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ROSS, J.

real value of this property; and in any case if the purchaser purchased at a low price, that is not a matter which affects the present question.

The defence in these suits appears to me to be entirely without merit and to rest on nothing better than a clerical mistake in a document of minor importance.

The result is that the plaintiff's appeals must succeed and are allowed with costs and the suits out of which these appeals arise must be decreed in full with costs throughout. The tenants' appeals are dismissed with costs.

MULLICK, J.—I concur entirely. It was argued that this being a second appeal it was not competent to us to interfere with the District Judge's finding in regard to the identity of the property which was sold. The answer to this is that as the finding relates to a mixed question of fact and law it is open to revision in second appeal.

Appeal dismissed.

REVISIONAL CIVIL.

Before Jwala Prasad, J.

LAURENTIUS EKKA

v.

DHUKI KOERI.*

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March, 13.

Advocate, whether can act without a vakalatnama—*Code of Civil Procedure,* 1908 (*Act V of* 1908), *sections* 2(*15*) *and* 119, *Order III, rules* 1 *and* 4—*Rules of the High Court at Patna,* 1916, *Chapter III, rule* 4, *clauses* (*iii*) *and* (*iv*)—*General Rules and Circular Orders, Chapter I, rule* 2, *clause* (3)—*Letters Patent of the Patna High Court, sections* 7 *and* 8—*Legal Practitioners Act,* 1879 (*Act XVIII of* 1879),

* Civil Revision nos. 381 of 1923 and 382 of 1923, against an order of Rai Bahadur A. N. Mitter, Subordinate Judge of Ranchi, dated the 9th June, 1923.

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section 4—Compromise, signed by pleader, whether can be challenged—Absence of imputation of fraud.

An advocate, unlike a pleader, may be verbally appointed to act on behalf of his client and when so appointed he may, under rule 1, Order III, Civil Procedure Code, appear, plead and act on behalf of his client.

Bakhtawar Singh v. *Sant Lal* (1), followed.

The word "practice" in section 4 of the Legal Practitioners Act, 1879, includes the right to appear, plead and act.

Where, under a *vakalatnama*, a pleader has full powers to compromise a case, his action in consenting to a compromise cannot be challenged unless fraud or collusion is imputed to him.

Sadho Saran Rai v. *Anant Rai* (2), followed. *Sourindra Nath Mitter* v. *Herambha Nath Bandopadhaya* (3), referred to.

Under the practice of the Patna High Court, an advocate is not entitled to withdraw money from the Court on behalf of his client unless he is specially authorized to do so and files a *vakalatnama*.

The facts of the case material to this report are stated in the judgment.

H. P. Sinha, for the petitioner.

S. Saran, for the opposite party.

JWALA PRASAD, J.—This is an application against an order of the Subordinate Judge of Ranchi, dated the 9th June, 1923, rejecting an application of the petitioners presented under Order XLVII, rule 1, of the Civil Procedure Code, for review of a judgment, dated the 23rd December, 1922, passed by him.

The petitioners were plaintiffs in the case and sought to recover possession of the disputed land on a declaration of their title thereto as their ancestral

(1) (1887) I. L. R. 9 All. 617, F. B. (2) (1923) I. L. R. 2 Pat. 731.
(3) (1923) All. Ind. Rep. (P. C.) 98.

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bhuinhari land. The defendants, on the other hand, claimed to be in possession of the property under purchase made by their father in 1873 from one Sheikh Bhukun, an auction-purchaser of the land. The plaintiffs' suit was dismissed by the Munsif, and the appeal filed by them was placed in the file of the Subordinate Judge for disposal. The argument of both sides concluded on the 20th December. On the 23rd December a compromise petition was filed before the learned Subordinate Judge. The petition was signed by the defendants and their pleader, and on behalf of the petitioners their pleader signed the same. By the petition of compromise the *bhuinhari* title of the petitioners was admitted and acknowledged by the defendants, and the defendants were allowed to hold the disputed land as occupancy *raiyats* under the plaintiffs on payment of rent at the rate of Rs. 3 per acre, the rent being revisable at the time of the preparation of the record-of-rights. The appeal was disposed of in terms of the compromise petition by judgment of the Court, dated the 23rd December, 1923.

The petition for review of the judgment was filed on behalf of the petitioners on the 5th June. In it it was alleged that after the arguments were over, the petitioner no. 1, who was in charge of the case on behalf of the plaintiffs, had left Ranchi for his village in order to make preparation for the Christmas festival in his charge, and he came back to Ranchi in the first week of January and learnt that the appeal was disposed of in terms of the compromise referred to above. It was alleged in the petition that the compromise petition was filed without his knowledge and without instructions to his pleader and that it was prejudicial to the plaintiffs' interest.

