

*Reasons for the Report of the Lords of the Judicial Committee of the Privy Council on the Appeal of Ganesha Row v. Tuljaram Row and another, from the High Court of Judicature at Madras (P.C. Appeal No. 124 of 1911); delivered the 8th April 1913.*

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PRESENT AT THE HEARING:

LORD MOULTON.

SIR JOHN EDGE.

MR. AMEER ALI.

[DELIVERED BY MR. AMEER ALI.]

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This is an Appeal from a Judgment and Decree of the High Court of Madras, dated the 28th of September 1909, which, affirming a Decree made in the exercise of its original civil jurisdiction on the 2nd of September 1908, dismissed the Plaintiff's suit.

The facts which have given rise to the present action relate back to the year 1886. The Defendants Tuljaram and Rajaram are two brothers, being the sons of one Venkata Row, who died in 1871. Tuljaram and Rajaram, with two other sons of Venkata Row named respectively Rama Chandra Row, since deceased, and Luchmana Row, formed a joint undivided Hindu family. In 1881 there was a dissolution of the joint family and a partial division of the family property. A large proportion of the assets was, however, left undivided in the hands and under the control of Tuljaram; the first Defendant, who seems to have been the

managing member of the family in respect at least of the business or businesses in Madras.

In 1886 a suit was brought on the Original Side of the High Court of Madras by Athmaran, the son of Luchmana Row, against Tuljaram for ascertainment of the remaining undivided family assets in his hands, for accounts and partition and other reliefs. This seems shortly to have been the general scope of the action instituted in 1886, in which Rajaram, the present Plaintiff's father, and other surviving members of Venkata Row's family were parties. The Plaintiff, Ganesha Row, who was not born at the time of the institution of the suit, was added as Defendant on his birth in December 1887, and by an order dated the 20th November 1888, his father Rajaram was appointed his guardian *ad litem*.

On the 14th of January 1892 a Preliminary Decree was made declaring the rights of the parties and directing accounts against Tuljaram.

By the Final Decree made on the 21st of October 1896 and a subsequent order of the 17th of August 1897, he was declared accountable to the family for a considerable sum of money, the share of the Plaintiff's branch in the total sum being, according to the High Court, about Rs. 86,000. Tuljaram appears to have filed an appeal from the Final Decree of the first Court, and during its pendency he entered into agreements with the adult parties to the suit by which they either abandoned their claims, as in the case of the Plaintiff's father, or compromised them for smaller sums.

Rajaram's agreement, which is dated the 21st of November 1897, recites that he "acting " for himself and as guardian for his minor " son Venkat Row" (another name for the Plaintiff) "with a view to terminate the litiga-

tion that had been going on in the family for the past eleven years and more, and to make an amicable settlement of all matters in dispute between the several members of the family," and in consideration of the Defendant Tuljaram consenting to withdraw his appeal, Rajaram agreed to "relinquish and disclaim for himself and for his minor son Venkat Row" the several sums of money for which Tuljaram was found liable to Rajaram's branch, and "to release and discharge Tuljaram from all liability in respect thereof to himself and to his minor son Venkat Row." And on the 25th of November 1897, Rajaram instructed the Registrar of the High Court "to enter up satisfaction of the Decree" in respect of the several sums which amounted in the aggregate to something like Rs. 86,000. Tuljaram also on his side withdrew the appeal he had preferred against the Decree. Admittedly no leave was either applied for or obtained from the Court in regard either of the Agreement or the entering up of satisfaction of the Decree.

Matters remained in this condition until the Plaintiff attained his majority. After some preliminary proceedings to which it is unnecessary to refer for the purposes of this Judgment, he brought this suit on the 7th of November 1906 to recover from the Defendant Tuljaram on the basis of the Decrees in the suit of 1886 a sum of Rs. 160,000 principal and interest.

Rajaram was also made a Defendant in this action, and his acts relating to the agreement and the satisfaction entered under it were challenged as fraudulent, without consideration and not binding on the Plaintiff, having been made without leave of the Court.

The learned Judge on the Original Side of the High Court who tried the case was of opinion that the suit was not maintainable in view of the provisions of Section 244 of the Code of Civil Procedure. Treating it, however, as an application under that section, he dealt with the matter on its merits.

