Privy Council Appeal No. 50 *of* 1921.

Patna Appeal No. 44 *of* 1919.

Sourindra Nath Mittra and others - - - - - *Appellants*

v.

Heramba Nath Bandopadhaya and others - - - - *Respondents.*

FROM

THE HIGH COURT OF JUDICATURE AT PATNA.

JUDGMENT OF THE LORDS OF THE JUDICIAL COMMITTEE OF THE PRIVY COUNCIL, DELIVERED THE 5TH MARCH, 1923.

Present at the Hearing :

VISCOUNT FINLAY.
LORD DUNEDIN.
LORD ATKINSON.
SIR JOHN EDGE.
MR. AMEER ALI.

[*Delivered by* SIR JOHN EDGE.]

This is an appeal from a decree, dated the 21st August, 1919, of the High Court at Patna which, adversely to the plaintiffs, varied a decree, dated the 5th December, 1917, of the Subordinate Judge of Dhanbad. The respondent to the appeal who has appeared in support of the decree of the High Court is Heramba Nath Bandopadhaya, who will be hereafter referred to as defendant 1. The other respondents are *pro forma* respondents and have not appeared to support the decree of the High Court.

The litigation was between persons who were interested in the Ranidih Colliery and land in Mouza Ranidih. The suit in which these appeals have arisen is in effect a suit to enforce the terms of a compromise entered into in suit No. 106 of 1912 in the Court of the Subordinate Judge of Purulia, who had on the 30th August, 1913, made a decree upon that compromise. That suit No. 106 of 1912 was brought by defendant 1 upon a mortgage of the 24th August, 1908, to obtain a decree for sale.

At the date when the compromise was entered into there were three other suits pending between the parties besides suit No. 106 of 1912. The other suits were suit No. 300 of 1911, suit No. 345 of 1911 and suit No. 638 of 1911. Suit No. 300 of 1911 was a suit by defendant 1 on the original side of the High Court at Calcutta; in that suit a preliminary decree had been made, and pending the determination of that suit the Ranidih Colliery had, on the 27th March, 1911, been attached. There was also then pending a suit No. 412 of 1911, which was brought by the lessors of the colliery for rent and royalty against all the parties to these present appeals or those whom they represent. After the date of the compromise, but before this present suit, the High Court at Calcutta had in suit No. 300 of 1911 made a decree in favour of defendant 1, which he was threatening to execute when this suit was brought.

The form in which the relief is claimed in this present suit is as follows :—

"(1) That it may be declared that they are entitled to the 16 annas of the property detailed in the schedule below, free from all encumbrances, and that none of the defendants has any right or claim to it.

"(2) That it may be declared that defendant 1 is in no way entitled to interfere with or to sell the said property in execution of the decree obtained by him in Suit No. 300 of 1911 of the Honourable High Court, in its original jurisdiction.

"(3) That it may be declared that even if there was any attachment of the said property or any portion thereof in consequence of the said suit of defendant 1, the same (attachment) is not valid, and that he is not entitled to derive any benefit thereunder.

"(4) That all the costs of the suit may be awarded to the plaintiffs.

"(5) That any other relief to which the plaintiffs be deemed legally and justly entitled may also be awarded.

"*Schedule.*

"Coal mine, named Ranidih, and land in Mouza Ranidih, Thana Topechanchi, Pergana, Loyagarh, Sub-District Dhanbad, District Manbhum.

"*East.*—Boundary limits of Muchi Raidi Tardla Mouzas.

"*West.*—Boundary limits of Babudi, Pipratand and Tardla Mouzas.

"*North.*—Boundary limit of Tardla Mouza.

"*South.*—Boundary limits of Bhuranga and Pipratand Mouzas.

"Within this boundary is situate coal mine and land comprising about 537 bighas, more or less, along with underground coal mine and Kuthi house, buildings, coals and appurtenances, etc., thereon—entire right to all those sorts of movable and immovable (property)."

