(1924) 12 CAL CK 0034

Calcutta High Court

Case No: None

Srimati Taru Bala Dassi		APPELLANT
	Vs	
Sourendra Nath Mitra and Others		RESPONDENT

Date of Decision: Dec. 18, 1924

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3

Citation: AIR 1925 Cal 866

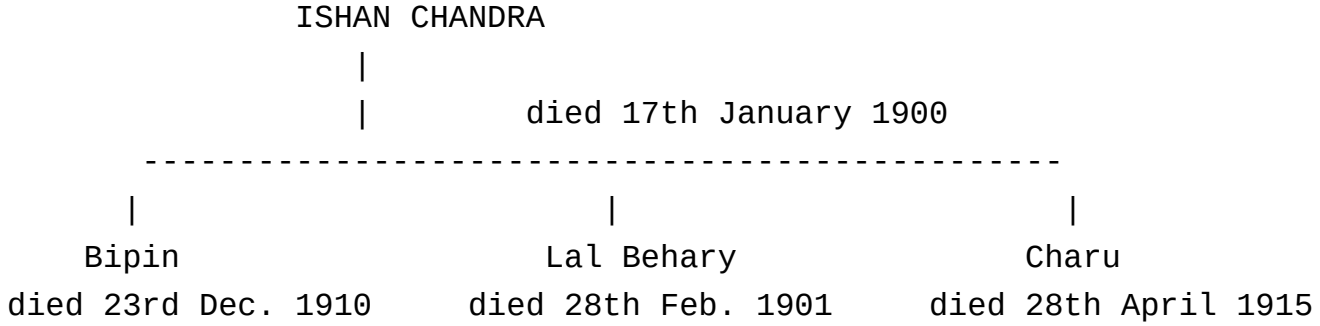
Hon'ble Judges: Walmsley, J; B.B. Ghose, J

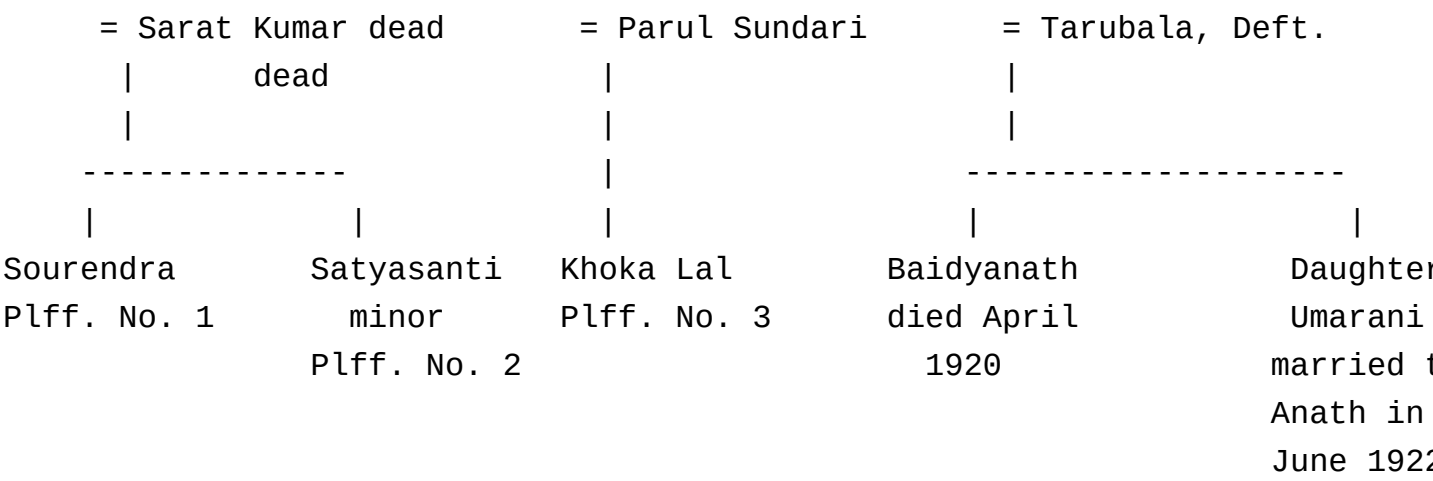
Bench: Full Bench

Judgement

B.B. Ghose, J.

