(1964) 09 KL CK 0037

High Court Of Kerala

Case No: C.M.A. No''s. 177 and 178 of 1962

Krishnadas and Another		APPELLANT
	Vs	
Ammu Poojari and Others		RESPONDENT

Date of Decision: Sept. 11, 1964

Citation: (1964) KLJ 1070

Hon'ble Judges: C.A. Vaidialingam, J

Bench: Single Bench

Advocate: K.V. Surianarayana Iyer, V. Rama Shenoi and R. Raya Shenoi, for the Appellant; T.S. Venkiteswara Iyer, Respondents 9 to 13 in C.M.A. 177/62 and Respondents 5 to 9 in C.M.A. 178/62 and V.R. Venkitakrishan, 4th Respondent in C.M.A. 178/62, for the Respondent

Final Decision: Dismissed

Judgement

Vaidialingam, J.

In both these civil miscellaneous appeals, on behalf of the appellants, who are the same, Mr. K.V. Surianarayana Iyer, learned counsel, attacks the orders passed by the learned Subordinate Judge of Kasaragod, dismissing two applications filed by his clients for recording a compromise in two appeals, namely A.S. "Nos. 28/62 and 31/62 on the file of that court. Though, for the purpose of disposing of these appeals, it may not be really necessary to go very much into the nature of the Litigations that led to the filing of these two civil miscellaneous appeals, nevertheless it is necessary to refer to two suits instituted by the parties concerned, in order to appreciate the circumstances under which the present appeals came to be filed by the present appellants.

2. It is seen that the present appellants had instituted a suit O.S.No. 127/50 on the file of the Munsif''s Court, Kasaragod, for a permanent prohibitory injunction to restrain the defendants therein, from treaspassing on their property or otherwise interfering with their peaceful possession of the same by them. It is also seen that there was another suit, viz., O.S.No. 163/58, on the file of the same court, filed by

three plaintiffs wherein a mandatory injunction directing the defendants in that suit--which included the present appellants as defendants 1 and 2--to restore the bund and pathways in the directions mentioned in the plaint, as also to restore a water channel, to their original condition.

3. Both the suits were tried together and disposed of by a common judgment. It is also seen that the suits were decreed and dismissed in part in favour and as against the present appellants. The appellants filed two appeals against the two decrees passed in the two suits, namely A.S. Nos. 28/62 against that part of the decree and judgment which was against them in O.S.No. 163/58, and A.S. No. 31/62 against the decision of the Munsif in O.S. No. 127/57. At this stage it may be stated that in O.S. 163/58 there were three plaintiffs--the 1st plaintiff being the Yajaman of the family,--and there were three defendants, namely the present appellants as defendants 1 and 2 as well as another person the 3rd defendant, who was the 4th respondent in A.S.No. 28/62. Similarly, to the suit instituted by the present appellants as plaintiffs in O.S. 127/57, the three plaintiffs in O.S. 163/58 as well as certain other persons were made defendants.

4. As I mentioned already, the appeals A.S. 28/62 and 31/62 in the Subordinate Judge''s Court, were filed by the present appellants, challenging the decisions in O.S. 163/58 and 127/57 respectively. Pending the appeals, it is seen that according to the appellants they had compromised the subject matter of the two suits with the three plaintiffs in O.S. 163/58; and for that purpose they filed two applications for recording the compromise as between them. The application filed by them in A.S. 28/62 is R.I.A. 373/62, and the application filed in A.S. 31/62 is R.I.A. 370/62. Those applications for recording the compromise as between the parties were under O.XXIII R. 3, C.P.C. In order to have an idea as to the matters mentioned by the parties in the two applications referred to above for recording the compromise, I will refer only to the statements made in R.I.A. 373/62, which was the application filed in A.S.No. 28/62.

5. Pausing here for a minute, it may be observed that the learned Subordinate Judge has ultimately dismissed both the applications, R.I.A. 370/62 and 373 of 1962, filed by the present appellants along with the plaintiffs in S.O. 163/58, for certain reasons which will be adverted to later in this judgment. Against the dismissal of R.I.A. 370/62 the present appellants have filed C.M.A. 177/62, and against the dismissal of R.I.A. 373/62 they have filed C.M.A. 178/62.

