

time I see no reason for varying that part of the order which appoints Ganga Bishan to be the guardian of the person of the minor. That portion of the order of the lower Court will stand. As appellants have partly succeeded and partly failed, I make no order as to costs.

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JHABBU
SINGH
v.
GANGA
BISHAN.

Order modified.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Banerji.

KALAVATI (PLAINTIFF) v. CHEDI LAL AND OTHERS (DEFENDANTS).*

1895.
May 2.

Civil Procedure Code, s. 462—Minor—Circumstances necessary to make a compromise by a guardian or next friend on behalf of a minor binding on the minor.

In order to make an agreement or compromise to which s. 462 of the Code of Civil Procedure applies a lawful agreement or compromise, it is necessary that the next friend or guardian should ask the Court to consider the proposed terms of the agreement or compromise, and before making the agreement or entering into the compromise should obtain permission from the Court to enter into the agreement or compromise proposed. The Court should record the fact that such application was made to it; that the terms of the proposed agreement or compromise were considered by the Court; and that, having regard to the interests of the minor, the Court granted leave to the making of the agreement or compromise.

From the mere fact that the Court passed the decree in accordance with the compromise it cannot be inferred that any of those steps preliminary and necessary to the making of the decree have been taken by the Court.

THE facts of this case sufficiently appear from the judgment of the Court.

Mr. D. N. Banerji, Muoshi Ram Prasad and Babu Durga Charan Banerji for the appellant.

Babu Jogindro Nath Chaudhri for the respondents.

EDGE, C. J., and BANERJI, J.—This is an appeal from the decree of the Subordinate Judge of Aligarh. The plaintiff, who is a minor, is, through her guardian, the appellant. The respondents are defendants in the suit. The parties, after the suit had been instituted, agreed to a compromise. They filed the compromise in the

* First Appeal No. 126 of 1894, from a decree of Babu Ganga Saran, Subordinate Judge of Aligarh, dated the 28th February 1894.

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Court, and the compromise having been verified, the Subordinate Judge made a decree in the terms of compromise and thus disposed of the suit. It is no doubt the duty of the Court under s. 375 of the Code of Civil Procedure to pass a decree in accordance with any lawful compromise which may be made by the parties, so far as that compromise relates to the suit. But in order to see what a lawful compromise is, where a minor is concerned, we must turn to s. 462 of that Code. That section was enacted for the protection of minors, and it positively forbids any next friend or guardian for a suit from entering into any agreement or compromise on behalf of a minor in reference to a suit in which such friend or guardian acts as such friend or guardian without the leave of the Court. The section would be entirely inoperative to afford any protection for minors in such cases if it meant that the Court was not to exercise, and was not bound to exercise, a judicial discretion as to the propriety, in the interests of the minor, of the agreement or compromise. In order to make an agreement or compromise to which s. 462 applies a lawful agreement or compromise, it is necessary that the next friend or guardian should ask the Court to consider the proposed terms of the agreement or compromise, and before making the agreement or entering into the compromise should obtain permission from the Court to enter into the agreement or compromise proposed. Further, the Court should record the fact that such application was made to it; that the terms of the proposed agreement or compromise were considered by the Court; and that having regard to the interests of the minor, the Court granted leave to the making of the agreement or compromise. From the mere fact that the Court passed the decree in accordance with the compromise, it cannot be inferred that any of those steps preliminary and necessary to the making of the decree had been taken by the Court. Indeed, looking at the proceedings in this case and the orders passed, it is obvious that the Court never considered the question as to whether the compromise was a proper one in the interests of the minor, and the only point to which the Court directed its attention was the acknowledgment by the parties that the agreement had been made.

We allow this appeal, and, setting aside the decree of the Court below, remand the suit under s. 562 of the Code of Civil Procedure to the Court below, to be decided on the merits. It will be competent for the guardian to apply to the Court for permission to compromise the suit, and if the Court grants leave, after considering the question of the interests of the minor, and the parties agree to the compromise, it will then be the duty of the Court to make a decree in accordance with s. 375 of the Code of Civil Procedure. If the suit is tried out, the Court must take special care to see that justice is done to the minor, if she has any title. The costs of this appeal will abide the event.

1895

 KALAVATI
 v.
 CHEDI LAL.

Appeal decreed and cause remanded.

Before Sir John Edge, Kt., Chief Justice, and Mr. Justice Banerji.

MEWA KUAR (DEFENDANT) v. BANARSI PRASAD (PLAINTIFF).*

1895

 May 8.

Civil Procedure Code, ss. 43, 44—Claim for possession and for mesne profits arising out of one cause of action—Suit for possession—Subsequent suit for mesne profits barred.

Where a plaintiff sued for possession of immovable property upon a forfeiture and for rent in respect of the said property up to the date of the alleged forfeiture, and, having obtained a decree, subsequently brought a separate suit for mesne profits including the period from the date of the forfeiture to the date of the institution of the former suit. *Held* that the claim for mesne profits for the period above mentioned was barred by s. 43 of the Code of Civil Procedure. *Lalji Mal v. Hulasi (1) and Venkoba v. Subbanna (2)*, referred to.

THE facts of this case sufficiently appear from the judgment of the Court.

Munshi *Mudho Prasad* for the appellant.

Mr. *D. N. Banerji* and Pandit *Sundar Lal* for the respondent.

EDGE, C. J., and BANERJI, J.—In this suit the plaintiff claimed mesne profits. Part of the period for which the mesne profits were claimed was from the 31st of January 1889 to the 23rd of Decem-

* First Appeal No. 63 of 1894, from a decree of Munshi Mata Prasad, Subordinate Judge of Bareilly, dated the 1st December 1890.

(1) I. L. R., 3 All., 600.

(2) I. L. R., 11 Mad., 151.