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the statement of case filed in this court on behalf of the appellant, it has not been stated that there is no evidence to show that the plaintiff was in possession of the disputed land or the land mentioned in schedule II within 12 years of the suit.

Thus both the points urged in this appeal fail. There can be no doubt that the entire tenure has passed to the plaintiff by the sale, but, apart from this fact, it is well-settled that a zamindar is presumed to be the owner of the underground rights in the tenancies created by him in the absence of evidence that he ever parted with them: [See *Hari Narayan Singh* v. *Sriram Chakravarthi*(1) and *Durga Prasad Singh* v. *Braja Nath Bose*(2)].

The result is that this appeal fails, and it is dismissed with costs.

Appeal dismissed.

Agent for the appellant: *R. R. Biswas.*

Agent for the respondent: *R. C. Prasad.*

BISHUNDEO NARAIN AND ANOTHER

v.

SEOGENI RAI AND JAGERNATH

[SHRI HARILAL KANIA C. J., PATANJALI SASTRI, MEHAR CHAND MAHAJAN, S. R. DAS and VIVIAN BOSE JJ.]

Civil Procedure Code (Act V of 1908), O. 32, r. 7—Suit for partition to which minor is party—Compromise by guardian—Sanction of Court not obtained before entering into agreement—Validity of decree—Suit by minor to set aside decree—Mere unfairness of division, effect of.

Where a Court has sanctioned an agreement or compromise in a suit to which a minor is a party after satisfying itself that it is for the minor's benefit, the decree based on the agreement or compromise cannot be held to be invalid or not binding on the minor merely because the sanction of the Court was not obtained by the next friend or guardian before he began to negotiate for the agreement or compromise.

(1) 37 I.A. 136 (2) 39 I.A. 133

Awadesh Prasad Missir v. *Widow of Tribeni Prasad Missir* (I.L.R. 19 Pat. 343) disapproved.

The rule that in the case of partition between members of a joint Hindu family one of whom is a minor, if the minor, on obtaining majority, is able to show that the division was unfair and unjust, the court will set it aside, does not apply to decrees in partition suits in which the minor was properly represented before the court. The decree is as binding on him as on the adult parties unless the minor can show fraud or negligence on the part of his friend or guardian *ad litem*.

CIVIL APPELLATE JURISDICTION. Civil Appeal No. 78 of 1950.

Appeal against the Judgment and decree dated the 1st December, 1942, of the High Court of Judicature at Patna (Manohar Lal and Shearer JJ.) in F. A. No. 188 of 1939 arising out of a Decree dated the 23rd December, 1937, of the Subordinate Judge at Saron, Chapra, in Suit No. 48 of 1936.

H. J. Umrigar for the Appellant.

S. P. Sinha (*S. N. Mukherjee*, with him) for the Respondent No. 1.

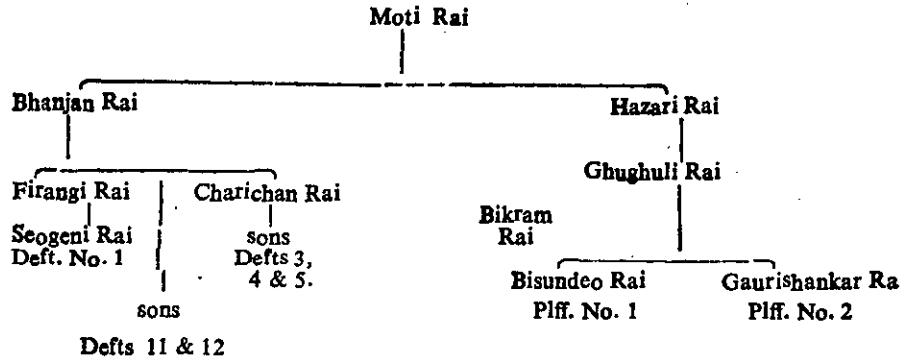
1951. May 4. The Judgment of the Court was delivered by

BOSE J.—This is a plaintiffs' appeal from a judgment and decree of the High Court of Judicature at Patna. Their Lordships of the Privy Council had granted special leave and the matter has been transferred to this Court.

The suit out of which the appeal arises was for a declaration that a compromise decree, made in a previous suit for partition, does not bind the plaintiffs. The learned counsel for the plaintiffs-appellants also contends that he asked for partition in the present case. But that is a matter of doubt.