6. Reverting now to the matters mentioned in R.I.A. 373/62, the parties thereto state that the appellants and respondents I to 3 in the appeal A.S. 28/62, have at the intervention of the mediators and well wishers settled all their disputes in O.S. 163/58 pending in appeal, and have agreed to the terms mentioned thereunder. One of the terms agreed to appears to be that in view of the compromise entered into in O.S. No. 127/57, pending attack in A.S. 31/62, the suit O.S. 163/58 has become unnecessary. It is also stated that the respondents in A.S. 28/62 give up all the reliefs

claimed in O.S. 163/58 and that the appeal A.S. 28/62 has to be allowed dismissing O.S. 163/58. Then there is provision to the effect that the costs incurred by each party hitherto are to be borne by himself. Ultimately the parties pray that the said compromise may be recored and the appeal A.S. No. 28/62 be allowed, dismissing the suit O.S. 163/58 in terms of the compromise. More or less the same statements are contained in R.I.A. 370/62 in A.S. 31/62.

7. While these applications were pending before the learned Subordinate Judge, it is seen that some of the junior members of the family of the first plaintiff, who, as 1 mentioned earlier, is the Yajaman of the family, in O.S. 163/58, filed two applications to get themselves impleaded as parties to the two appeals. Those two applications were R.I.A. Nos. 405/62 and 407/62. Here again, as it will be necessary to appreciate the stand taken by the junior members to oppose the compromise applications filed by the present appellants, I will refer to the averments made in R.I.A. 405/62. That was an application filed in A.S. 28/62. Those Junior members state that the 5th respondent in the said application was the Yajaman and manager of their family, of which they are among other junior members. They also state that O.S.No. 163/58 on the file of the lower court was filed by respondents 3 to 5 to the application; and they specifically refer to the fact that the 3rd respondent to the application has filed the suit as the Yajaman and manager of their family and that the suit has been decreed. Against that decision, the petitioners state, defendants 1 and 2--referring thereby to the present appellants--have preferred the appeal A.S. 28/62. Then they refer to the fact that they have come to know recently that respondents 3 to 5 to the application--referring to the plaintiffs in O.S. 163/58--have been won over by defendants I and 2 (the present appellants) after filing the said appeal and that they have filed a compromise petition R.I.A. No. 373/62, praying that the appeal may be allowed and the suit instituted by them be dismissed in terms of the compromise set out therein. The petitioners therein also state that the proposed compromise is highly detrimental to the interest of their family, and if it is to be re-recorded and the suit dismissed, the family would suffer irreparable loss, injury and hardship, and they would be left without a pathway to go into or get out of the property mentioned therein and that the said property would be rendered waste and useless. There is a further averment in the application to the effect that respondents 3 to 5 (plaintiffs in O.S. 163/58), by their joining in the proposed compromise, have rendered themselves unfit to represent the family, and the 3rd respondent in particular has disabled himself from continuing as the Yajaman and manager of the family. Ultimately the application winds up with the request that they are proper and necessary parties to the appeal and that therefore they may be impleaded as supplemental respondents to the appeal.

8. At this stage it may also be mentioned that the present appellants had filed another application R.I.A. No. 424/62 in A.S. 28/62 for striking out the name of the 4th respondent in that appeal who was the 3rd defendant in O.S. 163/58. That application was opposed by the concerned parties.

9. The applications filed by the junior members of the family for getting themselves impleaded as additional respondents in the two appeals, were opposed not only by the present appellants, but also by the Yajaman and manager of the family, who is the 1st defendant in O.S. 127/57, and some other members of the family.