It appears from the evidence of Ananga Mohan Bhattacharjee, who is a pleader of standing and was professionally engaged as a pleader in suit No. 106 of 1912, that the hearing of that suit commenced on the 24th or 25th July, 1913, and that negotiations for a compromise of that suit began when the hearing of the suit commenced. On the 29th July, 1913, the pleaders acting on behalf of their respective clients, the plaintiff and the defendants to the suit respectively, agreed in the Bar Library upon the terms upon which the suit should be compromised, and they then adjourned into Court to ascertain which of them had filed a

vakalatnama which authorised him to compromise the suit. A pleader, who does not hold and has not filed in the suit before the Court his client's general power of attorney authorising him generally to compromise suits on behalf of his clients, cannot be recognised by a Court as having any authority to compromise the suit unless he has filed in the suit his clients' vakalatnama giving him authority to compromise the suit before the Court. It appeared that Sreemati Kalitara Devi, a widow and a defendant in the suit, who lived in Calcutta, had, by some inadvertence, not filed any vakalatnama on her own behalf, although she had filed a vakalatnama appointing a pleader to appear in the suit on behalf of her minor son, who was also a defendant in the suit, appearing by her as his guardian. Some other of the defendants to the suit do not appear to have then filed vakalatnamas, but their Lordships are informed by counsel that all the vakalatnamas which had then been filed gave authority to the pleader named in them to compromise the suit. There can, in their Lordships' opinion, be no doubt that all the parties to the suit had been informed of the negotiations to effect a compromise. After inspecting the vakalatnamas which had been filed the pleaders agreed upon minutes of a compromise.

The minutes of compromise which the pleaders agreed upon are as follows :—

"IN THE COURT OF THE SUBORDINATE JUDGE OF MANBHUM.

"SUIT No. 106 OF 1912.

"Heramba Nath Banerji *versus* Abani Bhusan Chatterji.

"1. There is to be consent decree immediately in suit No. 106 of 1912 (Heramba Nath Banerji *versus* Abani Bhusan Chatterji and others) in the Court of the Subordinate Judge of Purulia in the following terms :—

"(*a*) There is to be a mortgage decree for Rs. 1,20,000 (one lakh and twenty thousand) and including interest, commission and costs, and all the defendants except the minor defendant will be personally liable for the amount decreed with interest and costs in addition to the mortgage security.

"(*b*) Interest is to run on the decretal amount at the rate of (15) fifteen per cent. per annum with six-monthly rests from date hereof until actual payment.

"(*c*) The plaintiff will not be entitled to execute the decree within six weeks from the date hereof, but if the decretal amount with interest be not paid to him within the aforesaid time he will be entitled to execute the decree with interest at the rate aforesaid.

"(*d*) On the payment of the decretal amount (Rs. 1,20,000), one lakh and twenty thousand, with interest accruing due thereon by the defendant 7, Charu Chandra Mitra, within (6) six weeks from the date hereof the plaintiff will, if his claim under the decree is not in the meantime satisfied, transfer the decree herein in favour of the defendant 7, Charu Chandra Mitra, or with his consent to any other person who may pay the said sum with interest as aforesaid at the costs of the assignee and without recourse to the plaintiff, and thereupon the said defendant will be discharged from further acting as Receiver and will not be liable in that event to account for his management.

"(*e*) This is to be certified as being for the benefit of the minor defendant.

" 2. The foillowing terms are also agreed by and between the parties :

" (*a*) Herambo Nath Banerji will, on payment of the decretal amount, *i.e.*, Rs. 1,20,000 (one lakh and twenty thousand) with interest in the said Suit No. 106 of 1912 to him within six weeks from the date hereof cause, at the costs of the defendants in the said suit, satisfaction to be entered in Suit No. 300 of 1911 (Herambo Nath Banerjee *versus* Naba Chandra Chatterjee) and Suit No. 345 of 1911 (Anila Bala Devi *versus* Abani Bhusan Chatterji).