The facts in brief are as follows:

The parties are members of a family whose common ancestor was one Moti Rai. A long genealogical tree was attached to the plaint but it is not necessary to reproduce more than the following:



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Moti Rai had two sons, Bhanjan Rai and Hazari Rai. The defendants are descended from the former and the plaintiffs from the latter. The contesting defendant is Seogeni Rai, son of Firangi Rai. The plaintiffs did not disclose that Moti Rai's two sons were by different wives, as that was not their case, but that has now been found to be the fact and was not disputed here.

The plaintiffs' case is that the family was joint at all material times until their father Ghughuli Rai was forced into a partition in the year 1924. They state that this partition does not bind them for a variety of reasons which, so far as they affect the present appeal, will be detailed later.

According to the plaintiffs, the circumstances of that partition were as follows. The plaintiffs' father Ghughuli Rai and the first plaintiff instituted partition suit No. 51 of 1924 against Firangi Rai and his brothers and their descendants, that is to say, against all the members of Bhanjan Rai's branch who were then in existence. The second plaintiff was not then born and the first plaintiff was a minor. There were also minors among the defendants. Firangi Rai, who was the *karta* of the family, through the exercise of undue influence, and by coercion, forced the plaintiffs' father to compromise. The compromise was grossly unfair and unequal but nevertheless a decree for partition followed. This is the decree which the plaintiffs seek to challenge here.

It is admitted on both sides that that decree left certain properties undivided. The extent of those properties is in dispute but the fact that some properties were left undivided is admitted.

In the year 1936 the first defendant instituted partition suit No. 29 of 1936 for partition by metes and bounds of that portion of the estate which was not divided in 1924. The plaintiff's case is that the previous partition does not bind them and so the whole of the family estate must be brought into hotch-pot and divided and not merely the properties which were left undivided in 1924; also that their share in these properties is greater than the share allotted to their father under the compromise decree. The plaintiffs state that so long as the compromise decree in partition suit No. 51 of 1924 stands, such a defence is not open to them in suit No. 29 of 1936. Accordingly, they have brought the present suit.

The first defendant alone contested and as we are not concerned with any of the others except indirectly, it will be convenient to refer to him throughout as the defendant. He stands by the compromise and denies that the partition effected by it was either unequal or unfair. On the contrary, he asserts that the plaintiffs got much more than they were entitled to. He also denies the allegation about undue influence and coercion.

The defendant's case about the compromise is this. He admits that the family was once joint but says that there was a separation long ago in the lifetime of Moti Rai himself. Moti Rai's two wives could not pull on, so the defendant's grandfather Bhanjan Rai separated from his father Moti Rai and his step-brother Hazari Rai. This was some twenty years before the suit. Ever since the two branches have had nothing in common.

The defendant states that there were further partitions among the defendant's branch and that from time to time members of the defendant's branch, as also those on the plaintiffs' side, have been acquiring

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property for themselves with which the others have no concern. Thus, at the date of the plaintiffs' suit (No. 51 of 1924) a number of properties stood in the separate names of various members of the family and were the separate properties. The plaintiffs thus had no right of suit at all. But in order to avoid a long litigation and to settle this family dispute amicably, the defendant's father Firangi Rai agreed to give the plaintiffs a four annas share in many of the properties acquired by the defendant's branch after the first partition in Moti Rai's lifetime to which the plaintiffs' branch had no claim at all. The defendant claims that this is a family arrangement which binds all sides.

The first Court decided in the plaintiffs' favour and decreed their claim not only for a declaration but also for partition. It is a matter of doubt whether the plaintiffs ever claimed partition, but there is no doubt that the properties which the learned trial judge has directed to be partitioned were not admitted by the defendant to be subject to partition even on the assumption that the plaintiffs are right in all their other allegations. Thus, the defendant stated that some of the properties were non-existent, others self-acquired and so forth. But the learned Judge, without trying any of these issues (the dispute is covered by Issue No. 9) and without any evidence being led on the point, directed that they be partitioned. That, of course, cannot be upheld on any view of the case.

The defendant appealed to the High Court and succeeded. The learned High Court Judges reversed the decree of the trial Court and dismissed the plaintiff's claim.

