

Jagatput Singh Dugar alias Kalidas Dugar - - - *Appellant*

v.

Puran Chand Nahatta and another - - - - *Respondents*

FROM

THE HIGH COURT OF JUDICATURE AT FORT WILLIAM IN BENGAL.

JUDGMENT OF THE LORDS OF JUDICIAL COMMITTEE OF THE
PRIVY COUNCIL, DELIVERED THE 9TH MAY, 1924.

Present at the Hearing :

LORD SHAW.

LORD BLANESBURGH.

MR. AMEER ALI.

[*Delivered by* LORD SHAW.]

There are two interesting questions raised on this appeal. They will be taken in their logical order.

The first has reference to the point of the authority of counsel to conclude this transaction of compromise of a pending suit. It must be admitted that the compromise was of a somewhat singular character. One circumstance reflects the greatest credit upon the senior counsel for the defendant in the case, because by that compromise he was elected by both parties as the person whose verdict would be taken either as final judgment, or, at least, for consideration, on the subject of the amount to be paid to the plaintiff in the action.

Their Lordships are aware that the authority of counsel to compromise actions upon a general footing is not in question, under what is known as the mandate of wig and gown. But their Lordships are of opinion that the compromise disclosed in these proceedings was of a highly exceptional, if not unique, character. And they incline to the view that it would have demanded the express authority on the part of counsel from his client to go the length that counsel here went. In point of fact, what happened was that the client upon one side had his fortunes committed by his counsel to the

determination of the counsel for the other side, and, as stated, without any express authority, to make a bargain of that character. Their Lordships, however, do not finally decide this point, although they have the doubts which have just been expressed.

For in the circumstances brought before them their Lordships are confronted with the broad proposition made by the learned Chief Justice as to the question of whether the parties to the compromise were truly *ad idem*. This is the second question in the appeal.

The details need not be gone into, but unquestionably there are, on the records of the Court made by the officials, entries which show that the case was taken out of the list during the trial on the assertion made to the Court that the case was settled. Their Lordships are of opinion that both Mr. Mitter, the counsel who made the statement to that effect, and Mr. Bose, his opponent, were of opinion that it was settled. The question of terms was, however, raised; and their Lordships are equally clearly of opinion that although the impression upon the minds of both counsel was that the settlement had thus been achieved, yet in point of fact there was a misapprehension as to the exact ambit of the terms of that arrangement. It turned out that when Mr. Chaudhuri's figure of Rs. 5,000 as a compromise of a claim for Rs. 25,000 was announced, Mr. Bose's client repudiated any such proposal and declined to agree to it. Upon Mr. Bose being appealed to as to what had occurred, he admitted quite frankly that an arrangement was come to, but he was quite as frank and quite as emphatic that the arrangement was not to be conclusive, but that Mr. Chaudhuri's interposition was merely to be accepted as a leading and predominant element in contributing to the compromise of the action between the parties.

In those circumstances this case is brought, and it was supported by an affidavit produced by Mr. Bose's client. Their Lordships are of opinion that Mr. Bose's conduct in regard to that affidavit was praiseworthy and worthy of the position of a leading counsel. He practically tore the affidavit up; he would have nothing to do with placing reliance upon it. He has not thereby in any way weakened the force of the rest of his own testimony; on the contrary, he has strengthened it. Their Lordships have with anxiety considered the position which he takes up, which was that he was not of opinion that a final and binding agreement which should commit his client to any sum or no sum, as fixed by Mr. Chaudhuri, had been come to. They are of opinion that the parties were not *ad idem* in connection with this compromise, and that the compromise has thus failed as a settlement of the suit between the parties. The suit must proceed if the parties are so inclined, so that their rights may be judicially determined. But the judgment of the learned Chief Justice appears adequately to express the opinion in a difficult case which their Lordships have also reached; and they will humbly advise His Majesty that the appeal should be disallowed, with costs.

In the Privy Council.

JAGATPUT SINGH DUGAR *alias* KALIDAS DUGAR

v.

PURAN CHAND NAHATTA AND ANOTHER.

DELIVERED BY LORD SHAW.

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