Attorneys for appellant: Messrs. *Mehta Lalji & Co.*
Attorneys for respondent: Messrs. *Shah & Co.*

Appeal dismissed.

B. K. D.

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JIVANLAL NARSI v. PIROJSHAW VAKHARIA & Co.

Beaumont C. J

APPELLATE CIVIL.

Before Mr. Justice Murphy and Mr. Justice Nanavati.

GURURAO NARASINGRAO DESAI AND ANOTHER (ORIGINAL DEFENDANTS NOS. 2 AND 3), APPLICANTS *v.* RAMCHANDRA ALIAS BALASAHEB, ADOPTIVE FATHER SHRINIVASRAO DESAI (ORIGINAL PLAINTIFF), OPPONENT.*

1932 *September* 21

Privy Council Appeal—Certificate granted—Appeal declared admitted—Parties entering into compromise—Whether High Court can substitute new decree in terms of the compromise.

Where after a final order for the admission of an appeal to His Majesty in Council is made by the High Court, a compromise is entered into between the parties, the High Court has no power, even by consent of parties, to supersede its first decree and pass another decree in terms of the compromise.

APPLICATION praying that a decree may be passed in terms of the compromise.

The facts are stated in the judgment.

H. B. Gumaste, for the applicants.

Nilkant Atmaram, for the opponent.

MURPHY J. This application arises out of F. A. No. 508 of 1927, decided by this Court. The petitioners, who were parties to the appeal, applied for leave to appeal to His Majesty in Council, and a certificate was granted them, the rule being made absolute on August 13, 1931. It is now stated in the civil application before us that the petitioners have paid into Court the necessary amount as security for the costs of opponent, and also the sum required for translating and printing the record and that the appeal has been declared admitted; but that meanwhile the parties have entered

* Civil Application No. 583 of 1932.

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GURURAO NARASINGRAO v. RAMCHANDRA SHRINIVASRAO

Murphy J.

into a compromise in the terms stated in the body of the application, and now pray that this Court should supersede its first decree and pass one in the terms of the compromise.

There is no doubt that a compromise has been arrived at. But our difficulty is that we do not see how this Court, having once made a decree in the matter, can even by consent make a second one superseding the first. The learned counsel for both sides have referred to the rules of 1925, and to a ruling to be found in *Jadunandan Koer* v. *Ramjiban Lal*.[1] The learned Judges in that case were dealing with a question of the substitution of parties. It was in 1905, when apparently there were no rules on the point, such as rules 14 and 15 of the rules of February 9, 1920, which do not appear to have been abrogated by the rules of May 2, 1925. The reference is to a case of that Court which has not been reported, and apparently the question was one of the substitution of the names of deceased parties by those of their legal representatives, as well as of a compromise. Apart from this authority the application has been argued on analogies of the powers of this Court in other matters, during the interval, after the appeal has been allowed, and before it has been made to His Majesty in Council. Some of these matters are provided for in Order XLV, and others by rules, but there is no similar authority for the order which it is suggested that we should now make. Lastly, it has been urged that in the interval between the grant of leave to appeal and admission, and its presentation to the Registrar of His Majesty's Privy Council, this Court is, in a measure, in the position to exercise some of the functions of His Majesty's Privy Council, and can, therefore, when so acting, make orders which would not be within its capacity in the exercise of its ordinary jurisdiction. It has also been contended that the Civil Procedure Code and the rules of the Judicial Committee are not exhaustive, and that an application can be made under section 151 of the Civil Procedure Code. We feel it impossible to accede to these

[1] (1909) 10 Cal. L. J. 331 at p. 333.

arguments in so serious a matter as the substitution of a second decree for one already made by this Court, and we can find no authority, either in the arguments used before us, or in any reported decision of any of the High Courts, in favour of the application. It has also been said that to disallow this application will be a matter of hardship to the applicants, whose only other course is to obtain a certificate from us to the effect that the matter has been compromised, and then to make an application to His Majesty in Council. But this is obviously not the only way out of the difficulty, for the appeal can admittedly be withdrawn, and the adjustment arrived at between the parties can be certified to the Court under Order XXI, rule 2. We think that we cannot make the order which we have been invited to do, and that the application must fail.

Mr. Gumaste says that in view of the opinion just expressed by the Court, he wants further time in which to consider whether he should not amend his application, by adding a relief, to forward the compromise to His Majesty in Council, with the prayer that a decree may be passed in its terms. Mr. Nilkant Atmaram wishes to consult his client. Parties are granted fifteen days' time in which to amend their application accordingly, if so advised.

NANAVATI J. I agree.

Application dismissed.

J. G. R.

ORIGINAL CIVIL.

Before Sir John Beaumont, Chief Justice, and Mr. Justice Rangnekar.

AISHABAI (ORIGINAL PETITIONER), APPELLANT *v.* ISMAIL SAKHI AND ANOTHER (ORIGINAL RESPONDENTS), RESPONDENTS.*

1932 *September 30.*

Letters Patent, clause 15—Order refusing to declare a person to be of unsound mind—Whether a "judgment" from which an appeal lies—Indian Lunacy Act (IV of 1912), section 39.

* O. C. J. Appeal No. 31 of 1932 : L. A. No. 5 of 1931.