The compromise petition was signed by the petitioners themselves, and countersigned by their Counsel, Mr. Roy. On the 9th June 1923 the Court rejected the application for review holding: (*1*) that

it was out of time, and (2) that it was not in proper form. As to the latter ground the learned Subordinate Judge observed that Mr. Roy being a Counsel (advocate) could not move the petition unless he was instructed by a pleader and after the latter had signed it, and that if Mr. Roy wanted to present the petition and thereby act as a pleader, he would have filed a *vakalatnama*. In support of this view the learned Subordinate Judge has cited the case of Mr. B. N. Misra, an advocate of the Court, who practises in Cuttack. I have looked into the file of the case. Mr. Misra applied for refund of some money on behalf of his client and filed a petition for that purpose under his own signature, without filing a *vakalatnama*. The learned Chief Justice (Sir Edward Chamier) observed that if Mr. Misra wanted to perform the functions of a pleader he must file a *vakalatnama*. This view has been maintained in this Court in several cases, and thus a practice has been established of not allowing refund of money to an advocate unless he is especially authorized and files a *vakalatnama*. This would be so under the provisions of the stamp law which especially require that a refund of money can only be made to a person holding a power of attorney, duly stamped, from the person on whose behalf the withdrawal is sought [Article 48(*g*), Schedule I of the Stamp Act]. But the counsel in the present case did not want any refund of money on behalf of his client; he only applied for review of judgment. The petition for review in the present case was duly signed by all the petitioners, and it was moved by counsel, Mr. Roy, who appeared for the petitioners who were also present in Court at the time. The rules as to the presentation of an application are to be found in Chapter III, page 13, of the High Court Rules, and in Chapter I, Part I, page 5, of the General Rules and Circular Orders for the Subordinate Courts. Rule 4, clauses (*iii*) and (*iv*), of Chapter III of the High Court Rules say that a petition shall be signed and dated either by the

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petitioner or declarant or his pleader and presented either by the petitioner or declarant or his recognized agent or his pleader or some person appointed in writing in each case by such pleader to present the same The note to that rule says:

"Here and throughout these rules unless there is anything repugnant in the subject or context 'Pleader' means advocate, vakil or attorney."

Therefore a petition must be signed and presented either by the petitioner himself or an advocate, vakil or attorney of this Court. In the present case the petition was signed by the petitioners themselves. They were present in Court, and it was signed and presented by Mr. Roy, advocate, on their behalf. Therefore, if the petition were filed in this Court it would have been in order. It is, however, contended by Mr. *Sambhu Saran* that, as it was presented before the learned Subordinate Judge, the advocate in question could not present it. Rule 2, clause (*3*), Chapter I, of the General Rules and Circular Orders, however, states that a petition to be presented in the lower Courts may be signed by the person presenting it, and rule 3 says that if the person presenting it is not a pleader or a *mukhtiar*, he shall, if so required by the Court, be identified. Therefore, a petition in the subordinate Courts may be signed and presented by a party or by his pleader. "Pleader" has been defined in the Code of Civil Procedure, section 2, clause (*15*), to mean any person entitled to appear and plead for another in Court and to include an advocate, vakil and attorney of a High Court. This rule refers only to the functions of appearing and pleading, and it is said that it does not include acting.

Rule 1 of Order III of the Civil Procedure Code says:

"Any appearance, application or act in or to any Court, required or authorized by law to be made or done by a party in such Court, may, except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent or a pleader duly appointed to act in his behalf."

Rule 4(*1*) of the Order says:

"The appointment of a pleader to make or do any appearance application or act for any person shall be in writing, and shall be signed by such person or by his recognized agent or by some other person duly authorized by power of attorney to act in this behalf."

Clause (*3*) of rule 4 dispenses with the appointment in writing in the case of an advocate of any High Court, and an advocate is not required to present any document empowering him to act.

Therefore an advocate, unlike a pleader, can be verbally appointed to act on behalf of his client, and when so appointed under rule 1 of Order III he can appear, plead and act. Hence Mr. Roy need not have filed any *vakalatnama* as his authority to present the petition of revision on behalf of the petitioners. So far as the law and the rules are concerned, there is nothing to prevent an advocate, either in the High Court or in the subordinate Courts, from presenting an application on behalf of his client without any power of appointment or *vakalatnama* given to him in writing. There is nothing in the Legal Practitioners' Act also against this view.

Section 7 of the Letters Patent of this Court confers upon the Court power

"to approve, admit and enrol such and so many advocates, vakils and attorneys as to the said High Court may seem meet; and such advocates, vakils and attorneys shall be and are hereby authorized to appear for the suitors of the said High Court, and to plead or to act, or to plead and act, for the said suitors, according as the said High Court may by its rules and directions determine, and subject to such rules and directions."

In section 8 of the Letters Patent it is further declared that this Court

"shall have power to make rules from time to time for the qualification and admission of proper persons to be advocates, vakils or attorneys-at-law of the said High Court, and shall be empowered to remove or to suspend from practice, on reasonable cause, the said advocates, vakils or attorneys-at-law; and no person whatsoever but such advocates, vakils, or attorneys shall be allowed to appear, plead or act on his own behalf or on behalf of a co-suitor."

