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Order IX, Civil Procedure Code. That is the effect of the decision of the Privy Council to which we have referred. It follows necessarily that, although the plaintiff's application to restore the suit purports to have been made under Order IX, it is not in fact governed by the provisions of that order at all. It must be deemed to be an application under section 151 for the exercise of the Court's inherent powers. The preliminary objection thus fails.

In the result, we allow the civil revision petition and set aside the order of the lower Court, dated the 9th May 1925. The District Munsif will restore the case to his file and allow the plaintiff to take further proceedings in the suit.

In the circumstances, we direct each party to bear his costs.

K.R.

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## APPELLATE CIVIL.

*Before Mr. Justice Venkatasubba Rao and Mr. Justice Madhavan Nair.*

1929, November 6.

NARAYANASWAMI MUDALI AND OTHERS (DEFENDANTS), APPELLANTS,

*v.*

THE PRESIDENT OF THE BOARD OF COMMISSIONERS FOR THE HINDU RELIGIOUS ENDOWMENTS AND ANOTHER (PLAINTIFF AND FOURTH DEFENDANT), RESPONDENTS.*

*Civil Procedure Code (Act V of 1908), O. XXIII, r. 3—Suit relating to public trust—Compromise of suit—Duty of the Court—Power and duty of Court to see that interest of public trust should not be sacrificed by the compromise.*

When a compromise in a suit relating to a public trust is submitted to a Court, it not only has the power, but is under

* Civil Miscellaneous Appeal No. 108 of 1929.

a duty, to scrutinise its terms, with a view to make sure that the interests of the trust are properly safe-guarded; and if the Court finds that a compromise is not in the interest of the public trust, the Court should not accept the compromise; while, in the case of private individuals, the only question the Court has to consider is whether there has been in fact a compromise and, if so, whether the adjustment is a lawful one.

Further, in the case of a public trust, no compromise can be said to be lawful which sacrifices the interests of the trust; consequently, a compromise entered into without due regard to such interests is not a lawful agreement within Order XXIII, rule 3 of the Civil Procedure Code, and cannot be accepted by the Court.

*Sundarambal Ammal* v. *Yogavana Gurukkal*, (1914) I.L.R., 38 Mad., 850; and *Sankaralinga Nadan* v. *Rajeswara Dorai*, (1908) I.L.R., 31 Mad., 236 (P.C.), referred to.

APPEAL against the order of the District Court of South Arcot in I.A. No. 70 of 1929 in Original Suit No. 16 of 1928.

The material facts appear from the judgment.

*M. Patanjali Sastri* for appellants.—The lower Court was wrong in not accepting the compromise. The Court was bound to accept the compromise between the parties, if it is true in fact and not unlawful. The mere fact that the compromise is not beneficial to the public trust, does not make it an unlawful agreement or compromise within Order XXIII, rule 3, of the Civil Procedure Code. Under the above provision of the Code (Order XXIII, rule 3), before a compromise can be rejected by the Court, the Court must find not merely that the compromise was not beneficial to the trust, but also that it was unlawful; see *Sankaralinga Nadan* v. *Rajeswara Dorai*(1).

*P. Venkataramana Rao* for respondents.—In the case of a public trust, the Court has the power and a duty to see that the interests of the trust are not sacrificed by the compromise. The power and duty of the Court are larger in cases of compromises in suits relating to public trusts than in suits relating to private rights of parties. A compromise, which is not beneficial to the public trust and in disregard of its interests is an "unlawful compromise" within the meaning of Order XXIII,

(1) (1908) I.L.R., 31 Mad., 236 at 249 (P.C.).

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rule 2, Civil Procedure Code. Reference was made to the following cases :—

*Gyananandu Asram* v. *Kristo Chandra Mukherji*(1), *Abdul Karim Abu Ahmed Khan* v. *Abdus Sobhan Choudry*(2), *Kumaraswami Asari* v. *Latchmana Goundan*(3); *Sundarambal Ammal* v. *Yogavana Gurukkal*(4).

The JUDGMENT of the Court was delivered by

VENKATASUBBA RAO, J.

VENKATASUBBA RAO, J.—This suit has been brought by the Board of Commissioners for the modification of a scheme under the Madras Religious Endowments Act. The plaintiff compromised the suit with certain of the defendants and asked the Court to recognize the compromise and pass a decree accordingly. The learned District Judge refused to comply with the request on the ground that the compromise was not in the interests of the temple in question. The reasons for the step taken by the learned Judge are to be gathered from two orders made by him on the same date.

