Jagdish Narain vs Rasul Ahmad And Ors. on 12 September, 1951

Equivalent citations: AIR1952ALL29, AIR 1952 ALLAHABAD 29

JUDGMENT

Agarwala, J.

1. This is a plaintiffs appeal arising out of a suit for ejectment and damages. The suit was instituted on 30-1-1948, against four persons, Easool Ahmad Abdul Hasau and Basir, defendants 1 to 3, and Abbas Ali, defendant 4. Defendant 4 was the previous owner of the shop which was the subject-matter of the suit and had transferred it to the plaintiff. Defendant 1 was a tenant of the shop. Defendants 2 and 3 were alleged to be his sub-tenants. Defendants 1 to 3 filed one written statement and defendant 4 filed another. Defendant 4 admitted plaintiff's claim while defendants 1 to 3 contested it mainly on two grounds firstly that the plaintiff had no right of ejecting them and secondly that even if he had such a right, they were entitled to sufficient time to vacate the shop.

2. On 6 5 1948, Mr. Saddiqui, pleader for defendants 1 to 3 and defendants 2 and 4 were present. They made a statement to the following effect :

> "The parties agree today that plaintiff's suit be decreed with costs against defendants and that defendants vacate the shop in dispute by or on 6-9-1948 failing which plaintiff will be entitled to immediately execute his decree."

The statement was signed by Mr. Saddiqi and defendants 2 and 4 and the plaintiff. As defendants 1 and 8 were absent, the Court took the prosecution of adjourning the case to 13-5-1948, for the purpose of obtaining their signatures. On 13-5-1948, defendants l and 3 were again absent. Mr. Saddiqi stated that defendants l and 3 were absent due to illness and that he had verified the agreement on their behalf on 6 5-1948, and prayed that a decree be prepared in terms thereof. On this statement being made the Court passed a decree in terms of the compromise recorded on 6 6.5.1948. Against this decree Kasool Abmad, defendant 1, appealed to the lower appellate Court, challenging the compromise on the ground that Mr. Siddiqi, his counsel, had no authority to enter into it. The learned Judge of the Court below construed the terms of the power of attorney in favour of Mr. Siddiqi and came to the conclusion that it did not authorise Mr. Siddiqi to enter into the compromise--it merely authorised him to file a petition of compromise which had been signed by his clients. In the result the decree of the trial Court was set aside and the case was remanded for being tried according to law. Against this order of remand the plaintiff has come up in appeal to this Court.

3. A preliminary objection baa been raised to the hearing of this appeal. It is urged that the appeal in

the Court below was against an order recording a compromise under Order 23, Rule 3, Civil P. C., and as such no further appeal lay to this Court. This contention, in our opinion, has no force. The appeal in the lower Court was directed against the decree passed by the trial Court and not against the order recording the compromise. Where the decree itself is challenged in the Court a second appeal to this Court would lie against the order of remand under the provisions of Order 43, Rule 1, Clause (u), Civil P. C.

4. On behalf of the plaintiff appellant two points have been urged before us. It has been urged that no appeal lay to the lower appellate Court since the decree against which the appeal was preferred was a consent decree. In our opinion, this contention also is not sound. No doubt, the decree was passed upon a compromise and as such was on the face of it a consent decree. But the very basis of tbe decree was challenged by the respondent in the Courb below. According to him Mr. Siddiqi who entered into the compromise on his behalf had no power to do so and therefore it could not be said that he (the respondent) had consented to the decree being passed against him. When the consent upon the basis of which a decree has been passed by the Court is itself challenged in the Court of appeal, it cannot be taken for granted that the decree was a consent decree. A consent decree must mean a decree validly consented to either by the party himself or by hia duly authorised agent. If the question raised is that the agent who consented to the decree was not duly authorised, the question has to be decided and it cannot be prejudged by holding that because on the face of it there was a consent decree, no appeal lies to the appellate Court.

