

1923.

GOVERNMENT
OF BOMBAY
v.
MEHWA
AG.

Instances with the land in reference, I think that the rate awarded by the Collector is quite fair. I, therefore, dismiss the reference with costs.

Attorney for Government : *Government Solicitor.*

Attorneys for claimant : *Messrs. Payne & Co.*

R. R.

ORIGINAL CIVIL.

Before Mr. Justice Marten.

1923.

*Septem-
ber 21.*

BAPUJI SORABJI PATEL, PLAINTIFF v. LAKHMIDAS ROWJI TERSEY
AND OTHERS, DEFENDANTS^c.

Practice and Procedure—Estate under administration of Court—Receiver in charge of estate—Compromise—Sanction of Court to compromise—Judge administering the estate should grant the sanction.

A receiver of an estate under the administration of the Court, desiring to compromise a suit brought against him as such should obtain the sanction of the Court or Judge administering the estate, and not of the Judge who is trying the suit in which the compromise is proposed.

SUIT on a promissory note.

The promissory note in suit was for Rs. 15,000; it was passed by Motilal (defendant No. 3), on November 21, 1919, in favour of the plaintiff. The plaintiff sued to recover the money due on the note from Motilal and his father Lallubhai.

On February 8, 1920, Lallubhai died leaving a will whereby he appointed Lakhmidas and Rattanchand executors.

Motilal filed another suit (No. 1015 of 1920) for administration of Lallubhai's estate. In that suit the Court appointed Lakhmidas and Rattanchand receivers of Lallubhai's estate.

Both Lakhmidas and Rattanchand were next brought on the record of the suit on the promissory note as defendants Nos. 1 and 2 in the capacity of executors and receivers of Lallubhai's estate.

Subsequently Motilal settled the suit by paying Rs. 16,000 to the plaintiff Bapuji in satisfaction of his claim on the promissory note.

The plaintiff and the defendants next applied to Marten J. for dismissal of the suit by consent.

Kanga, Advocate General, for the plaintiff.

Dastur, for defendants Nos. 1 and 2.

MARTEN, J. :—This is an application for a consent decree where I am doubtful that I have been told all the material facts. The innocent application that is made to me by defendants Nos. 1 and 2 is that by consent the suit should be dismissed against them without costs.

The suit is apparently on a promissory note for, I am told, Rs. 15,000. I am also told that the plaintiff has now been paid by defendant No. 3, and that defendant No. 3 has no claim for contribution against defendants Nos. 1 and 2. But defendants Nos. 1 and 2 are not *sui juris*. They are merely defendants because they have been appointed receivers in an action for partition or administration of the assets of the original first defendant one Lallubhai Nathuchand since deceased. I have not seen the plaint in that action in which they have been appointed receivers, nor the order, and I had considerable difficulty in ascertaining from their counsel what the nature of the action was. This is what I am told.

I further understand that an application was made to the Chamber Judge, Mr. Justice Kajiji, on behalf of these receivers, defendants Nos. 1 and 2, to sanction

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the compromise in this suit on the lines I have indicated. I am further informed that Mr. Justice Kajiji has refused that application. I understand further from what was told me on a previous occasion that the parties had gone before another Chamber Judge, Mr. Justice Kemp, to get the requisite sanction but had once more failed.

I am now asked to give my sanction. That request by counsel seems to me to be based on an entire misconception of the practice of the Court. This estate of Lallubhai is being in effect administered by another Judge in a separate action. It is for the Court in that action to say whether a particular suit should be brought or not on behalf of the estate; and whether a particular suit should be defended on behalf of that estate, and especially what compromise should be sanctioned for the receivers to enter into. I have nothing whatever to do with that suit. I am sitting here, as far as my board is concerned, to try a contested suit of *A v. B*. In no way have I any jurisdiction to give this sanction to the receivers. The proper Judge to give them that sanction is the Judge who is administering this estate of Lallubhai.

I say this in detail, because I know from past experience that there is a good deal of misconception in this Court on this point, and that people seem to think that because a Judge has a suit before him, he has got power to sanction anything on behalf of anybody. That is entirely wrong, and I am speaking on this point absolutely positively from my own practice at the Bar. And there is one very good reason for it. When you apply to the Judge who is administering the estate, counsel's opinions and all manner of confidential information may be given to that Judge to enable him to come to a conclusion as to whether the case should be fought out or not, or whether it should

be compromised, and if so, on what terms. But a Judge who has to hear a case as between the estate and a third party is in a totally different position. It would be entirely wrong for him, to read confidential opinions and information on the one side or the other. He is there, as I said, to decide between that estate and a stranger, and it is not for him to sanction the compromise on behalf of the estate. There are no doubt cases as regards infants where the matter is simple and where it is unnecessary to take separate proceedings in the matter of the infant to have the Court's sanction obtained. But in important cases where it would be undesirable to disclose in public the real grounds on which a compromise is made or a suit brought or defended, separate proceedings may be desirable.

Here, I have got separate proceedings, namely, in connection with the estate of Lallubhai. My clear opinion is that it is for the Judge there to sanction the compromise if he thinks fit. Defendants Nos. 1 and 2 are not *sui juris*. They cannot ask for sanction to compromise unless the Judge in their suit gives them leave.

Solicitors for the plaintiff: Messrs. *Craigie, Blunt & Caroe*.

Solicitors for the defendant: Messrs. *Dastur & Co.*

R. R.

APPELLATE CIVIL.

*Before Sir Lallubhai Shah, Kt., Acting Chief Justice, and
Mr. Justice Crump.*

ANANDILAL BHAGCHAND MARWADI AND ANOTHER (ORIGINAL DEFENDANTS). APPELLANTS *v.* CHANDRABAI MARD TATYA PATIL (ORIGINAL PLAINTIFF), RESPONDENT^a.

^a Second Appeal No. 432 of 1922.

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October 9.