Chittan Singh vs Sahib Dayal And Ors. on 5 April, 1950

Equivalent citations: AIR1950ALL617, AIR 1950 ALLAHABAD 617

JUDGMENT

Malik, C.J.

1. This is a plaintiff's appeal. One Baren Singh died leaving a brother, Sahib Dayal, and a widow, Mt. Maharaji. Mt. Maharaji on 23rd January 1930, executed a deed of gift in favour of her daughter, Mt. Sukhraji, and her daughter's son Chittan Singh. A Suit (No. 107 of 1930) was filed by Sahib Dayal, brother of Baran Singh, for the cancellation of this deed of gift on the ground that Baran Singh was a member of a joint Hindu family with Sahib Dayal and on Baran Singh's death the property came to Sahib Dayal and his son, Lakhan Singh, by survivorship and that the widow had no right to execute the deed of gift in favour of her daughter or daughter's son. The daughter's son, Chittan Singh, was a minor and was impleaded under the guardianship of his father. On 27th March 1931, the parties settled the terms and the guardian of the minor, Chittan Singh, applied for permission to enter into a compromise under O. 32, R. 7, Civil P. C. Permission was granted, the compromise was entered into and a decree was passed in terms of the compromise. Under this compromise Sahib Dayal and Lakhan Singh got a nine-anna share in the property and Mt. Sukhraji and her son, Chittan Singh, got the remaining seven, anna share. On the death of Mt. Maharaji the suit, out of which this appeal has arisen, was filed by Mt. Sukhraji and Chittan Singh for possession of nine-anna share of the property that was given to Sahib Dayal and Lakhan Singh under the compromise decree of 1931. Defendants relied on the previous compromise and urged that the suit was not maintainable. The suit was dismissed by the lower Courts and Chittan Singh plaintiff has filed this second appeal.

2. The only ground urged on his behalf is that the permission granted by the learned Judge was invalid as the learned Judge merely wrote the word "Allowed" and did not fulfil the requirements of the law as laid down by this Court in Kalawati v. Chedi Lal, 17 ALL 531 : (1895 A. W. N. 126).

3. Order 32, R. 7, Civil P. C., is in these terms :

> "(1) No next friend or guardian for the suit shall, without the leave of the Court expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian ;
>
> (2) Any such agreement or compromise entered into without the leave oi the Court so recorded shall be voidable against all parties other than the minor."

4. The old Section 462, Civil P. C. of 1882 did not mention that leave of the Court had to be expressly recorded in the proceedings and the question had arisen whether it might be assumed that, by

reason merely of the fact that a decree had been passed in terms of a compromise the Judge had sanctioned the said compromise in the absence of any express record of it. In Manohar Lal v. Jadunath Singh, 28 ALL 585: (33 I. A. 128 P.C.) their Lordships of the Judicial Committee pointed out that :

> "It ought to be shown, by an order on petition, or in some way not open to doubt, that the leave of the Court was obtained."

It was probably on account of these observations that a provision was made in Order 32, Rule 7, Civil P. C. [Act v [5] of 1908] to the effect that the leave of the Court should be expressly recorded in the proceedings.

5. In the case of Kalavati v. Chedi Lal (17 ALL. 531: 1895 A. W. N. 126) no application for leave was filed by the guardian, nor was there any express order granting permission to enter into a compromise. It was urged that by reason of the fact that the Court had passed a decree on the terms proposed is the compromise it must be assumed that the Court had given to the guardian permission to enter into the compromise. While dealing with this argument the learned Judges pointed out that before making an agreement or entering into a compromise the guardian should obtain permission of the Court to enter into the agreement or compromise proposed, and they further said that:

> "The Court should record the fact that such application was made to it; that the terms of the proposed agreement or compromise were considered by the Court; and that having regard to the interests of the minor, the Court granted leave to the making of the agreement or compromise."
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> By these remarks the learned Judges could not have intended to lay down that if the order did not contain, what they said it should contain, the order would be void or invalid. The remarks were merely for the guidance of the lower Courts. The remarks were necessary as Section 462 of the old Code of 1882 did not require that the sanction should be expressly recorded. From the very next sentence of the judgment it is clear that the observations were intended to meet the argument advanced by counsel that from the mere fact that the Court had passed the decree in accordance with the terms of the compromise it should be inferred that all those steps preliminary and necessary to the making of the decree, had been taken by the Court.