5. The second ground urged on behalf of the appellant is that Mr. Siddiqi had a general implied power to enter into a compromise on behalf of defendants 1 to 3 and that in any case even if he had no such general implied power, he had specific authority under the power of attorney which was executed in his favour by the defendants. The leading authority on the implied power of an Advocate is the decision of the Privy Council in Sourendranath Mitra v. Tarubala Dasi, 57 Cal. 1311, where it was held that the power to compromise a suit is inherent in the position of an Advocate in India, because the considerations which had led to this implied power being established in the advocates of England, Scotland, and Ireland, applied in equal measure to India. Their Lordshipp, however, added that this implied power can be restricted or countermanded by the client and that "Where the legal representative in Court of a client derives his authority from an express written authority, such as a vakalatnama, different considerations may well arise, and in such cases their Lordships express no opinion as to the existence of any implied authority of the kind under discussion."

On behalf of the respondent, our attention was drawn to Scurindra Nath v. Heramba Nath, A. I. R. (10) 1923 P. C. 98, where their Lordships observed :

> "A pleader, who does not hold and has not filed in the suit before the Court has client's general power of attorney authorising him generally to compromise suits on behalf of his clients, cannot be recognised by a Court as having any authority to compromise the suit unless he has filed in the suit his client's vakalatnama giving him authority to compromise the suit before the Court."

In this case the Privy Council had apparently Sub-rule, (1) of Rule 4, Order 3, Civil P. C., in mind which requires that no pleader shall act for any person in any Court, unless he has been appointed for the purpose by such person by a document in writing signed by such person or by his recognised agent or by some other person duly authorised by or under a power-of-attorney to make such appointment. Rule 4, Order 3 was subsequently amended by the Code of Civil Procedure (Second Amendment) Act, 1926 (XXII [22] of 1926). Sub-rule (5) of the rule as amended empowers a pleader to plead (but not to act) upon filing a memorandan of appearance signed by himself. He need not file a Vakalatnama. The position, therefore as the Civil Procedure Code now stands is that a pleader who is engaged only for the purpose of pleading is in the same position as an advocate who is engaged for the same purpose. It would, therefore, appear that where a pleader is engaged for the purpose of pleading merely, he has the same power with regard to compromising a suit as an Advocate possesses. The word 'pleader' under the Civil Procedure Code includes an Advocate, vide Section 2(15) of the Code. The point has been considered by the Nagpur High Court in Jiwibai v. Ramkuwar Shriniwas, A. I. R. (34) 1947 Nag. 17 (F. B.), where it was decided that counsel in India, whether Barristers, Advocates, or pleaders have inherent powers, both to compromise claims, and also to refer disputes in Court to arbitration, without the authority or consent of the client, unless their powers in this behalf have been expressly countermanded and this whether the law requires a written authority to "act" or "plead" or not. It is not necessary for us to express an opinion upon the proposition whether the power of an advocate or pleader in India to compromise a suit even though he is authorised to act under a written power-of-attorney can be referred to his implied authority or it should be found within the four corners of his power of attorney, because in our opinion, in the present case upon the inter. pretation of the written power-of-attorney there was an express power of compromising the suit conferred upon the pleader concerned.

6. The power of attorney in the present case was in the following terms :

> "The pleader shall have the power to conduct and defend the case or to examine or cross examine 'witnesses' or to file documents or sanads etc. or to withdraw them or on our behalf to take out execution of the decree and to realise money or to file compromise or admission claims on our behalf or withdraw moneys deposited by us or by the opposite party by granting a receipt executed by us or executed by himself, or to appoint arbitrators or another vakil. All this done by him shall be acceptable to us as if it was done by ourselves."

The words referring to compromise are, "Razi-nama ya iqbal dawa minjanib hamare dakhil karen." In some cases where there were general words empowering counsel to act on behalf of a client, for instance words like this : "whatever is done by the counsel shall be acceptable to us as if done by ourselves," it was held that these general words conferred a power upon the counsel to enter into a compromise : See Mt. Akbari Begam v. Rahmat Husain, A. I. R. (20) 1933 ALL. 861 (S. B.) and Sat Deo Prasad v. Debi Badal, A. I. R. (27) 1940 ALL. 143. We think that there are no such general words in the power of attorney in the present case. The words at the end of the power-of-attorney "All this done by him shall be acceptable to us as if it was done by ourselves" refer to the powers previously specified and not to certain undefined general powers. We are, therefore, confined to the language of the power-of-attorney itself. In our opinion the words used in the power-of-attorney are wide

enough to include the power not only of presenting a petition of compromise signed by the parties themselves but also to enter into a compromise and to file the petition of compromise in Court. There would be no point in mentioning this power if it were merely confined to presenting a deed of compromise already executed by the parties. That power would be covered by the expression "conduct and defend the case and file documents" which had been mentioned earlier. In Mt. Govindi v. Ganga Prasad, A. I. R. (20) 1933 ALL. 955, & similar expression was used and it was held that the words included the power of entering into a compromise and filing the same in Court. In Mt. Akbari Begam v. Rahmat Husain, A. I. R. (20) 1933 ALL. 861 (S. B.), the terms of the vakalatnama were also similar. The terms mentioned in the judgment of Sir Shah Salaiman at page 881 were :

> "The said Vakil may take back court-fee, appoint arbitrators, file a deed of compromise....."