The appeal here lies in a very narrow compass and can be disposed of quite simply. In substance only five points were raised before us. The first concerns Order 32, rule 7, of the Code of Civil Procedure. As minors were parties on both sides in the previous suit, the sanction of the Court was necessary for the compromise. On 17th November, 1924, the trial Court made the following entry in its order sheet :—

"*Selenama* filed with petitions on behalf of minor defendant for permission to compromise. Put up on the date fixed for order."

On the following day, *viz.*, 18th November, 1924, we have this—

"Petition of compromise put up. The proposed guardian of minor plaintiff and defendants have filed petitions for permission to compromise. Permission granted as the compromise was for the minor's benefit."

It is contended that this is insufficient to show that the learned Judge applied his mind to the matter and satisfied himself that the compromise was for the minor's benefit.

We do not think the Allahabad decision helps the certificate which the Court is required to record need be made. It is evident that the Judge had the provisions of Order 32, rule 7, in view. He adjourned the case on 17th November, 1924. He realised that he had to give permission and he realised that the compromise had to be for the benefit of the minors. The portion of the order reproduced above shows that he did give permission and that he was satisfied about the minor's benefit. In our opinion, there was not only a technical but also a clear compliance with the law. This objection fails.

The next point also concerns Order 32, rule 7. The argument here is based on a ruling of the Patna High Court and a full Bench decision of the Allahabad High Court. It is to this effect. Unless the next friend or guardian *ad litem* obtains the sanction of the Court before beginning to negotiate with the other side, and certainly before committing himself to any agreement, any subsequent sanction is invalid and the agreement and the decree, if any, following on it is without force.

We do not think the Allahabad decision helps the appellants. It is reported in *Hariam Bibi* v. *Amna Bibi*(1). The question there was about arbitration. A suit had been filed in which a minor was involved. The guardian *ad litem* of the minor agreed to refer the

(1) I.L.R. 1937 All. 317.

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dispute to arbitration. He did not seek the permission of the Court to enter into the agreement but did place the matter before the Court in another way. He said that the parties had agreed to refer the dispute to arbitration and asked the Court to sanction the reference. The Court did so, an award followed, and a decree was passed in terms of the award.

Now it will be seen that the learned Judge, who sanctioned the reference, never applied his mind to the question whether a reference to arbitration would be for the minor's benefit under the circumstances of the case. His whole attitude was that as the parties had agreed, that was enough. This did not comply with the provisions of Order 32, rule 7. The learned Judge did not even certify that the compromise was for the minor's benefit. The Full Bench held that Order 32, rule 7, had not been complied with and that in a case of that kind the permission of the Court to enter into an agreement for reference must precede the reference. But they also held that the omission to obtain the necessary sanction would not make the reference and the award and the decree nullities. It only made them voidable at the minor's option. That, in our opinion, is no authority for the contention urged on behalf of the appellants before us.

The Patna case reported in *Awadhesh Prasad Missir* v. *Widow of Tribeni Prasad Missir*(1) is more in point. There, the parties compromised in the High Court without obtaining the sanction of the Court. They then placed the concluded agreement (concluded, that is to say, so far as they were concerned) before the Court, apparently for its approval, and the Court made the following order :—

"We are satisfied that the terms settled between the parties are for the benefit of the minor defendants-respondents concerned."

The Court then passed a decree in terms of the compromise. When the minors attained majority, they sued for a declaration that the decree did not bind them

(1) I.L.R. 19 Pat. 343 at 348.

on the ground that there was no proper compliance with the provisions of Order 32, rule 7. The learned Judges of the Patna High Court upheld the contention and decided that unless the guardian *ad litem* obtained permission to enter into an agreement or compromise before reaching agreement with the other side, any subsequent sanction of the Court to a completed compromise (completed, that is to say, so far as the parties were concerned) was not binding on the minors and the proceedings which follow consequent on that sanction were therefore of no avail. They accordingly granted the minors the declaration they sought.

In our opinion, Order 32, rule 7, must be read as a whole. Sub-rule (2) contemplates a position where the mandatory provisions of sub-rule (1) have been ignored. In such a case, the resultant agreement or compromise is not to be held a nullity. It is only voidable. Therefore, it is good unless the minor chooses to avoid it. It follows that a decree or order based on the agreement is also good unless the minor chooses to challenge it. That is the position where there is no sanction of the Court. Reading the two provisions together, the rule merely means this. No next friend or guardian for the suit can enter into an agreement or compromise *which will bind the minor* unless the court sanctions it. If the Patna decision is meant to convey that before the guardian even begins negotiations for compromise with the other side, he must obtain the sanction of the Court, we are unable to agree with that view.

