

BOMBAY HIGH COURT

Gurmallappa Mallappa Katti

Vs

Mallappa Martandappa Teli

(N Macleod, Kt., C.J. Heaton, J.)

21.11.1919

JUDGMENT

Norman Macleod, Kt., C.J.

1. The facts of this case are very clearly set out at p. 6 of the print.
2. The plaintiffs are minors and in effect their mother as next friend has sued to set aside the sale-deed of the 17th July 1900 passed by her as their natural guardian. It has been found by both the lower Courts that the deed was passed for legal purposes, but the sale-deed has been declared to be void on the ground that the sanction of the Court was necessary. This, on the facts stated, involves a confusion of ideas. It is true that on an award decree against the plaintiffs' father execution proceedings were commenced, against the minors represented by one Baslingappa as their guardian ad litem, after which terms of compromise were arranged. An application to the Court was presented by both parties intimating they had entered into a compromise. The plaintiffs' application was signed however not by Baslingappa but by their mother. The Court recorded it, without granting or rejecting it. Clearly the application signed by plaintiffs' mother was not in order. Thereafter the Court passed an order in execution,
3. In spite of that the mother executed the sale-deed now in question, and as it has been found that it was for legal purposes and for the minor-plaintiffs' benefit it cannot be avoided unless it can be held that the powers of their mother as their natural guardian to satisfy the decree passed against their father were entirely suspended, from the time the execution proceedings commenced, or must be taken as suspended in consequence of her own action. The fact that Neelava agreed to sell the lands on the same terms as had been agreed upon by the compromise apparently made with the guardian ad litem which was never sanctioned by the Court is a mere coincidence, and is irrelevant to the general question which we have to deal with, and which so far as can be discovered has not yet been decided by the Courts in India. The question was referred to in *Granesha Row v. Tuljaram Row*¹ but their Lordships of the Privy Council said then

that that question was not in issue on the facts of that case; as the father of the minor had been appointed guardian ad litem in the suit, and his powers of management so far as they related to the minor's interest in the suit were held to be controlled by the provisions of Section 462 of the Code of 1882. Now in this case a decree was passed against the minor's father based on an award, and after his death the creditors sought to execute it, against his heirs. Neelava could have settled that claim by transferring these lands to the creditors and receiving Rs. 175 and on the facts found such a transaction could not now be disputed.

4. I fail to see why she could not have so settled the creditor's claim, disregarding altogether the execution proceedings, as she was not representing the minors in them. The transferee could then take the usual risk of the transaction thereafter being set aside, if it were proved that the minors' guardian had exceeded her power as such guardian. My brother Heaton, however, thinks that on general principles when a minor is represented in a suit by a guardian ad litem other than his natural guardian, the powers of his natural guardian to deal with the minor's interests which are involved in those proceedings are suspended. I am not prepared to go so far as that, but on the facts in this case I am not disposed to differ as Neelava had applied to the Court to sanction the compromise and thereby I think she put it out of her power to settle the creditor's claim as the minors' natural guardian without the Court's consent.

5. I should also like to point out that though Section 462 of the Code of 1882 applied and Order XXXII, Rule 7, of the present Code applies to execution proceedings, there seems to me to be a distinction between a case where the minor's liability has already been determined by a decree in his father's and a case where the minor's liability in the first instance is in dispute. For, in the former case there is a debt which the guardian is clearly entitled to pay off in full, and the fact that the judgment-creditor has issued execution against the minor making an outsider his guardian ad litem, does not in my opinion alter the situation.

6. The appeal will be dismissed with, costs.

Heaton, J.

7. I need not restate the facts.

8. The matter seems to me to be one of importance as a matter of principle. If you take the bare words of Section 462 of the old Code (now Order XXXII, Rule 7) they do not cover this case, as there was not a compromise by the guardian ad litem. Therefore, it may be said, there was not anything for which the leave of the Court was required. But there was a compromise during the continuance of the proceedings and it was a compromise which settled the very matter which was before the Court. The intention so to compromise the matter was brought to the notice of the

Court. The Court declined to give effect to that intention for it continued the proceedings before it and made an order contrary to that intention. Yet the compromise was effected; not it is true by the guardian ad litem but by the natural guardian of the minor. That compromise in my opinion was contrary to law because in effect it defeated the purpose of Section 462.

9. That section, I think, necessarily implies that during the continuance of proceedings in Court, the dispute between the minor and another party which the Court had to decide could not be compromised except by the guardian ad litem of the minor, and by him only with the leave of the Court.

10. That, I think, is the principle and purpose underlying Section 462, and I think that a relaxation of that principle might lead to very serious abuse.

11. Therefore I think the appeal should be dismissed with costs.

Cases Referred.

1(1913) I.L.R. 36 Mad. 295, P.C