10. The learned Subordinate Judge, by his order dated 24th August 1962 disposed of R.I.A. 373/62, 405/62 and 424/62 in A.S. 28/62. The views expressed by the learned judge in that order appear to be that no compromise can be entered into by the parties concerned without the 4th respondent, viz., the 3rd defendant in O.S. No. 163/58, being a party, and therefore it is not possible to record the compromise without the junction of the 4th respondent. The learned judge is also of the view that in view of the opposition raised by the junior members of the family, who have been impleaded as parties to the appeals, regarding the bona fide nature of the compromise, and also in view of the fact that they have taken up a contention that the compromise is detrimental to the family and that the 1st plaintiff in O.S. 163/58, who is the Yajaman of the family, has played into the hands of the present appellants, the presence of those junior members is absolutely necessary for a proper consideration regarding the beneficial or prejudicial nature of the compromise sought to be entered into by the parties concerned, and therefore the learned Subordinate Judge has directed the impleading of the junior members as supplemental respondants in the appeals. The learned Subordinate Judge, as I have already pointed out, has taken the view that inasmuch as the compromise cannot be entered into by the parties without the junction of the 4th respondent in A.S. 28 of 1962 also as a party to the compromise, it is not possible to record the compromise. As such the learned Subordinate Judge ultimately is of the view that the question whether the compromise is beneficial or prejudicial to the interest of the family will have to be decided only after bringing on record the junior members who have been impleaded as supplemental respondents and giving them an opportunity to state their case.

11. Pausing here for a minute, if this was the view of the learned Subordinate Judge and if the intention of the learned Judge by allowing the junior members to be impleaded as supplemental respondents to the appeal was that the question regarding the beneficial or prejudicial nature of the compromise petition filed by the parties concerned could be considered, the proper procedure to the adopted by him was to keep the compromise applications on file and conduct an inquiry if he thought he had jurisdiction regarding that aspect. But ultimately what the learned Subordinate Judge has done is to dismiss R.I.A. 373/62, which, as mentioned earlier, was a joint application filed by the parties for recording the compromise and for passing a decree in accordance with the terms of the compromise set out therein.

12. Therefore ultimately the application, R.I.A. 424/62 filed by the appellants in A.S. 28/62 to strike off the name of the 4th respondent therein, was rejected, the applications filed by the junior members of the family to be impleaded as

supplemental respondents was allowed, and the application R.I.A. 373/62 filed by the parties for recording the compromise entered into by them, was dismissed. Based upon these orders, the learned Judge by his order dated 6--9--1962 has also dismissed R.I.A. 370/62, which was a similar application filed by the present appellants and the plaintiffs in O.S. 163/58, for recording the compromise entered into by them in A.S.No. 31/62. In that order the learned Judge has stated that he has considered the question elaborately in the order already rendered in A.S. 28/62, and for the reasons given in that order the application R.I.A. 370/62 filed by the parties for recording the compromise cannot be accepted. The learned Judge is also of the view that unless the other respondents to the appeal consent to the compromise petition, it is not possible to allow the appeal by recording the compromise. Ultimately R.I.A. 370/62 for recording the compromise and allowing the appeal A.S. 31/62, was also dismissed.

13. No doubt there are no direct revisions taken as against the orders passed by the learned Subordinate Judge in R.I.A. 424/62, or against the orders on the applications filed by the junior members for being impleaded as parties to the appeals, namely R.I.A. Nos. 405/62 and 407/62. The attack that is made in these two civil miscellaneous appeals is as against the orders of the learned Subordinate Judge dismissing the applications filed by the parties concerned for recording the compromise in the two appeals, namely R.I.A. Nos. 370 and 373/62.

14. Mr. K.V. Surianarayana Iyer, learned counsel for the appellants before me urged that the view of the learned Subordinate Judge that it is open to the junior members of the family concerned to intervene in these proceedings and attack the nature of the compromise entered into by the parties in respect of which applications had been filed by them for recording the compromise, and the further view of the learned Subordinate Judge that it has got jurisdiction in these proceedings filed by the parties to record the compromise, to adjudicate upon these aspects, are absolutely erroneous inasmuch as, according to the learned counsel, such jurisdiction is not at all vested in the court. The learned counsel brought to my notice the provisions contained in O.XXIII, R. 3, C.P.C., and urged that where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit. That according to the learned counsel, rule 3 of O.XXIII gives no option to the court, when once the party has satisfied the court that the compromise or agreement entered into is lawful, except to order such agreement or compromise to be recorded and pass a decree in accordance with the terms thereof. The learned counsel in this connection also pointed out that even in respect of any grievance that the parties to the compromise itself may have on the ground that a particular signature contained in the compromise document and stated to be obtained by fraud, undue influence