These two appeals by the defendant arise out of a suit for partition and accounts. One is from an order under Rule 3 of Order 23 of the CPC that a compromise be recorded, and the other appeal is from the decree passed in accordance with the compromise. The properties to be partitioned were valued at over 16 lacs of rupees and the claim for accounts was valued at Rs. 10,000. 1 he parties formed a joint Hindu family governed by the Bengal School of Hindu Law. The following genealogical table will show the position of the parties.





2. Sourendra is guardian for his minor brother Satya Santi. Khokalal was a minor till February 1922, and his mother Parul Sundari was appointed guardian of his person and property during his minority under the Guardians and Wards Act. Tarubala took out Letters of Administration of the estate of her husband with the copy of his Will annexed after his death, and it is stated that she is entitled to the properties left by Charu as heir of her son Baidyanath, who had succeeded to the estate of his father. She has, however, been described as administratrix of the estate of her deceased husband in the plaint. All the persons lived in the family dwelling house at Hughli till March 1923. It is alleged that since the death of Baidyanath disagreements began to arise between Tarubala and the other members of the family which eventually became so acute that Tarubala found it impossible to dwell in the house at Hughli and felt compelled to leave it on 21st March 1923, and take shelter in the house of the father of her son-in-law. After leaving the family house the defendant demanded partition of the family properties and accounts from the plaintiffs through her attorney. Some correspondence pasted between the attorneys of the plaintiffs and the defendant to which it is Unnecessary to refer here. The plaintiffs ''anticipating the defendant filed the present suit in the Court of the Subordinate Judge at Hughli on the 12th April 1923. It appears that Jiten Roy, father of the son-in law of the defendant, who is said to be a wealthy man has been financing the defendant and acting in all matters in connection with the case on her behalf. There was no dispute between the parties as to the shares. But the dispute was whether certain properties belonged to the joint family and whether the joint family was liable for certain debts alleged to have been incurred by Charu. There was also serious controversy about the liability to render accounts by the different parties. One of the matters in dispute was whether certain properties described in Schedule "ga" attached to the Plaint, belonged exclusively to Charu or not. I need only refer to item No. 1 here, which is a colliery called Ranidih Colliery. Plaintiffs allege that this along with other properties in Schedule " ga " was Charu''s exclusive property. It appears that it was heavily mortgaged, when it was acquired and the equity of redemption at the time of the suit seems to be of very little value. Defendant alleged that in is joint family property. This involves the question as to how the purchase money for the property should be debited in accounting as it was paid by Charu out of the

common till, and who would be liable to discharge the incumbrance on that property.

