of a counsel's power to make admissions in, or refer to arbitration or compromise, suits in which he is instructed. A mere reference to the following cases would be sufficient as it is neither profitable nor necessary to consider them all in detail. *Bhutnath* v. *Ramlall*(1) *Swinfen* v. *Lord Chelmsford*(2) *Swinfen* v. *Lord Chelmsford*(3) in the Court of Exchequer; *Chambers* v. *Mason*(4), *Strauss* v. *Francis*(5), *Dwar Buksh Sirkar* v. *Fatik Jali*(6). *Beery* v. *Mullen*(7), goes the length of laying down that,

"The compromise made by a solicitor or counsel is binding on the client though it may have been made against his express directions unless the client has revoked the authority of the counsel or solicitor to compromise on his behalf and communicated the revocation to the other side. This must be done before the decree or order is sealed."

The following propositions are deducible from the authorities :—

(1) A counsel has authority to make admissions in Court on behalf of his client on matters of fact relevant to the issues in the case in which he is engaged. Admissions on questions of law would not bind the client.

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(1) (1900) 6 C.W.N., 82 at 87.
(2) (1859) 1 F. and F., 619.
(3) (1860) 29 L.J., Ex. 382.
(4) (1858) 5 C.B. (N.S.), 59.
(5) (1866) L.R., 1 Q.B., 379.
(6) (1898) 3 Calc.W.N., 222.
(7) (1871) 5 I.R., 368.

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(2) A counsel has authority to confess judgment, withdraw or compromise, or refer to arbitration the suit in which he is instructed if his doing so is for his client's advantage or benefit even though he has no express authority from his client.

(3) A counsel cannot without express authority agree to compromise or refer to arbitration matters unconnected with the subject matter of the suit in which he is instructed.

(4) Where in the course of a suit a counsel makes an admission as to a collateral matter, or gives up a doubtful claim which is not a subject matter of the suit, there is a presumption that the counsel acts under instructions if the admission or the giving up of the doubtful claim is for the benefit of the client.

(5) It is a question of fact in each case whether the counsel acts under instructions when he compromises or refers to arbitration matters not involved in the suit and the Court on a consideration of the probabilities and the circumstances of the case can find that the counsel acted on instructions even though there is no direct evidence on the point.

(6) A counsel has no power to make an admission in, or compromise or refer to arbitration, a suit if he is instructed not to do so, without express authority from his client.

The plaintiffs were anxious to have the mortgage deeds in order to enforce the rights under them without delay as the fall in the price of rubber made the securities doubtful and they probably acted upon the principle of the apothegm "a bird in the hand is worth two in the bush," and consented to ratify the release deed and thereby secure the mortgage deeds without delay rather than pursue a doubtful remedy against the defendant,

All the circumstances of the case and the evidence on record, the non-examination by the plaintiffs of their agent, Arunachalam, who instructed the counsel in the proceedings before the Supreme Court of the Straits Settlements, the absence of any statement in the second plaintiff's deposition that he or his brother, the first plaintiff, did not empower Arunachalam to make the statement as to ratification contained in the judgment of the Supreme Court of Singapore, the urgency with which the mortgage deeds were required by the plaintiffs and the speedy manner in which the suit was decreed in plaintiffs' favour owing to the defendant's consent to accept service and remain *ex parte* and the readiness with which the defendant executed the transfer deed within a fortnight of the approval of the draft judgment by his solicitors, lead to the irresistible conclusion that the plaintiffs' counsel was specially authorized to make the statement that the plaintiffs acknowledged that the said release was and is in full force and of full effect.

Even if the counsel was not specially instructed to make the statement, we hold that the circumstances of the case and the evidence on record fully justify the conclusion that he acted within his authority in making the above statement. A decree has been passed embodying the statement by the Supreme Court of Singapore and in pursuance of that decree the defendant signed the transfer deeds. But for the statement the plaintiff would not have got speedily and in the manner they got what they wanted. We have therefore no hesitation in holding that the plaintiffs by their counsel ratified the arrangement evidenced by Exhibit IV and they cannot now sue to set it aside.

In the result the appeal is allowed and the plaintiffs' suit dismissed. But considering the conduct of the

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defendant we think he ought not to get his costs. We therefore direct that each party do bear his costs throughout.

DEVADOSS, J.

KUMARA-SWAMI SASTRI, J.

KUMARASWAMI SASTRI, J.—I agree and have nothing useful to add.

K.R.

APPELLATE CIVIL.

Before Mr. Justice Kumaraswami Sastri and Mr. Justice Ramesam.

1927, March 22.

K. M. CHOKKALINGAM CHETTIAR (PLAINTIFF), APPELLANT,

v.

AT. AR. ATHAPPA CHETTIAR (FIRST DEFENDANT), RESPONDENT.*

Indian Registration Act (XXI of 1908)—Bona fide *purchase of property for the purpose of facilitating registration of a transaction*—Bona fide *inclusion of such property in a mortgage document—Fraud on registration—Validity of registration of the document.*

Where a person *bona fide* buys property for the purpose of facilitating registration of a transaction and also *bona fide* includes it in a sale or mortgage, he cannot be held to commit a fraud on registration which would render the whole transaction invalid.

APPEAL against the decree of T. M. FRENCH, Subordinate Judge of Ramnad at Madura, in Original Suit No. 63 of 1921.

The material facts appear from the judgment.

A. Krishnaswami Ayyar (with *K. Balasubrahmanya Ayyar*) for appellant.

K. Bashyam Ayyangar for respondent.

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* Appeal No. 290 of 1923.