or coercion, have not been allowed to be agitated even by those parties, as will be seen from the various decisions to which the learned counsel has drawn my attention. The learned counsel urged that if that is the position in respect of persons who are actually parties to the compromise, and if such grievances even on their part have to be gone into, not in proceedings under O.XXIII, R. 3, but in separate proceedings, the position of junior members like the additional respondents who have been impleaded in the appeals by the lower court, stands on a far inferior footing than those parties themselves are concerned. Therefore the learned counsel urged that the junior members who have been impleaded no doubt in the appeals have absolutely no right to ask the court to make an investigation in the manner they have done by challenging the compromise entered into by the parties concerned. The learned counsel also drew my attention to the Division Bench decision of the Madras High Court, reported in Rayarappan Nambiar v Koyotan Chalile Veetil Kamaran (45 I.C. 489-35 M.L.J. 51), consisting of Ayling and Seshagiri Aiyar, JJ. In that decision the learned Judges have held that the burden of proving that a compromise was not honestly entered into by the karanavan or manager of the family, lies on the junior members who seek to impeach the compromise. In fact, it will be seen that in that decision on the basis of a compromise entered into by the karanavan and which was sought to be enforced later, a defence was taken that in the original compromise the karanavan has surrendered the rights of the family but that question was gone into not in the suit in which the compromise was entered into but in a separate suit which was instituted by the person who was not a party to the compromise. No doubt under these circumstances the Madras High Court went into the plea of the junior members as to the validity and binding nature of the compromise that had been entered into by the karanavan and manager of the family.

15. The decision of the Madras High Court referred to above was relied upon by Mr. Surianarayana Iyer, learned counsel for the appellants before me in support of his contention that in this case the 1st plaintiff in O.S. 163/58 is admittedly the Yajaman or manager of the family of which the supplemental respondents are junior members; and even according to those junior members so long as the Yajaman has not been removed from managership, he has got a right to represent the family and enter into any compromise which he considers beneficial to the interest of the family; and if persons like the junior members have got any grievance, the remedy, if any, available to them is not to intervene and obstruct the compromise being recorded, but by having their rights adjudicated in law in any other appropriate proceedings.

16. Coming to the scope of the jurisdiction which is invited to be exercised by the court under O.XXIII, R.3, C.P.C., Mr. Surianarayana Iyer, learned counsel for the appellants, referred me to a decision of the Madras High Court by Rajamannar C.J., & Somasundaram J., reported in Kuppuswami Reddi and Another Vs. Pavanambal, as well as the decision of Kania J., of the Bombay High Court reported in The Western

Electric Company, Limited Vs. Kailas Chand, . These two decisions have been adverted to by our own High Court in the decision rendered by Justice Kumara Pillai and Justice M.S. Menon (as he then was) reported in Krishanan Nayar v Rayarappan Nayar (1958 KLT 991). In fact, if I may say so with respect, there has been in that Division Bench decision of our High Court a fairly exhaustive review as to what exactly is meant by the expression ''lawful agreement'' or ''compromise'' occurring in R. 3 of O. XXIII, C.P.C.