This appeal is filed by defendants 1, 2, 5, 6 and 7. The present attitude of the Board is different from what it was in the lower Court. It now says that the compromise was entered into under a certain misapprehension and ought not therefore to be recognized. In the plaint, serious charges were made against defendants 1 and 2, who were alleged to have misappropriated sums amounting to about Rupees 60 to 70 thousands. There is one very definite allegation with which we are directly concerned. It is asserted that the first defendant sold his own property worth about Rs. 2,500 to the trust for about Rs. 10,000 and received the purchase money from the funds of the temple. It is similarly asserted that the second defendant selling his own

(1) (1901) 8 C.W.N., 404.
(2) (1913) 18 C.W.N., 1264.
(3) (1927) 54 M.L.J., 629.
(4) (1914) I.L.R., 38 Mad., 850.

property worth about Rs. 3,000 to the institution for Rs. 12,000 received that sum. In the last mentioned case, it is also alleged that the property is subject to a usufructuary mortgage which was never disclosed.

That the trustees sold their own properties to the trust is not denied. Nor is it disputed that there is a mortgage outstanding in respect of the property sold by the second defendant. In the circumstances, the learned District Judge observes thus :—

> "Unless the defendants 1 and 2 are prepared to take back their lands and pay to the plaint temple Rs. 10,000 and Rs. 12,000, respectively, I find it impossible to give leave to the plaintiff to enter into any compromise."

This brings us to the question, what are the terms of the compromise? It is unnecessary to state them in detail, but their effect may be shortly stated. The two sales mentioned above are adopted. The charges against defendants 1 and 2 are wholly withdrawn. The scheme under the compromise provides for the appointment of new trustees defendants 6 and 7 (alleged to be the partisans of defendants 1 and 2) being among the first trustees to be so appointed.

One Venkatachala, before the compromise was actually effected, presented to the Court an application asking that he should be made a party plaintiff. He alleged that the Board was intending to compromise the suit on terms not favourable to the trust, that he was himself interested in the temple, that it was, *inter alia*, at his instance that the suit was filed and that, therefore, it was just that he should be added as a party. In spite of this warning, the Board entered into the compromise. It now recognizes that it was not prudent on its part to have entered into it and the District Judge says that it was due to an error of judgment that it compromised the suit. As a matter of fact, when the Judge refused

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to recognize the compromise, defendants 1 and 2 by their pleader offered, if sufficient time was granted, to bring into Court, the entire sum of Rs. 22,000. Incidentally we may mention that it was by suppressing this fact, they obtained an interim order from a learned Judge of this Court staying the trial of the suit. The temple gets no advantage from the compromise, on the contrary, the defaulting trustees obtain every possible benefit. We may also remark that some of the defendants were not parties to the compromise. The fourth defendant is opposed to it. We do not wish to pre-judge the case, but it is obvious that the right of none of the defendants to represent the temple is admitted. How, then, can the objection of the fourth defendant be ignored, if it is well founded?

Mr. Patanjali Sastri for the appellants, contends that it is incumbent upon a Court under Order XXIII, rule 3, to pass a decree in terms of the compromise, unless it comes to the conclusion that it is not a lawful agreement. He, in effect, argues that in suits relating to public institutions (for example, in what are known as suits by relators) the powers of a Court in this respect are exactly those as in suits between private individuals. With this proposition we are unable to agree. When a compromise in a suit like the present is submitted to a Court, it not only has the power, but is under a duty, to scrutinize its terms with a view to make sure, that the interests of the public trust are properly safeguarded. In the case of private individuals, the only question the Court asks itself is, has there been in fact a compromise and if so, is the adjustment a lawful one? Even if it sees reason to think that one of the parties was foolish in agreeing to certain terms, it has no option but to recognize and give effect to the compromise voluntarily made. But does this rule apply to the case of public or

