

Munshi Singh And Anr. vs Ewaz Singh And Ors. on 4 August, 1952

Equivalent citations: AIR1952ALL890, AIR 1952 ALLAHABAD 890

Author: V. Bhargava

Bench: V. Bhargava

JUDGMENT

Agarwala, J.

1. The plaintiffs-respondents filed a suit for partition of certain property.
2. The case for the plaintiffs was that certain houses sought to be partitioned were joint and that the plaintiffs had one-third share therein.
3. The defence was that the houses could not be divided as they were their self-acquired property. On the date of the final hearing, that is, 19-1-1948, both the parties agreed to abide by the statement on oath or without oath of Srimati Bitta, sister of plaintiff 1 and defendants 2 and 3 and that they did not desire to produce any other evidence in the case. They further stated that they would not produce any other evidence in the case. They further stated that they would produce Srimati Bitta on a future date to be fixed by the Court. The Court fixed 25-2-1948, as the date for the production of Srimati Bitta in Court and for her statement.
4. On 18-2-1948, however, the plaintiffs made an application resiling from the agreement to abide by the statement of Srimati Bitta and alleging that Munshi Singh defendant had brought Srimati Bitta to his house some 15 or 16 days before as a result of which she had gone against the plaintiffs. The learned Civil Judge ordered the application to be put before him on 25-2-1948. On 25-2-1948, the defendant filed an objection stating that there was no truth in the application made on behalf of the plaintiffs and praying that the statement of Srimati Bitta be recorded.
5. The learned Civil Judge made an enquiry into the allegations made by the plaintiffs and came to the conclusion that there was no ground for resiling from the statement made by them on 19-1-1948. He, therefore, rejected the application of the plaintiffs and recorded the statement of Srimati Bitta on oath and decided the case according to her statement.
6. The plaintiffs appealed to the lower appellate Court and the only question argued before it was whether the plaintiffs could resile from the agreement to abide by the statement of Srimati Bitta before her statement was made. The lower appellate Court held that the plaintiffs were entitled to

resile from the agreement to abide by the statement of Srimati Bitta at their sweet will before her statement was recorded. It, therefore, allowed the appeal and remanded the case to the trial Court for a decision on merits after recording the evidence which the parties may desire to produce.

7. Against this order the defendants came up in appeal to this Court. It was stated by learned counsel before the Bench hearing this appeal that there was a conflict between the decisions of this Court on the question whether a party could resile from a statement that he would be bound by a statement made by another person, before that statement had been made in Court. The Bench considered that the point was of sufficient importance and it, therefore, referred it to the larger Bench.

8. A similar question arose in Saheb Ram v. Ram Newaz, F. A. p. o. No. 112 of 1946 (ALL. F. B.), decided by us today. In that case the parties had agreed that they would be bound by the statement on special oath of Gangajali of one of the parties to the suit. The case fell under the provisions of the Oaths Act. In that case I held that, (1) Where a party offers to be bound by the statement of any of the opposite parties under Section 9, Oaths Act, he cannot resile from such an offer after the other party has agreed to make such oath, unless there be sufficient cause to the satisfaction of the Court for allowing the offerer to resile, and (2) Where a party offers to be bound by the statement of a witness, he cannot resile from such offer if any of the opposite parties has accepted that offer or has made a similar offer, but the Court will allow him to resile from it if there has been no such acceptance or counter offer by any other party.

9. In the course of the judgment it has also been pointed out that apart from the provisions of the Oaths Act upon general principles of law an agreement between the parties to abide by the statement of a person, whether on oath or without oath, was a valid agreement and could not be resiled from by one of the parties, even though the statement had not been recorded. The observations made by me in that case fully govern this case. It is, therefore unnecessary to discuss the matter at length in the present case.

10. My answer to the question referred to us is that where parties agree to abide by the statement of a person, whether on oath or without oath, one of such parties cannot resile from that statement without sufficient reason even though.

the statement of the person referred to "has not been recorded.

Malik, C.J.

11. I agree and have nothing to add.

V. Bhargava, J.

12. I agree and have nothing to add.

By the Court

13. The answer to the question referred to the Full Bench is as below:

Where parties agree to abide by the statement of a person, whether on oath or without oath, one of such parties cannot resile from that statement without sufficient reason even though the statement of the person referred to has not been recorded.