17. But before I consider the Division Bench decision of our High Court referred to above, it is really necessary to advert to the decisions of the Madras High Court as well as of the Bombay High Court referred to above, namely Kuppuswami Reddi and Another Vs. Pavanambal, and The Western Electric Company, Limited Vs. Kailas Chand, . Kania J., in The Western Electric Company, Limited Vs. Kailas Chand, , in considering the scope of the expression ''lawful agreement'' occurring in O. XXIII, R. 3, C.P.C., observes that the term "lawful agreement" excludes not only unlawful agreements, the object or consideration for which is unlawful as defined in the Contract Act, but all agreements which on the face of them are void and therefore will not be enforced by the court. The learned Judge also observes that for purpose of O. XXIII, R. 3, C.P.C., no inquiry is necessary because the terms of the agreement themselves will show the defect, and the court has therefore only to consider whether on the face of the agreement it is lawful or not. The view of the learned Judge, as will be seen in the latter part of the judgment, is that the word ''lawful'' cannot be construed as wide enough to include an inquiry whether the agreement is voidable or not. But the learned Judge is ultimately of the view that if the parties have any grievance in respect of the agreement, which is no doubt being recorded by the court under O. XXIII, R. 3, their remedy is to file a suit to set aside the agreement and the decree. In the decision of the Madras High Court, namely Kuppuswami Reddi v Pavanambal (A.I.R. 1950 Mad 728), referred to above, the learned Chief Justice Rajamannar, speaking for the Court has again adverted to the provisions of O. XXIII, R. 3. The learned Judge has also adverted to the fact that in that case the grievance of the party was that though she had put her thumb impression to the agreement, to which she was a party, the compromise was brought about by fraud and coercion by the guardian of the minor petitioner. In dealing with that contention the learned Chief Justice observes that it has been held that under O. XXIII, R. 3, C.P.C., a compromise cannot be attacked by allegations that it is a voidable compromise brought about by fraud, undue influence and duress. The learned Judge emphasises later on that provided the compromise is lawful, i.e., not contrary to law, the court is obliged to record it; and the mere fact that it may be voidable, is no reason for a court to refuse to record it. Ultimatey the learned Chief Justice observes that even assuming that what is averred in the affidavit filed by the petitioner in that case is accepted, it will only mean that the compromise is voidable, and it certainly does not amount to urging that the compromise itself is unlawful. Ultimately in this view the learned Chief Justice directed recording of the

compromise and passing a decree in terms thereof.

18. That the proper remedy for a party who may be aggrieved by the compromise being recorded under O.XXIII, R. 3, C.P.C., is not to agitate his grievance when proceedings are taken for recording the compromise under the particular provision referred to above, but to agitate it in a separate suit, if he is otherwise entitled to, has also been laid down in the decision of the Orissa High Court reported in Kishori Mukhi Vs. Dhaneswar Sahu and Others, .

19. Now, reverting to the decision of our own High Court namely Krishnan Nair v Rayarappan Nair (1958 KLT 991), that judgment was rendered by Justice Kumara Pillai and Justice M.S. Menon (as he then was). If I may say so with respect, Justice M.S. Menon, speaking for the court, has very exhaustively referred to the case law on the subject, and also referred to the decisions of various High Courts bearing on that aspect. The learned Judge starts the discussion by referring to the observations of Sulaiman and Kendall JJ., in an earlier decision of the Allahabad High Court reported in Qadri Jahan Begam Vs. Fazal Ahmad , In the Allahabad case the learned Judges had to consider the expression ''lawful'' occurring in O. XXIII, R. 3, C.P.C. and the view of the Allahabad High Court is that the word ''lawful'' in O. XXIII, R.3 refers to agreements which in their very terms or nature are not unlawful and may therefore include agreements which are voidable at the option of one of the parties thereto because they have been brought about by undue influence, coercion or fraud. M.S. Menon J. again quotes with approval the judgment of the Madras High Court reported in Kuppuswami Reddi and Another Vs. Pavanambal, , to which I have already made reference. The learned Judge then refers with approval to the construction of the word ''lawful'' by Kania J. in The Western Electric Company, Limited Vs. Kailas Chand, . Ultimately, after a review of the various decisions, the learned Judge winds up the discussion on this aspect by again adverting to the earlier decision of the Allahabad High Court in Qadri Jahan Begam Vs. Fazal Ahmad , and holds that the view expressed by the learned judges of the Allahabad High Court as early as 1928 has virtually held the field for a generation, and ultimately observes that the grievance of the party before them, who was challenging the compromise on the ground that his signature had been obtained as the result of a fraud, cannot be gone into when proceedings are taken under O. XXIII, R.3, C.P.C., but if at all that grievance can be agitated only in a suit instituted for the purpose in a competent court.

