

Present : De Sampayo and Schneider JJ.

1922.

BANDARA *v.* ELAPATHA *et al.*

D. C.—Ratnapura, 652 (Testamentary).

Restitutio in integrum—Application for probate—Settlement—Compromise—Minor—Special leave of Court—Civil Procedure Code, s. 500.

In a testamentary case where probate was applied for parties, including the guardian *ad litem* of a minor, came to a settlement, and the Court sanctioned the settlement and ordered probate to issue, subject to the modifications detailed in the terms of settlement. No special leave was given to the guardian of the minor to enter into the compromise.

Held, that the compromise was not binding on the minor.

THE facts appear from the judgment.

Samarawickreme, in support.

June 28, 1922. DE SAMPAYO J.—

This is an application for *restitutio in integrum* in respect of an order entered by the District Judge on December 3, 1915, in testamentary action No. 652 of the District Court of Ratnapura. The deceased whose estate was administered in that case left a will, which was produced in Court, and for which probate was applied for. There were several parties interested in the estate, among others the present applicant, who was named first respondent, and who at

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that time was a minor. The parties, including the guardian *ad litem* of the minor, submitted to Court certain terms of settlement. These terms appear to be a radical departure from the terms of the will, and affect the minor very seriously. The will devised to him a half of a large portion of the estate, but in the compromise he was to get one-fifth share only. The will also contained conditions creating a *fidei commissum*, but all these provisions of the will would appear to have been ignored, and the terms submitted to Court were sanctioned. The terms were signed by all the parties, including the guardian *ad litem*, and the motion was : " We jointly move that the Court do sanction the above terms of agreement."

The Court thereupon without any further inquiry purported to order probate to issue, " subject to the modifications detailed in the terms of settlement." It will be noticed that while the Court sanctioned the terms of settlement, it did not apply itself to the question of giving special leave to the guardian of the minor to enter into this compromise. The section of the Code applicable to the matter in section 500, which enacts that no next friend or guardian for the action shall, without the leave of the Court, enter into any agreement or compromise on behalf of a minor with reference to the action in which he acts as next friend or guardian, and that any such agreement or compromise entered into without the leave of the Court shall be voidable against all parties other than the minor. It appears to me clear that the leave of Court referred to in this section is a special leave to be applied for by the guardian, and different from the general sanction applied for by all the parties for the approval of the Court to the terms of the settlement. In this connection I may refer to the judgment of this Court in *Silindu v. Akura*.¹ In my opinion the provisions of section 500 of the Civil Procedure Code were not observed in this case, and that the order referred to ought not to have been made so far as the minor is concerned. The minor has now grown up, and makes this application for the purpose of the order being set aside. I think he is entitled to the relief applied for. I would, therefore, direct that the order of the District Judge of December 3, 1915, be set aside, and the estate be administered, so far as the minor is concerned, in terms of the will, subject to the consideration of any objection to the will itself or any other ground relevant to the application for probate.

SCHNEIDER J.—I agree.

Allowed.

¹ (1907) 10 N. L. R. 193.