3. The defendant made an application for the appointment of a Receiver on various allegations on the 4th of June 1923. This was strenuously opposed by the plaintiffs. In the proceedings relating to the appointment of a receiver four masters of dispute emerged as of primary importance, (1) The question of Ranidih Colliery already referred to; (2) a decree of Janakinath. Roy against Charu and Sourendra for about a lac and fifty thousand rupees (3) a claim by Hari Mohan ''-Ghose for about 50 thousand rupees for which a suit is now pending on the original side of this Court; and (4) a sum of Rs 53,000 obtained on an insurance policy on Cham''s life, -which sum was deposited in common fund of the joint family. The dispute with regard to items (2) and (3) was whether those debts are payable by the joint family or by the defendant alone as representing the estate of Charu, and with regard to the 4th item, whether the defendant was entitled to get the money. Mr. N. N. Sircar, a barrister and an Advocate of this Court of considerable experience, was instructed on behalf of this lady to conduct her case with regard- So the appointment of a receiver. Jiten Roy and his son Anath, the son-in law of the lady were instructing Mr. Sircar on her behalf. Attempts were made by the relations of the parties to bring about a settlement. One such attempt made in July 1923 by Rai Mahendra Chandra Mitra Bahadur, the brother of Ishan Chandra failed. Another gentleman Mr. S.M. Bose, Barrister-at-Law, a relation of the parties, approached Mr. Sircar with a view to settlement. It appears that by their efforts certain terms were arranged under which the plaintiffs agreed to pay Rs. 5,72,500 to the lady in certain instalments on certain conditions and the lady was to give up all claims to the properties. Apparently the lady did not agree to the instalments and the rate of interest proposed. In one of his letters to Anath, Mr. Sirear wrote to him about the authority of counsel to compromise a case and said, "My client, in the case, is a Pardanashin lady incapable of judging for herself. So far as I am concerned, I have no desire to force a settlement which is unacceptable to my client but I certainly reserve to myself the right to retire from the case." This was on the 28th August 1923. The case, however, was not settled and it appears from Mr. Sirkar''s letter to Jitten Roy of the 29th August that he was preparing himself, for arguing the case in Court. The bearing of the, matter of the appointment of a Receiver had commenced on the 18th August and pirtly heard on the 25th August. The arguments were resumed on the 1st September and continued till the 3rd. The order in the order-sheet of that date concludes thus; " He (Counsel for plaintiff No. 3) has not quite finished, when there has been a talk of compromise and the case is adjourned to 5th September 1923 for further hearing" What happened on the 3rd September may be taken from the judgment of the Subordinate Judge as there is no dispute about those facts before us. He says: On this date the plaintiff''s Counsel, Mr. S.R. Das, finished his arguments and then he sent a slip of paper containing certain terms of compromise from the Court Verandah to Mr. Sircar who was inside the Court room. As will be seen later on

those terms were discussed and accepted on both sides with some modification and then embodied in the Memorandum, Exhibit I, which was signed by the defence Counsel, Mr. Sircar, and also by the plaintiff No. 1 for himself and the minor plaintiff except the plaintiff No. 3, Khokalal, as he was abent from Court that day. The terms were signed by Khokalal, on the 4th September 1923 in the afternoon''. Later on in his judgment he refers to the evidence of Mr. Sircar and proceeds thus: " From Mr. Sircar''s evidence it is clear that the modifications suggested by Mr. Roy were then discussed with him by Messrs. Sirear and Das and ultimately the terms were settled and embodied in the memorandum and signed without any objection on any side." On the 5th September, the order of the Court on a petition filed by the defendant was this. "Defendant has filed a petition consented to by the plaintiffs praying for time for amicable settlement of the suit. Ordered.-That the suit be adjourned to the 15th September 1923 for further hearing. Parties do file the petition of compromise on that date. It is apparent that it was not the case of either party on that date that the suit had already been compromised. The order of the 7th September also shows that neither party asserted that the suit had already been compromised, "Issues in the suit had not yet been settled". The order of the Court of the 10th September is also relevant, which runs thus: " plaintiffs pray for a week''s time for settlements of issues on the score that there has been a talk of compromise between the parties-Ordered-that the suit be adjourned to 15th September 1923 for settlement of issues. Parties do settle the issues on that date if the proposal for amicable settlement falls through ". On the 15th September defendant filed a petition praying for a date being fixed for the hearing of her application for the appointment of a Receiver alleging that the proposal for compromise had not been finally settled. On that date plaintiffs filed a petition alleging that the terms bad been settled and signed by the plaintiffs and Counsel for defendant as mentioned above. They filed a copy of the memorandum of the terms signed by Mr. Sircar and the plaintiffs and prayed that the compromise be record" ed under Order 23, Rule 3 of the Civil Procedure Code. The defendant raised various objections which were overruled by the Subordinate Judge and he ordered the compromise to be recorded and passed a preliminary decree in accordance with the compromise so far as it related to the suit. The defendant appeals both against that order and the decree. Before dealing with the matter; in controversy before us, I should refer to the observation of the Subordinate Judge as to the application of the rule in England regarding the authority of Counsel to compromise a case without reference to his client. Ha appears to have held that the common law rule in England is applicable to this case, and he refers to the oases of Strauss v. Francis L.R. (1866) 1 Q.B. 379 and Mathews v Munster (1888) 20 Q.B.D. 141. This is contested by the appellant. Even if this case exactly come under the rule in those oases, I should be extremely reluctant to hold unless compelled to do so by any binding authority, that a rule of practice in England which has its roots in different traditions and environments should be applied in this country, particularly in the Mufassil, where people never heard of any such practice. Moreover, there are two lines of cases in England as has been pointed