20. So far as I could see, the position is that even in respect of parties, who are signatories to a compromise agreement, have not been allowed to wriggle out of it in proceedings under O.XXIII, R.3; and, if at all, the courts have uniformly held that if they feel aggrieved either by the terms of the compromise or a decree being passed in accordance with the terms of the compromise, the proper remedy to be adopted by them is by way of a regular suit.

21. Therefore Mr. Surianarayana Iyer, learned counsel for the appellants urged that the lower court had absolutely no jurisdiction at all to allow the junior members of the family to be impleaded as supplemental respondents to the appeals for the purpose of embarking upon an inquiry so to say as to whether the compromise which they wanted to be recorded is beneficial to the family or not, and that matter is totally foreign to the proceedings initiated by his clients under O.XXIII, R.3, C.P.C.

22. Mr. T.S. Venkiteswara Iyer, learned counsel for the contesting respondent junior members, has no doubt supported the view taken by the learned Subordinate Judge in the order under attack for rejecting the applications filed by the parties to the compromise, namely R.I.A. Nos. 370 and 373 of 1962. I will consider the contentions of Mr. T.S. Venkiteswara Iyer, after I discuss the contentions taken by Mr. V.R. Venkitakrishnan, learned counsel for the 4th respondent in A.S. 28/62, who, as 1 mentioned earlier, was the 3rd defendant in O.S. 163/58. So far as the party is concerned, I have already referred to the fact that the present appellants had filed R.I.A. 424/62 for striking out the name of that party from the party array in A.S. 28/62. It may be mentioned that though the 4th respondent was not a party to the compromise agreement, the application, R.I.A. 424/62 was opposed by him on the ground that certain rights had been declared in his favour in O.S. 163/58 and that no compromise can be entered into at all to his prejudice and that no compromise decree can be passed without his being made a party to the application filed for recording the compromise. These contentions no doubt appear to have appealed to the learned Subordinate Judge, and therefore R.I.A. 424/62 filed by the persent appellants for striking out the name of the 4th respondent from the party array in A.S. 28/62 was dismissed by the learned Judge. Mr. Venkitakrishnan learned counsel for the 4th respondent has no doubt attempted to sustain the reasonings of the learned Subordinate Judge for dismissing R.I.A. 424/62.

23. So far as that is concerned, even allowing that the order passed by the learned Subordinate Judge, declining to strike off the name of the 4th respondent from the party array in A.S. 28/62 and dismissing that application is allowed to stand, the question which will have to be considered is as to what will be the position so far as the present appellants are concerned. Mr. K.V. Surianarayana Iyer learned counsel for the appellants, urged that it was quite unnecessary for his clients to have filed the application R.I.A. 424/62 for striking off the name of the 4th respondent from the party array; on the other hand his clients would very well have been satisfied by withdrawing the appeals as not pressed so far as the 4th respondent was concerned, and if that procedure had been adopted, the learned counsel pointed out, the 4th respondent in A.S. 28/62 could have no grievance whatsoever.

24. In my view, this contention of Mr. K.V. Surianarayana Iyer, learned counsel for the appellants, will have to be accepted. Whatever may be the nature of the agreement entered into by the parties for passing a decree, the 4th respondent in A.S. 28/62 in my view had no right to intervene in those proceedings and prevent a

decree being passed in terms of the compromise agreement as asked for by the parties concerned. As pointed out by Mr. Surianarayana Iyer, if the appellants in the two appeals, namely his clients, had merely represented to the court that they were not pressing the appeal A.S. 28/62 so far as the 4th respondent was concerned, the latter could have no objection to that procedure being adopted by the court; and the court also could not stand in the way of the appellants being permitted to have that appeal dismissed as against the 4th respondent. Therefore, notwithstanding the fact that R.I.A. 424/62 has been dismissed by the learned Subordinate Judge, in my view, if the compromise is to be recorded as per the two applications,'' R.I.A Nos. 370 and 373 of 1962, I make it very clear that A.S. 28/62 on the file of the lower appellate court, to which Mr. V.R. Venkitakrishnan''s client was a party as the 4th respondent, will stand dismissed so far as that party is concerned. As I am of the view that inasmuch as the 4th respondent in A.S. 28/62 has been made a party irrespective of the nature of the defence he has taken, that appeal will have to be dismissed with half costs of the 4th respondent in both the subordinate courts. Therefore, A.S. 28/62 will, subject to the directions that are to be given regarding the compromise applications, will stand dismissed so far as the 4th respondent is concerned and he will get half costs.