6. The observations of the learned Judges in Kalavati's case, (17 ALL. 531 : 1895 A. W. N. 126) must be confined to the facts of that case. There was no application for sanction in that case and no sanction had been granted. It was not a case where the Judge had sanctioned the compromise but had not set out the reasons for the same. It was pointed out by their Lordships of the Judicial Committee in Punjab Co-operative Bank, Ltd. Amritsar v. Commissioner of Income-tax, Lahore, 67 I. A. 464 at p. 478: (A. I. R. (27) 1940 P. C. 230) that the expositions of the law in a judgment must be qualified by the particular facts of the Case. Their Lordships had, in a previous decision, Errol Mackey v. Oswald Forbes, 67 I. A. 64: (A. I. R. (27) 1940 P. c. 16) said that Section 205, Government

of India Act, "imposes on the High Court the duty of considering and determining in every case, 'as part of its judgment, decree or final order, the giving or withholding of a certificate."

Dealing with this remark their Lordships said in the later case:

> "The remarks of the Board as regards the duties of the Judges of the High Court must be read as confined to cases of the nature which arose in that case; and in that connection reference may be made to the remarks of Lord Halsbury in Quinn v. Leathem, 1901 A. C. 495: (70 L. J. P. C. 76) that every judgment must be read as applicable to the particular facts proved, or assumed to be proved, since the generality of the expressions which may be found there are not intended to be expositions of the whole law, but governed and qualified by the particular facts of the case in winch such expressions are to be found."

7. The next reported case decided by the same Bench Aman Singh v. Narain Singh, 20 All. 98 : (1893 A. W. N. 205) shows that the learned Judges could not have intended to lay down, that if the order did not contain what they bad said in Kalavati's case : (17 All. 531: 1895 A. w. N. 126) it should contain then the order must be deemed to be invalid. In Aman Singh's case, (20 ALL. 98 : 1897 A. W. N. 205) the guardian ad litem of certain minors had assented on their behalf to a compromise and had then filed the compromise in Court. The permission of the Court had not been taken before the Compromise had been entered into and reliance was placed on certain observations made in Kalavati's case, (17 ALL. 531: 1896 A. W. N. 126) that it was necessary for the validity of the compromise that a guardian should apply for permission to enter into a compromise before the compromise was entered into. The learned Judges pointed out that it was not necessary to have asked for permission in advance.

8. Learned counsel has cited two other cases of this Court; Badri Prasad v. Gopal Bihari Lal, 41 ALL 553 : (A. I. R. (6) 1919 All. 243) and Joti Sarup v. Kamle Singh, A. I. R. (20) 1933 ALL. 149. These are cases in which no order of the Court had been passed authorising the guardian of the minor to enter into a compromise. In other words, there was no sanction expressly recorded as required by Order 32, Rule 7, Civil P. C. It was held by the learned Judges that in the absence of such an order it could not be presumed that the Judge had pissed an order in accordance with the provisions of Order 32, Rule 7. C. P. C. and had given the guardian the permission to enter into the compromise. The compromise was, therefore, hold to be invalid. Learned counsel has not cited any case of this Court in which, even when the sanction was granted and it was expressly recorded, such sanction was held to be invalid merely because it did not mention that an application for permission had been made to the Court, that it had considered the terms of the agreement and had come to the conclusion that it was in the interests of the minor that sanction should be given and had, after taking into consideration all the facts, granted leave to the guardian to enter into the compromise. It is no doubt desirable that an order under Order 32, Rule 7, Civil P. C. should be passed by the Courts after carefully considering the fact and the interest of the minor and the order, as far as is possible, should show that the Count had applied its mind to the question whether the compromise was or was not for the benefit of the minor. But it cannot be laid down that where all these facts are not mentioned in the order the order itself must be deemed to have been vitiated. In the case before us the guardian

of the minor had made an application under Order 32, Rule. 7, Civil P. C., and had set out the facts and the grounds on which he asked the Court to give him permission to enter into the compromise as it was for the benefit of the minor. The Court must have looked into the application and the facts when it passed the order "Allowed". In any case, no evidence was produced before the lower Court that the application was not given a judicial consideration and the learned Judge passed the order without looking into the facts of the case.

9. We are of the opinion that the decision of the lower Courts is right.

10. There is no force in this appeal and it is dismissed with costs.