out by Bankes, L. J., in Shepherd v. Robinson [1919] 1 K.B 474. I should rather follow, wherever possible, the dictum of Lord Halsbury, L.C. in Neale v. Gordon Lennox [1903] A.C. 465 where his Lordship said:

The Court is asked for its assistance when this order is asked to be made and enforced that the trial of the cause should not go on: and to suggest to me that a Court of justice is so far bound by the unauthorised act of learned Counsel that it is deprived of its general authority over justice between the parties, is, to my mind, the most extraordinary proposition that I ever heard ". I need hardly say anything further on the point as learned Counsel for the respondents in his careful argument did not rely upon the general authority of Counsel to compromise a case.

4. I shall now deal with the other grounds urged on behalf of the appellants and it would be convenient to take them in the inverse order of the argument of the learned Counsel. The first is that the agreement of compromise is not " lawful " as mentioned in Order 23, Rule 3 of the Civil Procedure Code, as no leave of the Court to enter into the compromise was obtained under Order 32, Rule 7 of the Code by the next friend of the miner plaintiff. The argument is two-fold, (1) that on the terms of Sub-rule (2), Rule 7, Order 32, the agreement is voidable by the defendant as against the adult plaintiffs, as it provides that such agreement shall be voidable against all parties other than the minor. I cannot accept this argument as it seems to me clear that that sub-rule contemplates the case of a minor on one side ranged against adults on the other, as regards the matter of compromise and that it can have no reference as to the effect of any compromise between adults, although a minor may be a party to the suit. The question as between adults must be governed by the general law and not by this sub-rule. Secondly, it is said that the compromise was entered into by the next friend of the minor against the imperative provision of Sub-rule (1) of rule 7 and therefore it was not lawful." But Sub-rule (2) lays down what should be the effect of a breach of the provision of Sub-rule (1) and I do not think that the agreement can on that ground be set aside as not being lawful. I should state here that application was made by the next friend of the minor plaintiff for leave of the Court to compromise on teems set out, on the 12th January 1924 during the course of the argument in the Court below, and that Court sanctioned the compromise on behalf of the minor by the order under appeal. In my opinion this ground urged by the appellant fails.

5. The second point taken is that the compromise is too vague and uncertain to be carried into effect and should not therefore be recorded. If the terms of an agreement are intelligible, and the agreement is binding between the parties it cannot be avoided by one of the parties on the ground that he does not understand whether a particular matter is included in those terms or not. It is urged that the four matters in dispute already stated have not been provided for, as to who should pay the encumbrance on the colliery and who should be liable to pay the debts due to Janakinath Ray and Hari Mohan Ghose and what would become of the money

received on Charu''s life insurance policy. In answer it is urged on behalf of the respondents that the clauses of the agreement are quite clear, because those who take shares in an encumbered property must pay the encumbrance according to their shares and the liability to pay debts is provided for by Clause a of the agreement. If the debts referred to are shown in the books of the estate the plaintiffs must pay them. Charu''s insurance money is similarly provided for by Clause 3 as coming within the term " deposits ". The appellant argues that she never understood the matter to be so. This however is relevant with reference to the question of ratification, which 1 shall deal with later on. But it cannot be said that the terms are unintelligible on that ground. In my opinion the contention of the respondents should be accepted as sound that the terms of the agreement are not vague or indefinite.