charitable trusts? The Court cannot shirk its duty by simply saying that the agreement is lawful in the narrow sense of the term. Cases of collusion between the relators filing the suit and the defaulting trustees, are not infrequent. Then, owing to gross negligence, the interests of the trust may be sacrificed. We are somewhat surprised that Mr. Patanjali Sastri has contended with persistence that in such cases the Court is powerless. There is nothing to prevent cases of this kind from being compromised like other cases; but it seems to us plain, that the Court has plenary power to subject the terms to scrutiny and reject the compromise for valid reasons. We would go further and say that if any party opposes a compromise from sordid motives or on improper grounds, the Court, even then, has a right to take suitable action. These, in our opinion, are the principles that should guide the Courts. But we may rest our judgment on narrower grounds. In the case of a public trust, no compromise can be said to be lawful which sacrifices its interests: on the ground, therefore, that a compromise entered into without due regard to the trust, is under Order XXIII, rule 3, an unlawful agreement our conclusion may be supported. It matters little how the question is viewed; the same result follows.

This seems to rest on principle and reason. Apart from that, the cases on the point clearly show that Mr. Patanjali Sastri's contention is entirely untenable.

In *Sundarambal Ammal* v. *Yogavana Gurukkal*(1) the suit was in respect of a half share in the archaka miras in a Saivite temple. The parties entered into a compromise by which one of them alienated a portion of his right to the office for a pecuniary benefit. The learned Judges refused to pass a decree in accordance with the

(1) (1914) I.L.R., 38 Mad., 850.

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compromise. Mr. Justice SADASIVA AYYAR points out that the primary right is that of the deity to have certain services performed, and the right of the office holder to receive emoluments is but subsidiary. The observations made by him seem to be very pertinent to this case.

> "The Court itself has certain duties in connexion with a case in which a judgment *in rem* has to be pronounced, or in a case which involves the right of the public or the right to a religious and charitable office, or the right of a minor or other incapacitated person."

It is noteworthy that the learned Judge treats for this purpose a public trust as on the same footing as a minor or other incapacitated person. In *Gyanananda Asram* v. *Kristo Chandra Mukherji*(1) a compromise was refused to be recognized which affected prejudicially the interests of a Hindu temple. The judgment of MACLEAN, C.J., furnishes a conclusive answer to the contention urged in this case for the appellant. The learned CHIEF JUSTICE points out that section 375 of the Code of 1882 (corresponding to Order XXIII, rule 3) does not apply to the case of a religious endowment at all: he then adds, that even if it does, an agreement made in disregard of its interests is an unlawful one within the section. In *Abdul Karim Abu Ahmed Khan* v. *Abdus Sobhan Choudry*(2) the principle enunciated in this case was referred to as being in accordance with common sense.

In *Muthukrishna Naicken* v. *Ramachandra Naicken*(3), it is assumed, without discussion, that the Court can reject a compromise detrimental to a trust. (See page 492.) In the well known Kamudi case, *Sankaralinga Nadan* v. *Rajeswara Dorai*(4), the Judicial Committee

(1) (1901) 8 C.W.N., 404.
(2) (1913) 18 C.W.N., 1264.
(3) (1918) 37 M.L.J., 489.
(4) (1908) I.L.R., 31 Mad., 236 (P.C.).

acted on the same principle. Admitting Nadars and Shanars into a Hindu temple is, of course, not strictly illegal; the rejection of the compromise recognizing such a right, could be only on the ground that the trustee betrayed his trust and was not acting in its interests.

The point is clear beyond doubt and the Courts ought not to give countenance to the doctrine so strenuously contended for in this case, that their duty consists in merely registering a compromise, however detrimental it may be to a public trust.

It only remains to add that there is no substance in the argument that the lower Court's finding is not borne out by evidence. It is idle to contend that a Court cannot act upon affidavits in a case of this kind and that it is bound to call on the parties to adduce oral evidence. The order of the lower Court is confirmed and the appeal is dismissed with costs.

K.R.

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## APPELLATE CIVIL.

*Before Mr. Justice Anantakrishna Ayyar.*

BULLIRAJU *alias* ACHAYAMMA (PLAINTIFF), APPELLANT,

*v.*

SATYANARAYANAMURTI (DEFENDANT), RESPONDENT.*

1929, October 23.

*Letters Patent, cl.* 15—*Decision of a single Judge of High Court—Leave to appeal—Test to be applied in granting leave.*

Under clause 15 of the amended Letters Patent, the Judge of the High Court, who decides a second appeal, has a discretion

* Second Appeal No. 1315 of 1927.