" (*b*) Naba Chandra Chatterji and Kunja Behary Dutta will withdraw the suit instituted by them in the Calcutta High Court against Heramba Nath Banerji for damage for malicious attachment now pending in the said court within six weeks from the date hereof.

" (*c*) Charu Chandra Mittra indemnifies Herambo Nath Banerji against the claim of the plaintiffs Gopi Nath Banerji and others in suit No. 412 of 1911 of this Court—all subsequent rents and royalty accruing due till the payment of the decretal amount.

" (*d*) All the defendants in the said Suit No. 106 of 1912 undertake that they and each of them will file in court express authority in favour of their respective pleaders to consent to these terms.

" (*e*) In case the said defendants fail to proceed and file such authority as in sub-clause (*d*) of clause (2) hereof within three weeks from the date hereof, the terms contained in sub-clauses (*a*) to (*e*) of clause (2) hereof will not come into operation.

" (Sd.) S. C. MITRA,
" For CHARU CHANDRA MITTRA."

The pleaders presented these minutes of compromise to the Court on the 29th July, 1913, and along with the minutes of compromise the pleaders filed the following application :—

" In connection with the aforesaid suit, the plaintiffs and defendants 1, 2, 3, 5, 6 and 7 beg to submit that the suit has been settled according to conditions written in English herewith. Hence it is prayed that the suit may be decreed according to the said terms. Be it also known that defendant 4 also has settled the suit according to the said condition. But as he has not filed the vakalatnama to-day, the same may be filed within seven days. Under the circumstances, it is prayed that it may be decreed with the said conditions against her [defendant (4)] and other defendants when the said vakalatnama will be filed. Dated 29.7.13."

and an application that the compromise might be sanctioned by the Court on behalf of the minor. The Court, on the 30th July, 1913, sanctioned the compromise on the part of the minor and extended the time for filing the widow's application. That time was extended from time to time.

It appears from the Order sheet that on the 30th August, 1913, the widow, the minor and two other defendants in suit No. 106 of 1912 filed a petition in the Court of the Subordinate Judge, consenting to abide by the solehnama (minutes of compromise) which was presented to the Court on the 29th July, 1913, and their Lordships are informed by counsel that vakalatnamas from all the other parties to the suit authorising the pleaders to compromise the suit on behalf of their clients had been filed in the suit on or before the 30th August, 1913, but it does not

appear that any further and special vakalatnama giving authority to any pleader to consent to the terms of clause 2 of the compromise was filed by anyone. The filing of such further and special vakalatnamas appears to have been intended in paragraphs (*d*) and (*e*) of clause 2 of the minutes of compromise. But there cannot be the slightest doubt that before the 30th August, 1913, all the parties to the suit No. 106 of 1912 knew what the terms were on which the suit was to be compromised and had assented to those terms, and did not consider that it was necessary to file any further and special vakalatnamas. They treated the compromise as binding upon them and acted upon it. The Subordinate Judge on the 30th August, 1913, made a decree in suit No. 106 of 1912 in accordance with the solehnama (minutes of compromise), and in the decree stated that the solehnama was filed by the parties, and further decreed that "the solehnama filed be considered as part of this decree." That was all he could do. He had no power in suit No. 106 of 1912 to deal with suits which were not before him and could not decree that suits No. 300 of 1911, No. 345 of 1911 and No. 638 of 1911, or any of them, should be stayed or abandoned. The staying or abandonment of those suits depended upon the compromise and not upon any decree which the Subordinate Judge could make in suit No. 106 of 1912.