6. I now come to the next two important questions: Whether Jiten Kay had authority to agree to the compromise on behalf of the defendant, and if not, did the defendant ratify the agreement and is, therefore, bound by it. It teems to me that it cannot be doubted on the evidence that Jiten Ray did agree to the compromise and there was discussion between him and Mr. Sircar as to the terms- before Mr. Sircar accepted them. It is immaterial to consider what led Jiten Ray to agree to those terms. We have to decide whether the lady is bound by his acts. The Subordinate Judge says " Mr. Jiten Ray was all in all in respect to the litigation throughout and he is so even at the present moment. So Mr. Jiten Ray had full authority to compromise and the Counsel engaged by him was equipped with authority to enter into a compromise." It seems to me there is a confusion of ideas here. It is true that Jiten Ray was doing everything in the matter of conducting the litigation for the lady. A paradanashin lady in the situation of the defendant must find somebody to advance her money for her litigation and to act for her generally, but it would be disastrous to the interests of purdanashin ladies if we were to hold that a tadbirkar or financier is authorised on behalf of a pardanashin lady to compromise a suit on any terms he thinks fit and thereby bind the lady. There is in this case no direct evidence of Jiten Ray''s authority and there was no communication from the lady to her Counsel. The defendant as well as Jiten Kay swear as to the absence of any such authority. The Subordinate Judge disbelieves them, but that cannot establish she positive fact of the existence of authority, which must be proved. The learned Counsel for the respondents supports the conclusion of the lower Court somewhat in this way: "Jiten bad been doing everything for the lady, there was a talk of compromise on what has been called the " cash basis"; Jiten had been doing everything in that connection and the lady was prepared to compromise on the " cash basis" if the terms had been accepted by the plaintiffs. Therefore Jiten had authority to compromise on certain terms, and it may be inferred from his conduct and other circumstances that Jiten had authority to compromise on other terms. " I am unable to hold that such an inference can be legitimately drawn. An agent authorised to do a certain act cannot be held to be authorised to do another act in connection with the same business. It

is quite true that Jiten was in a position to induce the lady to accept any terms he considered proper, but the decision must ultimately be here. This was also realised by Mr, Sircar When he wrote to Anath Ray that his client being a pardanashin lady was not in a position to judge for herself. I am of opinion that Jiten Ray had no authority to consent to the compromise on behalf of the lady and that his acts cannot bind her. Any person seeking to hind a pardanashin by the act of her agent must give strict proof of such agency, and there is no such proof in this case, Azeezoonissa v. Baqur Khan [1872] 10 B.L.R. 205. Appellant''s counsel also relies upon the case of Sarat Kumari v. Amulyadhan AIR 1923 P.C. 13 while the respondents rely on Bhutnath v. Ram Lall [1901] 6 C.W.N 82. No case can be an authority as to the facts of another case which must) be decided on the evidence in each case; but it is instructive that in Sarat Kumari''s case their Lordships of the Privy Council referred to the cases of Tacoordeen Tewary v. Syed Ali Hussein [1873] 1 I.A. 192 and Shambati Koeri v. Jago Bibi [1902] 29 Cal. 749 laying down the principles by which the Courts are to be guided in dealing with transactions by pardanashin ladies, as applicable to the case to a compromise by a lady. The last case as well as the case of Sudisht Lal v. Mt. Sheobrat Koer [1881] 7 Cal. 248 (8 I. A. 39) which it followed, deal with transactions by agents of pardanashins. The cases on the subject are numerous and the principles are clearly laid down but they are for sometimes lost sight of. Even where a deed is executed by a purdanashin lady herself there must be evidence of clear understanding by her of what liabilities she is taking and what is being given to her, Annoda Mohini v. Bhuban Mohini [1901] 28 .Cal. 543: 28 I. A. 71. This should be borne in mind in connection with the question of ratification by the lady which I am next proceeding to deal with. The appellant argues that the question of ratification could not be raised by the respondents as this was never alleged in their petitions in the lower Court but was only started during the coarse of their argument in that Court. I will assume that the question might be raised. There is no direct evidence of any ratification by the lady. During the course of her examination she was not asked a single question on the point. But it is urged that the statements of Jiten Ray and Anath to Mr. Sircar prove beyond doubt that the lady had ratified the transaction; and that is also supported by the conduct of the lady. The facts are these: Jiten Ray enquired of Mr. Sircar more than once on the 4th September through the telephone, whether Khokalal plaintiff No. 3 agreed to the terms and said that the terms were very satisfactory and Khokalal would " cry of ". Jiten also told him that the lady wanted Rs. 1,500 a month instead of Rs. 750 during the pendency of the partition proceedings as provided in clause 7 of the memorandum of agreement. Mr. Sircar succeeded in inducing Khokalal and the other plaintiffs to consent to pay Rs. 1,400 a month and certain other terms of the clause were modified and put down in writing. Mr. Sircar then read out to Jiten the whole of the contents of the paper by telephone. Anath also saw Mr. Siroar on the 4th and Mr. Sircar asked him whether his mother-in-law was satisfied with the terms, particularly about clause 5 relating to the Hooghly house. Mr. Sircar says " I understood from him that there was no question of his mother-in-law or her party