The next point was put in the form of a question. Can a minor have a compromise which effects a partition set aside on the single ground of unfairness to him? It was argued that he can, and reliance was placed on *Balkishen Das* v. *Ram Narain Sahu*(1) and on Mulla's Hindu Law, 10th Edition, page 394, section 308(2).

The rule laid down in Mulla's book is expressly stated to be in cases where the partition is not effected by a decree of a competent Court. In our opinion, that is correct. It does not matter whether the decree was by

(1) 30 I.A. 139 at 150.

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consent or otherwise, for a decree, unless and until it is set aside or avoided in one or other of the ways in which alone a decree may be attacked, holds its force and binds all concerned.

It is well established that a minor can sue for partition and obtain a decree if his next friend can show that that is for the minor's benefit. It is also beyond dispute that an adult coparcener can enforce a partition by suit even when there are minors. Even without a suit, there can be a partition between members of a joint family when one of the members is a minor. In the case of such lastly mentioned partitions, where a minor can never be able to consent to the same in law, if a minor on attaining majority is able to show that the division was unfair and unjust, the Court will certainly set it aside. The rule, however, does not apply to decrees if the minor is properly represented before the Court and the decree is as binding on him as on the adult parties, unless the minor can show fraud or negligence on the part of his next friend or guardian *ad litem*. This contention also therefore fails.

We turn next to the questions of undue influence and coercion. Now it is to be observed that these have not been separately pleaded. It is true they may overlap in part in some cases but they are separate and separable categories in law and must be separately pleaded.

It is also to be observed that no proper particulars have been furnished. Now if there is one rule which is better established than any other, it is that in cases of fraud, undue influence and coercion, the parties pleading it must set forth full particulars and the case can only be decided on the particular as laid. There can be no departure from them in evidence. General allegations are insufficient even to amount to an averment of fraud of which any court ought to take notice however strong the language in which they are couched may be, and the same applies to undue influence and coercion. See Order 6, rule 4, Civil Procedure Code.

The allegations in the plaint regarding this part of the case are as follows. In paragraph 13 the plaintiffs say—

"That the said Firangi Rai being infuriated by the filing of the said suit, put such a pressure upon the father of the plaintiffs that the father of the plaintiffs under fear of his threatend death filed a compromise in the said suit before any written statement was filed by Firangi Rai and other defendants."

In paragraph 15 they say—

"That the said compromise was nothing but a dictated mandate of Firangi Rai which the father of plaintiffs, out of sheer fear of Firangi Rai submitted against his own free will and signed under compulsion and coercion and undue influence of the said Firangi Rai".

Then, in paragraph 17 and 18 the plaintiffs state—

"17. That plaintiffs' father being a man of weak intellect and finding no help and succour from the people of residential village or neighbourhood and being also unaware of the details of properties of the family could not but submit meekly and quitely to the dictates of Firangi Rai who taking advantage of his fearful supremacy wanted to have everything according to his own sweet wish.

"18. That even after the compromise plaintiffs' father could not get any income of the family properties and Firangi Rai remained the sole master of the family appropriating every pice to himself."

We will deal with the case of coercion first. It will be seen that the plaintiffs case regarding that is grounded on the single allegation that their father was threatened with death. When all the verbiage is cleared away, that remains as the only foundation. The rest, and in particular the facts set out in paragraphs 8 to 12 about the ferocious appearance of Firangi Rai and his allegedly high-handed and criminal activities and his character, are only there

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to lend colour to the genuineness of the belief said to have been engendered in Ghughuli Rai's mind that the threat of death administered to him was real and imminent. But as regards the threat itself, there is not a single particular. We do not know the nature of the threat. We do not know the date, time and place in which it was administered. We do not know the circumstances. We do not even know who did the threatening. Now, when a court is asked to find that a person was threatened with death, it is necessary to know these particulars, otherwise it is impossible to each a proper conclusion.

It was argued that it is not necessary for a plaintiff to give particulars and if the other side is not satisfied, there are provisions in the Code which entitle him to ask for them. That is a grave misapprehension.