In their Lordships' opinion all the parties to suit No. 106 of 1912 were competent to agree and did agree that suit No. 106 of 1912 should be compromised and that it was an essential term of that compromise that satisfaction should be entered in suits No. 300 of 1911 and No. 345 of 1911, and that suit No. 638 of 1911 should be withdrawn. The parties to those suits were parties to suit No. 106 of 1912, and were competent to put an end to the litigation in those suits and did agree to put an end to it. No Court with judicial notice of the compromise would or could proceed with the hearing of suits No. 300 of 1911, No. 345 of 1911 or No. 638 of 1911, or make in any of those suits any order, except in suit No. 300 of 1911 and in suit No. 345 of 1911, that the suit had been satisfied and in suit No. 638 of 1911 that the suit had been withdrawn.

In suit No. 106 of 1912, Rs. 1,22,032–4–0, which included the Rs. 1,20,000 mentioned in the minutes of compromise, were deposited in Court by the defendants in that suit on the 12th September, 1913, to be paid out to the plaintiff in that suit, who is referred to in this judgment as defendant 1, and were paid out to him by the Court on the 25th September, 1913.

In the present suit the Subordinate Judge of Dhanbad, on the 5th September, 1917, gave the plaintiffs a decree and a declaration that they had an absolute right to the colliery in dispute, and a declaration that defendant 1 has no right to get the colliery sold in execution of his decree in suit No. 300 of 1911, and gave the plaintiffs their costs. From that decree defendant 1 appealed to the High Court at Patna.

The High Court at Patna held that as no special vakalatnamas contemplated in paragraphs (*d*) and (*e*) of clause 2 of the compromise had been filed, the plaintiffs could not avail themselves of the compromise, but they held that in suit No. 300 of 1911 an attachment of the colliery which was made in that suit affected only $7\frac{1}{2}$ annas of the 16 annas of the colliery because the attachment of the other $8\frac{1}{2}$ had been abandoned, and the High Court at Patna varied the decree of the Subordinate Judge by limiting it to an $8\frac{1}{2}$ annas share in the colliery. Against that decree the plaintiffs have brought this appeal and defendant 1 has applied to their Lordships for special leave to appeal against it, his contention being that the whole 16 annas were and continued to be attached in suit No. 300 of 1911 and are liable to be sold in execution of a decree which, subsequently to the compromise, it is said that he obtained in the High Court of Calcutta in suit No. 300 of 1911. That application for leave to appeal is dealt with below by their Lordships. Holding the view which their Lordships have expressed as to the effect of the compromise, it is not necessary for them to refer in any detail to what had taken place in suit No. 300 of 1911. Before the compromise of suit No. 106 of 1912, a preliminary attachment in suit No. 300 of 1911 before decree had been made, whether of the whole 16 annas or of $7\frac{1}{2}$ annas only in the colliery, it is not necessary to consider. After suit No. 106 of 1912 had been compromised on terms which included a term that satisfaction should be entered in suit No. 300 of 1911, an application was made to the High Court at Calcutta on behalf of the defendants in that suit to enter satisfaction in that suit, that application was subsequently altered to an application to the Court to record the compromise. That application came before Mr. Justice Chaudhuri on the 31st August, 1914; it was opposed by defendant 1, and Mr. Justice Chaudhuri dismissed it on the ground that it was barred by limitation. The view which Mr. Justice Chaudhuri took of the merits of the case may be inferred from the fact that he dismissed the application without costs. As that High Court had, by the application, although it was dismissed, judicial notice of the compromise, it had no power to proceed further with the hearing of the suit and should, in their Lordships' opinion, have treated it as satisfied.

For the reasons which have been stated in this judgment their Lordships will humbly advise His Majesty that the appeal of the plaintiffs should be allowed, the decree of the High Court at Patna should be set aside with costs, and that the decree of the Subordinate Judge should be restored and affirmed. The defendant 1 must pay the costs of this appeal.

The petition of the first defendant for special leave to cross-appeal should be dismissed with costs.

In the Privy Council.

SOURINDRA NATH MITTRA AND OTHERS

v.

HERAMBA NATH BANDOPADHAYA AND OTHERS.

DELIVERED BY SIR JOHN EDGE.

Printed by
Harrison & Sons, Ltd., St. Martin's Lane, W.C. 2.

1923.