Section 119 of the Civil Procedure Code enacts that

"Nothing in this Code shall be deemed to authorize any person on behalf of another to address the Court in the exercise of its original civil

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jurisdiction, or to examine witnesses, except where the Court shall have in the exercise of the power conferred by its charter authorized him so to do, or to interfere with the power of the High Court to make rules concerning advocates, vakils and attorneys."

No rule has been framed in this Court prohibiting an advocate from presenting an application or acting on behalf of his client.

Under section 4 of the Legal Practitioners Act (Act XVIII of 1879)

"Every person now or hereafter entered as an advocate or vakil on the roll of any High Court under the Letters Patent constituting such Court, shall be entitled to practise in all Courts subordinate to the Court on the roll of which he is entered," etc.

Thus, if an advocate on the roll of this High Court is entitled to sign and present an application and to act on behalf of his client in the High Court itself, by section 4 of the Legal Practitioners Act referred to above he will be entitled to practise in all the Courts subordinate to this Court. The word "practise" in the section has been advisedly used and unless prohibited by any special rule will include the right to appear, plead and act.

Mr. *Sambhu Saran* has referred us to the case of *Ram Taruck* v. *Sidhessuree Dossee* (1). That case, no doubt, supports his contention, but that case relates to the practice in the Calcutta High Court under the rules framed by that Court prohibiting advocates of the Court from acting on behalf of their clients either on the original or on the appellate side; and all the arguments advanced by Mr. *Sambhu Saran* were considered and fully met by a Full Bench of the Allahabad High Court in the case of *Bakhtawar Singh* v. *Sant Lal* (2). Their Lordships in that case observed: "It does not appear to us necessary to enter upon a discussion of the practice that prevails and regulates the professional status and proceedings of counsel in England, as it seems to us altogether beside the question we have to determine, namely, whether enrolled advocates of this Court, are, as such,

(1) (1870) 13 W. R. (C. R.) 60. (2) (1887) I. L. R. 9 All. 617, F. B.

prohibited from doing all such acts as admittedly may be done by the vakils."

Accordingly their Lordships held that under the Letters Patent of the Allahabad High Court and its rules an advocate can appear, plead and act.

Now, the Letters Patent of this Court and the rules framed by us are on similar lines to those of the Allahabad High Court. I am, therefore, inclined to adopt the view taken by the Full Bench of that Court and to hold that the learned Subordinate Judge was wrong in his view that the petition of review presented to him by Mr. Roy, advocate, on behalf of the petitioners was not properly presented.

The first ground upon which the learned Subordinate Judge rejected the application of the petitioners, however, seems to be substantial. The petition was filed much out of time. The appeal was disposed of on the 23rd December, 1922, and the petitioner no. 1 came to know of it in the first week of January, 1923, when he came to Ranchi to inquire about the case. The review petition should have been filed about the 23rd of March, 1923. It was, however, filed on the 5th June, 1923. This enormous delay has not been explained in the petition for review presented to the Subordinate Judge.

It is a well-recognized principle that a petition filed out of time must show on the face of it the reason for delay and there must further be an express prayer for condonation of the delay under section 5 of the Limitation Act. On the face of it the petition was time-barred and the Court below was right in holding that it was not entertainable.

Again, the petition does not impute improper conduct on the part of the pleader who filed the compromise petition, and unless that was done the action taken by the pleader on behalf of the petitioners could not be challenged, for under the *vakalatnama* the pleader had full power to compromise the case [vide *Sadho Saran Rai* v. *Anant*

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Rai (1)]. The recent decision of their Lordships of the Judicial Committee in the case of *Sourindra Nath Mitter* v. *Heramba Nath Bandopadhyaya* (2) may be usefully cited, though the facts of the case are not very similar to those of the present one. On principle there does not seem to be any reason for interfering with a compromise consented to by the pleader duly authorized in this behalf, unless fraud or collusion is imputed to the pleader. No such collusion or fraud has been pleaded in the petition. No doubt, ignorance of the compromise, want of instructions to the pleader and possibly fraud practised by the opposite party have been vaguely stated in the petition. These are, however, not sufficient to affect the compromise filed in the present case. Again, the petitioner no. 1 says that he was looking after the case and went away on the 23rd December, 1922, to make arrangements for Christmas festivities, but there were about ten other petitioners and there is no reason why the petitioners other than petitioner no. 1 could not remain in Ranchi to look after the case.

For all these reasons I dismiss the applications.

Applications dismissed.

APPELLATE CIVIL.

Before Mullick and Ross, J.J.

1925.

April, 8, 14; May, 1.

GARBHU MAHTON

v.

MUSSAMMAT BIBI KHUDAIJATUNNISSA.*

Bengal Tenancy Act, 1885 (*Act V of* 1885), *sections* 22 *and* 26—*Occupancy* raiyat, *dying intestate without heirs*,

* Appeal from Appellate Decree no. 361 of 1922, from a decision of B. Krishna Sahay, Subordinate Judge of Purnea, dated the 6th February, 1923, reversing the decision of M. Amir Hamza, Munsif (First Court), Patna, dated the 17th August, 1921.

(1) (1923) I. L. R. 2 Pat. 731. (2) (1923) All. Ind. Rep. (P. C.) 98.