This was interpreterd as meaning not merely the filing of a deed of compromise duly executed by the panties but also as including the power to compromise the suit. In Sat Deo Prasad v. Deli Badal, A. I. R. (27) 1940 ALL, 143 also the words were similar and they were interpreted in the way indicated above.

7. On the other hand our attention has been drawn to three cases decided by the late Chief Court of Oudh in which a contrary view appears to have been taken. In Mt. Hubraji v. Chandra Bali, (A. I. E. (15) 1928 Oudh 386, a vakalatnama was executd by an illitarate pardanashin lady. The vakalatnama authorised the agent "to file compromise" on behalf of the party. There was evidence before the Court to show that the plaintiff was told at the time the power-of-attorney was read out by the scribe that the power to compromise given by the deed was with respect to disputes between tenants and not with respect to suits. It was held that the power of attorney must be strictly construed and the expression in question was ambiguous and could be construed as referring merely to the power of filing a compromise already executed by the pardanashin lady. This case, therefore, is no authority for the proposition that the words "minjanib hemare dakhil karen" refer merely to the physical act of presenting a petition of compromise already entered into between the parties.

8. The observations made in this case were extended to cases of powerg-of-attorney executed by persons other than pardanashin ladies in two single Judge decisions in Ram Kirat v. Gajadhar Shrikla, A. I. R. (17) 1930 Oudh 112 and Kalpi Singh v. Bachchu Singh, A.i.r. (21) 1934-Oudh 417. With all respect we think that the interpretation given to the phrase in question in these two cases was too narrow.

9. Our attention has also been drawn to Thenal Ammal v. Sokkammal, 41 Mad. 233. In that case the vakalatnama contained a provision authorising a vakil "to present, if necessary, petitions for razinama for withdrawal and for referring to arbitration and to sign the razinama ttc. petitions."

It was held that this did not give authority to the vakil to enter into a compromise without referring to his clients. As the language of the vakalatnama referred merely to presentation of petitions of compromise the interpretation put by the Madras High Court may be taken as correct, but certain general observations made by that Court do not seem to hold good now after the decision of the

Privy Council in Sourendra Nath Mitra's case, 57 Cal. 1311. It was observed by the Court in that case that the practice prevailing in England by which counsel and solicitors are clothed with extensive powers to agree to terms on behalf of the client should not be imported into this Country and that it is not the ordinary duty of an advocate to negotiate terms, without reference to his client, with the opposite party, as such an action is calculated to place the practitioner in a false position. The Privy Council in the aforementioned case has pointed out that there is no reason to make a distinction between the powers of Advocates in England, and those in India. The Lahore High Court followed the Madras decision, vide Mehra v. Ahmad, A. I. R. (16) 1929 Lah. 746 (1). This caae was also decided before the Privy Council decision in Sourendra Nath Mitra's case. In Keshav Bamkrishna Phadke v. Subba, A. I. R. (26) 1939 Bom, 490, the terms of the vakalatnama were similar to those in Thenal Ammal's case and were interpreted in the same manner. As the terms in the present vakalatnama are different these authorities can afford us no guidance. In Rdmappayya v. Subbamma, A. I. R. (36) 1949 Mad. 98 the vakalatnama was ailtnt regarding the power to compromise and no general powers beyond the power of conducting and defending the suit were mentioned. In those circumstances it was held that Counsel bad no power to compromise the suit. The facts of tbat case were, therefore, different from the facts of the case before us.

10. In our opinion the pleader in the present case had power to enter into the compromise on behalf of the defendants respondents. We, therefore, allow this appeal set aside the order of the Court below and restore the decree passed by the Munsif. The appellant shall have his costs in all the Courts.

11. The stay order dated 11-8-1949 is discharged.