

## APPELLATE CIVIL

Before Mr. Justice Iqbal Ahmad and Mr. Justice Bajpai

1939  
November,  
23

SATDEO PRASAD (PLAINTIFF) v. DEBI BADAL AND OTHERS  
(DEFENDANTS)\*

*Vakil and client—Vakalatnama, powers given by—“Sulahnama dakhil karen”—Imports power to enter into compromise and not merely to file one—Civil Procedure Code, order XXIII, rule 3—Compromise of suit brought by minor—Subsequent suit by minor for setting aside compromise decree—Grounds.*

The words, “*sulahnama dakhil karen*”, in a vakalatnama, or a power of attorney, by which wide and extensive powers concerning the conduct and prosecution of a suit are conferred, are words of general import and, in the absence of any express limitation, confer the power to enter into a compromise and not merely to file one. Even apart from such words, where a vakalatnama confers very wide and extensive powers in very general terms it must by necessary implication be deemed to authorise the entering into a compromise.

Where a suit by a minor has been compromised with the permission of the court, and subsequently a suit is brought by him for setting aside the compromise decree, the question whether the compromise was or was not for the benefit of the minor cannot be raised in the subsequent suit; that was a question for determination by the court which granted the permission for the compromise.

Dr. N. P. Asthana and Mr. B. N. Sahai, for the appellants.

Mr. Damodar Das, for the respondents.

IQBAL AHMAD and BAJPAI, JJ.:—This is an appeal by Satdeo Prasad minor, an unsuccessful plaintiff whose suit for a declaration that the compromise decree in suit No. 233 of 1933 of the court of the Munsif West, Allahabad, was collusive and void and was not binding on him has been dismissed by both the courts below.

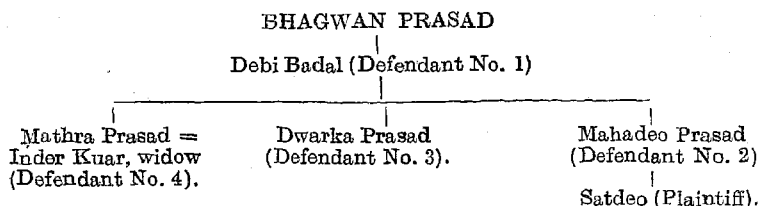
\*Second Appeal No. 934 of 1936, from a decree of Brij Behari Lal, Additional Civil Judge of Allahabad, dated the 30th of March, 1936, confirming a decree of J. D. Sharma, Munsif West of Allahabad, dated the 10th of December, 1934.

The parties to the present suit are descended from one Bhagwan Prasad and their family pedigree is as follows:

1939

SATDEO  
PRASAD  
v.

DEBI BADAL



It appears that suit No. 233 of 1933 was filed on behalf of Satdeo Prasad by his mother Mst. Bhagwati Devi who acted as his next friend in the suit. The defendants to that suit were, amongst others, Debi Badal, Dwarka Prasad and Inder Kuar. As Mst. Bhagwati Devi was a pardanashin lady she appointed one Balgobind as an attorney to look after the prosecution of the case. The powers given to Balgobind were evidenced by a registered power of attorney dated the 8th of May, 1933. By this deed Balgobind was *inter alia* authorised to file a compromise. The Urdu words used in the document were "*sulahnama dakhil karen*". An advocate named B. Mahabir Prasad was appointed a pleader on behalf of the plaintiff by means of a vakalatnama that was signed by Bhagwati Devi. By the vakalatnama extensive powers concerning the conduct and prosecution of the suit were given to B. Mahabir Prasad and he was *inter alia* authorised to appoint arbitrators, to file compromise (*sulahnama dakhil karen*) and to file documents, and it was stated in the vakalatnama that all the acts done by B. Mahabir Prasad would be accepted by Satdeo Prasad plaintiff. In short, wide and extensive powers were conferred on B. Mahabir Prasad by the vakalatnama.

Suit No. 233 was contested by the defendants and on the date of the recording of evidence the parties entered into a compromise when the trial Judge was actually recording the statement of Balgobind. It has been found by the courts below that the terms of the compromise were discussed by the parties or their pleaders

1939  
SATDEO  
PRASAD  
v.  
DEBI BADAL

in the presence of the presiding Judge and after the terms were settled the counsel for the parties made a statement concerning those terms and that statement was recorded and signed by Balgobind and the pleaders of the parties. In short it is manifest from the findings recorded by the courts below that the compromise was not a hole and corner affair but was arrived at in open court after mutual discussion between the parties.

