

1920.

HOLL-
BASAPPA,
In re.

MACLEOD, C. J. :—In certain proceedings before Mr. Nesarikar, Sub-Divisional Magistrate, Belgaum, in the case of *Imperator v. Gurpadawa* certain remarks were made by the Magistrate prejudicial to the petitioner who was not a party to the proceeding nor a witness in the case. The petitioner has asked us to express an opinion with regard to those remarks. We confine ourselves to saying that it is very undesirable that a Judge or a Magistrate should make remarks which are prejudicial to the character of a person who is neither a party nor a witness in the proceeding before him, and who has, therefore, no opportunity of giving an explanation or defending himself against the remarks made by the Court. That is a principle which has more than once been laid down by the Courts.

R. R.

APPELLATE CIVIL.

Before Sir Norman Macleod, Kt., Chief Justice, and Mr. Justice Shah.

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December 2.

CHHAGANLAL KALIDAS (ORIGINAL JUDGMENT-DEBTOR), APPELLANT *v.* FARASRAM KURNASHANKAR, MINOR, BY HIS GUARDIAN OF PROPERTY, BAI GAVRI, WIDOW OF KURNASHANKAR ADITRAM AND ANOTHER (ORIGINAL DECREE-HOLDER), RESPONDENTS⁶².

Dekkhan Agriculturists Relief Act (XVII of 1879), section 71†—Civil Procedure Code (Act V of 1908), Order XXI, Rule 2, Order XXXII, Rule 7—Decree in favour of minor—Compromise of the decree with minor's mother—Compromise neither certified to nor sanctioned by the Court—Payment made under compromise to be taken into account under the decree.

⁶² Second Appeal No. 77 of 1920.

† The section runs as follows :—

71. The last clause of section 258 of the Code of Civil Procedure shall not apply to payments out of Court made in any proceeding under this Act, in any case where an acknowledgment by the judgment-creditor for the same is produced, or when the payment is either admitted by him or proved.

A decree passed on a mortgage provided for payment of Rs. 662-15-0 in annual instalments of Rs. 60 each commencing from the 15th April 1916. The decree-holder having died his widow, acting as natural guardian of her minor son, compromised the decretal debt for Rs. 350, the payment of which was endorsed on the decree though not certified to the Court. No sanction of the Court was obtained for the compromise. Later, the widow and the Nazir of the Court were appointed guardians of the property of the minor. Early in 1917, they applied to recover the amount of the first instalment which had accrued due :—

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Held, that by reason of section 71 of the Dekkhan Agriculturists' Relief Act which applied to the case, the executing Court was, notwithstanding Order XXI, Rule 2 of the Civil Procedure Code, entitled to take into account the payment made to the widow though it was not certified.

Held, further, that the judgment-debtor was not entitled to take advantage of the compromise which was neither sanctioned nor recorded by the Court.

Held, therefore, that the executing Court was entitled to disregard the compromise; but it could take into account the money that had actually been paid.

SECOND appeal from the decision of M. S. Advani, District Judge of Broach, confirming the decree passed by G. M. Pandit, Acting First Class Subordinate Judge at Broach.

Execution proceedings.

On the 18th May 1915, the plaintiff obtained a decree on a mortgage for Rs. 662-15-0, which was made payable in annual instalments of Rs. 60 each commencing from the 15th April 1916.

In October 1915 the plaintiff died.

The plaintiff's widow, acting as natural guardian of her minor son, compromised the decretal debt for Rs. 350, which was paid to her in February 1916. The payment was duly noted on the decree, but was not certified to the Court. The judgment-debtor was an agriculturist. The compromise was not even sanctioned by the Court.

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In September 1916, the widow and the Nazir of the Court were appointed guardians of the property of the minor. They applied in January 1917 to recover the amount of the first instalment which had then fallen due.

The lower Courts held that the compromise not having been sanctioned by the Court as being for the benefit of the minor was not binding on the minor; and that the judgment-debtor was entitled to have the benefit of Rs. 350 towards the decretal debt he had to pay. The first instalment was taken as duly paid off and the application was dismissed.

The judgment-debtor appealed to the High Court.

G. N. Thakor, for the appellant.

M. T. Teivala, for the respondents.

MACLEOD, C. J.:—This is an application for execution of the decree obtained by one Kurnashankar Aditram on the 18th May 1915 on a mortgage of a house executed by the defendant. The decree was for Rs. 662-15-0 including costs and the amount was made payable by annual instalments of Rs. 60 commencing from the 15th April 1916. Kurnashankar died in October 1915, leaving a widow and a minor son. On the 6th September 1916 the widow and Deputy Nazir of the District Court were appointed guardians of the property of the minor and on 10th January 1917 the widow and the Deputy Nazir presented this Darkhast for the recovery of the first instalment of Rs. 60 due on the 16th April 1916. The defendant contended that shortly after Kurnashankar's death he compromised the decretal debt with the widow as the mother and natural guardian of the minor for Rs. 350 and paid that amount to her in two sums of Rs. 200 and 150 and got the decree duly endorsed by her as fully satisfied.

Under section 71 of the Dekkhan Agriculturists' Relief Act, section 258 of the Code of 1882 did not apply to a payment out of Court in any proceeding under the Dekkhan Agriculturists' Relief Act in any case when the payment was either admitted or proved.

Therefore the executing Court in this case was entitled to take into account, in spite of the provisions of Order XXI, Rule 2, the payment made to the decree-holder, the mother of the minor, although it was not certified; but it does not follow that the Courts are precluded from considering whether the compromise now relied upon was for the benefit of the minor. Clearly the minor was personally entitled to the benefit of the decree, and under Order XXXII, Rule 7, any agreement or compromise entered into without the leave of the Court would not be binding against the minor. The appellate Judge has considered the question whether the compromise effected by the widow was for the benefit of the minor, and came to a very distinct finding that the compromise was not to his advantage. It is clear, therefore, that the appellant is not entitled to take advantage of the compromise which was neither sanctioned nor recorded by the Court, and the executing Court is entitled to disregard the compromise and merely take into account the money that has actually been paid. Therefore we dismiss the appeal with costs.

SHAH, J. :—I concur.

Appeal dismissed.

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