But all that apart, what is the evidence here? There are only three witnesses who need be considered as the others had no personal knowledge. They are, No. 6 Sheokumar Dube, No. 9 Bodhu Rai and No. 10 Sheonandan Prasad. Of these, only Bodhu Rai suggests that Firangi ever made any threat. He is not supported by the other two and we cannot believe him. All that the others say is that Ghughuli Rai said his life would be in danger without however explaining how or why. That is insufficient to sustain pleas of undue influence and coercion, particularly when we have the following facts which negative these pleas: (1) Two pleaders were engaged by Ghughuli Rai; (2) the first draft was torn up by one of the pleaders as it was unfavourable to his client and the draft embodying the compromise ultimately accepted was substituted; (3) Ghughuli Rai refused to sign this second draft until it was read out to him; (4) this draft was read over by the pleader who had disapproved of the first and was signed by him after Ghughuli Rai had signed; (5) Ghughuli Rai relied on the compromise on several occasions and filed suits to enforce its terms; (6) he twice sued Firangi Rai himself; (7) though he lived eleven years after the compromise and filed several suits to enforce it, he never suggested that it

had been brought about by coercion or undue influence; (8) he took no steps to set it aside or question it even after Firangi Rai's death which was two and a half years before this suit; and (9) he did not join as a plaintiff in this suit though he was the real person who knew the truth. There is nothing in the evidence to indicate when the undue influence ceased and we find it impossible to believe that it could have lasted eleven years and even two and a half years after Firangi Rai's death.

There is also another point. The basis of the claim is the inequality of the partition. Under the compromise, the first plaintiff and his father got those properties which stood in their names and a four annas share in certain other properties. No evidence has been adduced to show the values of these various properties in 1924. For all we know, their value and the four annas share in the other properties may have been equal to eight annas of the entire joint properties. We agree with the learned High Court Judges that coercion is not proved.

The case of undue influence suffers the same fate. It was not separately pleaded and the evidence is the same.

The last contention is that even if the plaintiffs fail in all else, their case cannot be wholly dismissed because, admittedly, certain properties are still undivided and the plaintiffs are entitled to have them partitioned and to be given separate possession of their share.

As we remarked at the outset, it is a matter of some doubt whether the plaintiffs sought partition in this suit or whether they merely wanted a declaration here that the compromise decree in the suit of 1924 does not bind them and consequently is no bar to their demanding partition of the whole estate in the first defendant's suit No. 29 of 1936.

We need not consider whether the present suit is for partition and separate possession or not, because there is pending a previously instituted suit between

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the same parties for the same relief. It will be more convenient and proper to have these matters decided there. Accordingly, we dismiss the plaintiffs' suit with costs throughout, but make it plain that in doing so we do not adjudicate upon their right to seek partition of such properties as they contend are omitted to be partitioned under the compromise decree in the pending suit.

Appeal dismissed.

Agent for the appellants: *R. C. Prasad.*

Agent for respondent No. 1: *P. K. Chatterjee.*

KARNANI INDUSTRIAL BANK, LIMITED

v.

THE PROVINCE OF BENGAL AND OTHERS

1951

May 4

[SAIYID FAZL ALI, MUKHERJEA and CHANDRASEKHARA AIYAR JJ.]

Transfer of Property Act (IV of 1882), ss. 106, 116—Lease for a term—Acceptance of rent for further period before expiry of term—New tenancy—Necessity of notice to quit—Lessee's property becoming property of lessor by failure to remove within time—Injunction against removal—Whether can be granted.

The context in which the provision for acceptance of rent finds a place in s. 116 of the Transfer of Property Act shows that what is contemplated is that the payment of rent should be made at such time and in such manner as to be equivalent to the landlord assenting to the lessee continuing in possession. Where payment is made at a time when there was no question of the lessor assenting to the lessee's continuing in possession and neither party treated the payment as importing such assent the case does not fall within s. 116.

A lease deed was executed on the 17th February, 1928, in respect of a land for a period of ten years from 24th February, 1928 the annual rent of Rs. 6,000 being payable in advance every year. In April, 1937, a cheque for Rs. 6,000, being the rent from 1st April, 1937, to 31st March, 1938, was sent by the lessee and accepted by the lessor: *Held,* that as the rent was paid before the expiry of the lease and neither party treated the payment of rent as importing assent on the part of the lessor to allow the lessee