being dissatisfied but he told me that he was sure Khokalal would not sign it." Whether the wish of the Roys was the reason for the thought is not certain, but they deny having made all these statements. They have been disbelieved by the Subordinate Judge and there can be no doubt that they made those statements to Mr. Sircar. But to hold on the statements of such unreliable parsons that the lady ratified, the transaction would in my opinion be erroneous. They did not apparently give any straightforward answer to Mr. Sircar that the lady had consented to the compromise and the conduct of the Roys in this matter was tortuous. There is evidence that on the 4th Anath saw, under instructions from his father, a vakil of this Court and also a barrister-at-law with the object of getting out of the compromise as they were under the belief that Counsel had authority to compromise a suit on any terms he thought fit. On the 6th it was clear that Mr. Sircar understood that there was a desire to get out of the agreement on the part of the defendant. Another fact should be mentioned. The lady was given a Bengali translation of the memorandum by Anath on the evening of the 3rd September. It is clear that she read it then. It is urged that it must he taken that she ratified the transaction since she did not raise any objection to the terms except with regard to the monthly payment of Rs. 750, Assuming that it was she, who wanted more money, the question is whether she understood all the terms and whether they were explained to her clearly. Did she understand whether she would have to pay the debts of Janaki Nath Ray and Hari Mohan Ghose from her own share? Was she told whether those debts were shown in the books of the estate or not? We are informed that these are still matters in controversy. There is no evidence that she consented to the compromise with full knowledge of all these facts and full knowledge is essential on the question of ratification. Similarly, it is difficult to say whether she understood that the life insurance money of Charu was given up, because In clause 2 the ward "deposits" has been mixed up with several other matters placed before and after it. I cannot therefore hold that there was any ratification by the defendant of the proposed agreement. Further, there was no communication of any ratification by the lady to the plaintiffs before she repudiated the transaction It is clear that the plaintiffs themselves represented to the Court on the 10th September 1923 that there bad been talk of compromise and never said before the 15th Septa fiber that there had been a completed agreement to settle. Nothing had happened between the 10th and the 15th which altered the situation. There is therefore neither any direct evidence of ratification nor can any inference be drawn from the evidence that the lady did ratify the transaction with full knowledge of the facts and the effect of it. There cannot be any doubt that Mr. Sircar acted as he did under the belief, on the materials placed before him, that be was acting in the best interest of his client. But much as we may desire that this litigation should be compromised and feel that it would be advantageous to the lady to settle it, I do not think, we can force bar to accept the terms which she does not like. It is regrettable that the advisers of the parties did not take the ordinary precautions which. must be taken while dealing with purdanashins.

7. On these grounds, I am of opinion that the order of the lower Court and the decree based on the compromise must be set aside and the case remitted to that Court to be heard from the stage it had reached on the 3rd September 1923.

8. As all this was brought about by the acts of her counsel and her advisers I think the defendant should pay the costs of the proceedings in the Court below as ordered by that Court but the defendant will recover her costs in this Court from the respondents. The hearing fee will be 10 gold mohurs in both the appeals. The costs of the supplementary paper-book incurred by the defendant are not recoverable by her.

9. Let the records be sent down to the Court below at once.

Walmsley, J.

10. I agree.