The plaintiff appellant assailed the validity of the compromise on four grounds. He alleged that his mother, who was his next friend, gave no instructions for the compromise to any person whatsoever. Secondly he alleged that Balgobind was under the influence of Debi Badal who was one of the defendants in suit No. 233. Thirdly he alleged that the compromise was entered into without the permission of the court and lastly he asserted that the compromise was prejudicial to his interest.

The contention of the plaintiff that the compromise was entered into without the permission of the court was baseless. It has been found by both the courts below that the requisite permission to enter into a compromise on behalf of the plaintiff, who was a minor, was given by the presiding officer of the court.

The question whether the compromise was or was not for the benefit of the minor had no material bearing on the decision of the present suit unless the compromise was vitiated on any of the grounds alleged by the plaintiff. If the compromise was otherwise valid and binding, the question whether or not it was for the benefit of the plaintiff cannot now be debated and discussed. That was a question to be determined by the Judge who granted the permission for the compromise.

It may be assumed for the purposes of argument that the mother of the plaintiff who was his next friend did not give any directions either to Balgobind or to B. Mahabir Prasad to enter into the compromise. Nevertheless the compromise must be held to be valid and

binding if it is found that either Balgobind or B. Mahabir Prasad had the authority to enter into the same and that in exercising that authority they acted honestly and without being in collusion with the defendants to the suit.

So far as B. Mahabir Prasad is concerned he was undoubtedly competent to enter into the compromise. As stated before, the vakalatnama in his favour conferred very wide powers in very general terms on him, and, as such, the vakalatnama must by necessary implication be deemed to have authorised him to enter into the compromise. This was the view taken in the Full Bench decision of this Court in *Akbari Begam v. Rahmat Husain* (1).

It was contended on behalf of the plaintiff appellant that the words "*sulahnama dakhil karen*" that find a place in the power of attorney and in the vakalatnama did at best authorise Balgobind and B. Mahabir Prasad to file a compromise and not to enter into a compromise. We are unable to agree with this contention. The words noted above are words of general import, and uncontrolled as they are by any condition to the effect that the compromise must bear the signature of the plaintiff's guardian before the same can be filed in court, the only reasonable interpretation that can be put on those words is that the attorney and the vakil were given the authority to enter into a compromise on behalf of the minor. That being so, the competence of the vakil and of Balgobind to compromise the suit cannot be questioned. We find that the compromise was signed also by the plaintiff's father. It is not suggested that the plaintiff's father was in collusion with the other defendants to suit No. 233.

The allegation that Balgobind or the plaintiff's father were either in collusion with or under the influence of Debi Badal was not accepted by either of the courts below. It follows that the compromise was entered into

1939  
 SATDEO  
 PRASAD  
 v.  
 DEBI BADAL

by authorised persons and was not vitiated by fraud or collusion. The courts below were therefore right in holding that the compromise decree was binding on the plaintiff appellant. This appeal must, therefore, fail and is dismissed with costs.

## REVISIONAL CIVIL

Before Mr. Justice Rachhpal Singh

1939  
 November,  
 23

HARCHARAN DAS SOMPRAKASH (PLAINTIFF) v. JAI JAI  
 RAM (DEFENDANT)\*

*Contract Act (IX of 1872), section 30—Wagering contract—Contracts of advance purchase, on which no delivery was to be made and only differences were to be paid—Contract with pakka arhatia—Not contract with an agent—Difference between pakka arhatia and kachcha arhatia.*

Where the terms of a contract of advance purchase or sale of goods show that the parties agreed that there was to be no delivery and there was a mutual understanding that differences only would be paid by one party to the other, such a contract is a wagering contract and void.

There is a difference between the position of a *pakka arhatia* and that of a *kachcha arhatia*. Where there is a contract between a *pakka arhatia* and a constituent, for all practical purposes both parties act as principal parties, and there is no question of agency in such cases. So if the contract is essentially a wagering contract it is void and unenforceable between the parties.

The position of a *kachcha arhatia* is that he acts as an agent of the constituent, for remuneration by way of commission, and enters into contracts with third parties on behalf of the constituent. Whether a *kachcha arhatia* has or has not a right of suit against the principal although as between the principal and the third party the transaction may be a wager, has no bearing on the case of a contract between a constituent and a *pakka arhatia*.

Mr. K. C. Mital, for the applicant.

Mr. S. N. Seth, for the opposite party.