

Order below (Exh. 7)
(Passed on 31/03/2022)

This is an application filed by the plaintiff and defendant (hereinafter referred as applicant) for seeking grant of permission for compromise.

2. In short, the applicant submitted that the plaintiff has filed the present suit for declaration that defendant No. 1 as care taker, nominee and beneficiary and to receive all benefits of service of the plaintiff. All defendants have no objection to allow declaration as defendant No. 1 is residing with the plaintiff from childhood. The declaration sought by plaintiff for official purpose at WCL and in order to avoid an further dispute amongst relative of the applicant. The mother of plaintiff by name Khalida Begam widow of Mohammad Anisuddin has filed no objection for plaintiff's prayer. Hence, on the terms and condition compromised decree may be passed.

3. Perused the application and record. Heard both the side.

4. At the outset it is necessary to mention here the pleading of the plaintiff. The plaintiff aver that she is an employee of WCL, Kamptee and she is 75% permanently physically handicap. Due to her physical handicapness she unable to marry, but she gets job or compensatory ground. After death of her father Shri. Anussuddin. She took custody of defendant No. 1 since seven years of his age and since, then all education expenses was done by her.

Defendant No. 1 is the son of her brother who is defendant No. 2. Her brother and sister-in-law had no objection to keep their child with her as he has lot of love and affection with her. Defendant No. 1 treats her as mother. It is defendant No. 1 who performs all household work and without defendant No 1 she unable to lead her normal life. That many representation were made by her to WCL and she has also submitted deed of declaration dated 22/07/2021 to WCL, but WCL authority orally stated her for bringing declaration from the appropriate Court. She is Muslim by religion and therefore, she cannot adopt, as there is no adoption is permissible in Muslim Law. She cannot apply for guardianship as defendant No. 1 become major and the Act is for minor only. Hence, the suit.

5. Before further discussion here it is necessary to consider Order 23 Rule 3 of the Civil Procedure Code, 1908, were it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the party, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith. This provision specifically provides that there should be lawful agreement or lawful compromise.

6. Now here it is necessary to consider Section 34 of the Specific Relief Act, 1963, which provides that any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not

in such suit ask for any further relief. It means element of denial of title to such character or right is inevitable element for seeking relief of declaration. However, in the present sit it is not specific intention of the plaintiff that defendants have deaning or interested to denial per title to such character or right. Moreover, it is specific pleading of the plaintiff that defendants have filed no objection to her claim. Therefore, there is no question of any denial to plaintiffs character or right.

7. Therefore, I am of the considered view that the contention made by respective parties in the present application will not amount to be a lawful agreement or lawful compromise. Therefore, the application is devoid of any merit and liable to be rejected. With this I pass following order :

ORDER

The application is liable to be rejected.

Kamptee

Date : 31/03/2022.

(Shri. A. A. Kulkarni)
2nd Jt. C.J.J.D., Kamptee.