25. Now, coming to the contentions urged by Mr. T.S. Venkiteswra Iyer learned counsel appearing for the junior members who have been allowed to be impleaded on the party array in the two appeals before the lower appellate court, the contentions appear to be that inasmuch as the suit O.S. 163/58, instituted by the Yajaman of the family must be considered so to say to be a representative suit for and on behalf of the family, it is open to the junior members of the family--if they feel that their interests are sought to be bartered away or are not being properly looked after by the Yajaman and manager of the family--to intervene in the proceedings and prevent any compromise which may be prejudicial to them from their point of view, and to participate in the further conduct of the appeal. No doubt the learned counsel also pointed out that on the merits, he will be able to satisfy this Court that the compromise sought to be entered into by the Yajaman and manager of the family is not only beneficial, but highly detrimental to the other members of the family.

26. I have declined to go into the merits, because in my view the question that arises for consideration in these two civil miscellaneous appeals is a very short one, namely as to whether the lower appellate court had jurisdiction to allow the junior members of the family to intervene in these proceedings for the purpuse of an inquiry regarding the binding nature or beneficial nature of the co(sic) that is sought to be entered. No doubt Mr. T.S. Venkiteswara Iyer has drawn my attention to several decisions of the Madras and Andhra Pradesh High Courts wherein a transferee pendente lie, who was either a party on record or who was directed to come on record at a later stage, has been permitted to oppose the compromise that is sought to be entered into between the parties who are already on record. On the

basis of those decisions, the learned counsel urged that in this case also inasmuch as the junior members have got a vital interest in seeing that the rights which have accrued to them in O.S. 163/58 are not in any manner prejudiced by any compromise that may be entered into by the parties, his clients are entitled to be on record and they have got a right to challenge the prejudicial nature of the compromise and request either to inquire into the matter or to refuse to record the compromise as prayed for; by the parties concerned. Among the cases referred to me by the learned counsel where the junior members were allowed to intervene in such proceedings, the only case which requires consideration is the one reported in Kunju Kombi Achan v Ammu (A.I.R. 1932 Mad 31). There, the circumstances so far as I could see, are very exceptional, because after the junior members had instituted the suit for removal of the karanavan, who was so long conducting another litigation on behalf of the tarwad and had filed an appeal also in the appellate court and filed an application for withdrawing the appeal, the junior members filed an application for being impleaded as additional appellants and opposing the application filed by the karanavan to withdraw the appeal. Justice Curgenven, dealing with this aspect, expresses the view that inasmuch as a suit filed by the karanavan must be considered to be a representative suit, the junior members have got an interest to see that the appeal instituted by the karanavan is properly conducted. But the learned Judge, if I may say so with respect, is very guarded in his observations contained in the latter part of the report, when he says that it is not of course in all cases that the prayer of a junior member either to be added as a party in a suit brought by the karanavan or to be substituted in the place of the karanavan should be invariably granted. Then the learned Judge takes note of the fact that in the particular case before him the junior members had filed affidavits to the effect that the karanavan was not acting bona fide. In that connection the learned Judge also refers to the fact that the junior members had already instituted a suit to remove the karanavan from the management of the tarwad affairs, which was pending; and it was after that suit had been instituted by the junior members of the tarwad that the karanavan had filed the application in the appellate court for withdrawing the appeal. Under those circumstances the learned Judge permitted the junior members to come on record as supplemental appellants and also to oppose the application filed by the karanavan to withdraw the appeal. As I mentioned earlier the circumstances existing in that case were rather exceptional and recognising, if I may say so with respect a limited right in the junior members under the circumstances of that case, and the learned Judge directed their being impleaded as additional appellants and also to oppose the application filed by the karanavan for withdrawing the appeal. In my view, the principles laid down by the learned Judge in that decision have no bearing when the court has to consider an application under O. XXIII, R. 3, C.(SIC)

