Narain vs Basdeo on 30 January, 1950

Equivalent citations: AIR1950ALL437, AIR 1950 ALLAHABAD 437

JUDGMENT

Bind Basni Prasad, J.

1. This is a plaintiff's appeal arising oat of a suit brought by him in the Court of the Munsif, Muttra, in which the relief claimed by him was a declaration that he was entitled to the allotment of three jajmans which had fallen to the share of the defendant by the decree of a previous partition suit, for recovery of Rs. 200/-as the approximate profit which the defendant had derived during one year from those jajmans and for future damages at the rate of Rs. 200/- per year. The appeal raises an interesting point of law. The facts are simple.

2. Narain, plaintiff, appellant, Basdeo, defendant-respondent, and one Girraj are three brothers who are Chaubey by caste and are residents of Muttra. Their profession is Birt jajmani. In 1933 Narain and Basdeo brought a suit in the Court of the Civil Judge against Girraj for the partition of their share of the property. A preliminary decree for partition was passed on 22nd December 1942. An Amin was deputed to divide the property. Except the Birt jajmani lights he was able to divide the rest of the property. It appears that there was a keen contest among the brothers as to the allotment of the jajmans and the division of the bahis in which entries relating to them appeared. Several well-to-do persons of Benares and elsewhere were the jajmans of this family, Girraj offered to solve the problem about the division of the jajmans. He said that he would prepare three lots and would ask Naraiu and Basdeo to pick up first any two of them and agreed himself to take the remaining third lot. Each lot contained the names of the jajmans. Narain picked up lot No. 3, Basdeo picked up lot No. l and thus the remaining lot No. 2 went to Girraj. Everyone agreed to the allotment of the lots aforesaid and a final decree for partition was passed accordingly on 20th August 1943. By this decree the share of each of the three brothers was divided. Soon after this decree, Narain appellant brought the suit against Basdeo from which this appeal arises. His case was that there was an agreement prior to the final decree between him and Basdeo that he would pick up lot No. 3 and Basdeo would pick up lot No. 1, but after the decree the latter would deliver to him the pages of the bahi containing the entries of certain jajmans mentioned in Para 6 of the plaint. His contention was that the lots were unequal and by this arrangement they had agreed to make them equal.

3. The suit was contested by the defendant and inter alia he pleaded the bar of Section 92, Evidence Act and Section 11, Civil P. C. Learned Munsif took up these preliminary issues and held that the claim was barred by res judicata and that, having regard to Section 92, Evidence Act, it was not open to the plaintiff to set up a pre-decree oral agreement so as to vary the terms of the decree.

4. In appeal the learned Civil Judge concurred with the trial Court that Section 11, Civil P.C., was a bar to the plaintiff's suit. He further held that the oral agreement pleaded by the plaintiff could not

be proved as the property was worth more than Rs. 100/- and its transfer was not in writing, stamped and registered. He recorded no finding on the plea of Section 92, Evidence Act.

5. The plaintiff comes in second appeal. In the Pull Bench case of Papamma v. Venkayya, 58 Mad. 994 : (A. I. R. (22) 1935 Mad. 860 (F. B.)), it was held that a decree does not come within the purview of Section 92, Evidence Act. Section 92 really refers to a contract, grant or other disposition of property entered into by agreement between the parties to that document. It cannot refer to a decree which is imposed upon one of the parties by force majeure. There is no mutuality about a decree which is passed in accordance with the wishes of one party and contrary to the wishes of the other. Section 92, therefore, in my opinion, cannot bar the setting up of a contract of the nature pleaded in the present case.

6. The main question in the appeal is whether, having regard to the final decree in Suit No. 22 of 1933, the plaintiff can set up an agreement to vary its terms. I am clearly of opinion that he is not entitled to do so. A decree when once passed is binding between the parties and it can be varied only in one of the modes provided in the Code of Civil Procedure, namely, by appeal, review, or revision. It is not open to any party to go behind a decree by setting up an anti-decretal agreement contrary to it. A decree finally adjudicates the dispute between the parties. To re-open a decree, as the plaintiff desires to do in the present case, would give no finality to it. Learned counsel for the appellant has relied upon certain oases in support of his contention that an agreement of the nature pleaded by the plaintiff can be set up when proved. I am of opinion that all those cases are distinguishable.

7. The first case relied upon is Papamma v. Venkayya, 58 Mad. 994: (A. I. R. (23) 1935 Mad. 860 F. B.). That was a case in which in the executing Court a judgment-debtor resisted the execution of a decree on the allegation that there was an oral agreement between him and the decree-holders subsequent to the filing of the suit and before the passing of the decree to the effect that they would not execute the decree that might be passed against him in the suit, provided he did not contest the suit. The decree-holders contended that such an agreement could not be pleaded in bar of execution in the Court executing the decree. It was held that the agreement pleaded was one which related to execution alone and did not attack the decree itself and that the matter could be enquired into by the Court executing the decree. The distinguishing feature in that case was that the agreement set up by the plaintiff was not intended to vary any terms of the decree passed. It related only to the executability of the decree. There is a sharp difference between the terms of a decree and its executability. In the present case, the plaintiff seeks to vary the very terms of the decree. Despite the allotment of lot No. 3 to him and lot No. 1 to the defendant he asserts that some jajmans of the defendant's lot should be given to him. In the case just cited the plaintiff did not want to vary any terms of the decree. Their Lordships observed at page 1000:

> "A decree or its terms cannot be varied or modified except by the Court; it is a matter of procedure and not of rules of evidence. The parties cannot by their agreement alone vary or modify the terms of the decree, whether the agreement be oral or written."

8. The second case relied upon is the Full Bench case of Udham, Singh v. Atma, Singh, I. L. R. (1941) 22 Lah. 383 : (A. I. R. (28) 1941 Lah. 149). That case also is distinguishable. There a contract was set up not to vary a decree but as an adjustment within the meaning of Order 21, Rule 2, Civil P. C. The judgment-debtor accepted the decree as it was and contended only that it had been adjusted. That is not the position in the present case.

9. The third case referred to is Panchananda v. Brojendra Kumar, 34 C. W. N. 150: (A. I. R. (17) 1930 Cal. 356). That was also a case in which the terms of the decree were not sought to be varied but only its executability was in dispute.

10. Similar was the position in Harendranath v. Gopalchandra, 62 Cal. 421: (A. I. R. (22) 1935 Cal. 177).

11. The last case relied upon is Cauri Singh v. Gajadhar Das, 6 A. L. J. 403: (2 I. C. 608). The facts in that case were quite different. Disputes between a creditor and a debtor were settled by arbitration without the intervention of the Court and a decree was obtained in terms of the award, notwithstanding the debtor's objection that in pursuance of the award he had already assigned debts to the creditor in part satisfaction of the aggregate amount awarded to the latter by the arbitrator. Upon the decree-holder's subsequently applying for execution of his decree in full the judgment-debtor repeated the same objection. It was held that the assignment was not an adjustment of a decree for whole or in part within the meaning of Section 258 of Act XIV 14 of 1882 and the execution Court was bound to consider what debts, if any, had been assigned before directing execution as claimed by the creditor. It will be seen that here again the judgment debtor did not seek to vary the terms of the award. He only pleaded its partial satisfaction.

12. None of the above-mentioned authorities help the appellant. The view of the Courts below that the suit was barred by Section 11, Civil P. C., is correct.

13. The appeal fails and it is, hereby, dismissed with costs. Leave for Letters Patent appeal was asked for and refused.