He held that the compromise entered into by Rajaram was binding on the Plaintiff, and that it was supported by consideration which consisted in the withdrawal by Tuljaram of his Appeal. The principal ground of his judgment is to be found in the following passage:—

In this case under the terms of the decree the money in respect of which the agreement AA was arrived at and satisfaction entered up was made payable to the third Defendant personally and not to the minor sixth Defendant. If the minor had been represented by another guardian *ad litem* the third Defendant could just as well have made the compromise and entered up satisfaction of the amount payable to him under the decree and it could not have been suggested that Section 462 was applicable to the case. It makes no difference in my opinion that the third Defendant happened to be the guardian *ad litem* of the sixth Defendant because in making the compromise and entering up satisfaction he was not acting as guardian *ad litem* on behalf of the minor sixth Defendant but as the third Defendant in the suit.

The learned Judge accordingly dismissed the Plaintiff's suit, and his Judgment has been affirmed on appeal by the High Court in its Appellate Jurisdiction. With regard to the invalidity of Rajaram's acts as affecting the Plaintiff's rights, the learned Judges in the Appellate Court have taken the same view as the First Court, that Rajaram, in entering into the compromise, acted in his personal capacity, which they considered him competent to do as "his appointment as guardian *ad litem* " would not deprive him of his capacity to act "on his own behalf." They were further of

opinion that "as the money was made payable  
 " to him only as the representative of the  
 " family of which he is the head, the com-  
 " promise he entered into will be binding on  
 " the other members, including the Plaintiff,  
 " only if it is a *bonâ fide* compromise of a  
 " disputed claim."

It seems to their Lordships that there is a fallacy underlying the reasoning on which the Courts below have proceeded. No doubt a father or managing member of a joint Hindu family may, under certain circumstances and subject to certain conditions, enter into agreements which may be binding on the minor members of the family. But where a minor is party to a suit and a next friend or guardian has been appointed to look after the rights and interests of the infant in and concerning the suit, the acts of such next friend or guardian are subject to the control of the Court. Section 462 of the Code of Civil Procedure expressly provides that—

No next friend or guardian for the suit shall, without the leave of the Court, 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.

The Courts in India seem to think that because Rajaram was a party to the suit of 1886 and was also guardian *ad litem* for his minor son, who was a member of the joint family whom Rajaram was representing, it was open to him to enter into the compromise in his personal capacity, and as it was a *bonâ fide* settlement of a disputed claim, it became binding on the minor by virtue of his having acted as the managing member of the family. How far the acts of a father or managing member may affect a minor, who is a party to the suit represented by another person as next friend or

guardian *ad litem*, is a question which does not arise in the case, and their Lordships are not called upon to express an opinion on it. But they consider it to be clear that when he himself is the next friend or guardian of the minor his powers are controlled by the provisions of the law and he cannot do any act in his capacity of father or managing member which he is debarred from doing as next friend or guardian without leave of the Court. To hold otherwise would be to defeat the object of the enactment.

The learned Judges, however, seem to have lost sight of the fact that the agreement, which is challenged in this case, was entered into by Rajaram not only on his own behalf but also on behalf of his minor son, for whom he was guardian in the suit. Their Lordships are of opinion that, in view of the provisions of Section 462, he had no authority to enter into any compromise or agreement purporting to bind the minor.

In their Lordships' judgment the fact that the monies were made payable to Rajaram, who was admittedly representing his branch of the family, makes no difference in the duty which lay on him to obtain the leave of the Court to an agreement which was clearly intended to affect the rights and interests of his son:

Their Lordships are of opinion that there should be a declaration in this case that the agreement of the 21st November 1897 and the satisfaction entered thereunder are not binding on the Plaintiff and that he is remitted to his original rights under the Decrees in the suit of 1886.

Their Lordships will, therefore, humbly advise His Majesty that the Decree and Judgment of the High Court should be set aside, that a declaration should be made in the terms

stated, and that the case should be returned to the High Court to deal with the other questions covered by Issues Nos. 6 and 7 arising between the parties.

The Respondent Tuljaram will pay the costs of the Appeal to the High Court in its Appellate Jurisdiction and the costs of this Appeal. The costs of the Trial on the Original Side of the High Court, and those which will be incurred in the future proceedings, will abide the result of those proceedings.

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In the Privy Council.

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GANESHA ROW

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TULJARAM ROW AND ANOTHER.

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DELIVERED BY MR. AMEER ALLI

LONDON:  
PRINTED BY EYRE AND SPOTTISWOODE, LTD.,  
PRINTERS TO THE KING'S MOST EXCELLENT MAJESTY.

1913.