27. So far as that is concered, the principle is now well-settled that even a party to a compromise cannot be allowed to resile from it on the mere ground that it is

voidable, in proceeding under O.XXIII, R. 3. If that is so, in my view the position of outside, though they may be members of the 1st plaintiffs family is that they cannot have far higher rights than rights given to parties to the compromise itself. Therefore, the junior members as supple mental respondents to the appeals was absolutely unwarranted and not justified in the circumstances.

28. I have already indicated that if the learned Subordinate Judge in impleading the junior members as parties to the appeals was for the purpose of an inquiry into the beneficial nature of the compromise, which was the subject of the two applications, viz., R.I.A. 370 and 373/62, the proper course for the learned Judge to adopt was to keep those applications on file and conduct an investigation in that behalf. So far as that is concerned, I have already indicated that the learned Subordinate Judge has no jurisdiction at all to make such an investigation at that stage. That was not what has been done by the learned Subordinate Judge in the present case; he has dismissed the applications R.I.A. 370 and 373/62. If that is so in my view, no useful purpose would be served by the learned Judge, allowing the junior members of the tarwad to be brought on record as additional respondents in the appeals.

29. Then the question is what are the directions to be given in the two civil miscellaneous appeals. If it was a question of considering the beneficial nature or otherwise of the compromise, which arises for consideration in R.I.A. Nos. 370 and 373/62, and if I had taken the view that the lower appellate court had jurisdiction to embark on an inquiry either at the instance of any party to the compromise or at the instance of the junior members of the family, then it follows that these matters would have to be remanded for re-consideration. But in my view, and as rightly pointed out by Mr. Surianarayana Iyer, learned counsel for the appellants before me, no such considerations at all arise in the present case and the lower appellate court has no jurisdiction to embark on an inquiry once the parties are able to satisfy the court that the compromise has been entered into by a lawful agreement, which expression has been defined and explained by decisions of several High Courts referred to earlier in this judgment, and the court has no option but to record the compromise and pass a decree so far as it relates to the suit. Therefore I do not think any useful purpose will be served by remanding R.I.A. Nos. 370 and 373/62 to the lower appellate court.

30. Therefore the orders of the lower appellate court in so far as they relate to the dismissal of the applications R.I.A. Nos. 370 and 373 of 1962 are concerned will stand set aside, and the learned Subordinate Judge is directed to pass decrees in the two appeals A.S. Nos. 28/62 and 31/62, in terms of the compromise agreement entered into as between the parties in relation to the suit. I have already stated that A.S. 28/62 on the file of the lower appellate court will stand dismissed as against the 4th respondent therein, with half costs of the 4th respondent.

31. Inasmuch as I have taken the view that it is not open to the junior members of the family to be impleaded as additional respondents to the appeals, and that they

have no right to intervene in these proceedings and challenge the compromise that is sought to be entered into by the parties, Mr. T.S. Venkiteswara Iyer, learned counsel for the junior member respondents, has represented that the names of his clients may be struck off the record. In view of this representation the names of the junior members of the family, who have been impleaded as supplemental respondents to the two appeals by virtue of the orders in R.I.A. Nos. 405 and 407 of 1962, will stand deleted from the records. It also follows that the orders on these two applications, viz., R.I.A. 405 and 407/62, will have to be dismissed, and the orders passed by the learned Subordinate Judge allowing those applications, will stand set aside. I make it very clear that the junior members, who had been impleaded no doubt originally by the orders in R.I.A. Nos. 405 and 407/62, will have no rights available to them to challenge the compromise in any manner and on any grounds known to law. In the result C.M.A. 177/62 is allowed, and parties will bear their own costs. Inasmuch as A.S. 28/62 has been directed to be dismissed as against the 4th respondent therein, it follows that C.M.A. 178/62 will stand dismissed as against that respondent in this Court also.