

Mst. Kalpa vs Sita Ram And Anr. on 22 September, 1954

Equivalent citations: AIR1955ALL187, AIR 1955 ALLAHABAD 187

JUDGMENT

Randhir Singh, J.

1. This first appeal from an order raises some points of interest, which are not wholly free from difficulty.

2. It appears that a suit was instituted by one Sita Ram on 14-3-1950, against the appellant (defendant No. 1) and one Chhedi Lal, on the allegations that the plaintiff was the nearest reversioner to the estate of Shrimati Kalpa's deceased husband and that Shrimati Kalpa, though a life owner, was wasting property in collusion with defendant No. 2. The appellant (defendant No. 1) did not enter appearance but defendant No. 2 filed a written statement on 17-4-1950.

On 16-5-1950, a petition of compromise is said to have been filed by the plaintiff and the appellant (defendant No. 1) and verified before the Court on 29-5-1950. On 29-5-1950, an order was passed that the case be put up on 7-7-1950, for the disposal of an application for amendment of the plaint. It was also mentioned in the order that the orders on compromise will be passed at the time of judgment. An application for the setting aside of the 'ex parte' proceedings against defendant No. 1 was made on 7-7-1950, in which it was alleged that the appellant (defendant No.

1) had been unwell and was unable, therefore, to enter appearance. It was prayed that the order to proceed 'ex parte' against her be set aside.

This application of defendant No. 1 was heard on 20-8-1950, and was allowed on payment of costs and the case was fixed for hearing for 14-9-1950. The case could not be taken upon that date and was then adjourned to 18-9-1950. On 18-9-1950, a written statement was filed on behalf of defendant No. 1, in which she stated that she had entered into no compromise with the plaintiff, nor had she appeared before the court for verification of any such compromise.

An issue was framed by the Court and the case was adjourned from time to time till ultimately the case came up before the Court on 8-2-1951. On this date the learned Civil Judge heard the parties and passed the order against which the appellant has now come up in appeal. In the order passed by the learned Civil Judge on 8-2-1951, he held that it was not open to him to go into the factum of the compromise in view of the verification of the compromise having been made earlier by his predecessor. He also remarked that it was open to the appellant (defendant No. 1) to go in appeal against that order under Order 43, Rule 1 (m), Civil P. C. The learned Judge ultimately decreed the suit in terms of, the compromise. The defendant No. 1 has now come up in appeal against this order.

3. A preliminary objection has been raised on behalf of the respondent to the admissibility of the appeal on the ground that the order dated 8-2-1951, was not an order recording a compromise and as such was not appealable. This argument has been met by the learned Counsel for the appellant and it has been argued that the order passed on 8-2-1951, was a composite order comprising of an order for recording the compromise and the judgment of the Court.

A perusal of the judgment of the lower Court no doubt shows that the order has not been passed in clear terms. He seems to have treated at one place the order dated 29-5-1950, which makes a mention of the verification of the compromise before the Court, as an order recording the compromise. Then again, at a later stage he seems to have treated the order which he passed on 8-2-1951, as an order for the record of a compromise, as he remarks that it would be open to the defendant to go in appeal against that order under Order 43, Rule 1 (m). As remarked above, the order is not very clear but it would be safer to treat it as a composite order comprising of an order for the record of the compromise and the judgment in the case and as such appealable under Order 43, Rule 1 (m).

If the Court does not pass an order recording the compromise or refusing to record the compromise but decides a case after a compromise has been filed, the question would arise as to whether there was or was not an order for the recording of the compromise, as required by Order 23, Rule 3, Civil P. C. A ruling of this Court in -- 'Mt. Shah Jahan Begam v. Ghulam Rabani', AIR 1935 All 738 (A), has been cited on behalf of the respondent in support of the proposition that an omission to pass an order to record a compromise was a mere irregularity curable under Section 99, Civil P. Order If there had been a mere omission to record the compromise, we could possibly have treated it as an irregularity, but it appears to us that the lower Court did not consider the objection raised by defendant No. 1 to the compromise before the final order decreeing the claim in terms of the compromise was passed. It was evidently the duty of the Court below to have come to a conclusion on the allegations made by the defendant with regard to the making of the compromise. If a party to a compromise denies having entered into the compromise, the Court will have to come to a finding as to whether there had or had not been a compromise effected between the parties and then also to decide if the agreement or the adjustment was lawful. It is only after the Court is satisfied that there had in fact been a compromise and further that that compromise was a lawful compromise, that there would be no option left to the Court but to record it and to pass a decree in terms of the compromise.

4. It has been argued on behalf of the respondent that even if defendant No. 1 had alleged that the compromise had been brought about by fraud, it was not open to the defendant No. 1 to raise that point in the Court below and the only courses open to the defendant No. 1 was to proceed by a regular suit for the setting aside of the decree. The argument advanced on behalf of the respondent need not be examined in view of the circumstances of this case. Defendant No. 1 did not in the present case admit that there had been a compromise but alleged that the deed of compromise was obtained by fraud. She definitely challenged the making of the compromise or her appearance in Court for the verification of that compromise. In fact, she denied having made the compromise at all and it was, therefore, the duty of the Court to come to a finding on this point and then to examine if the terms of the compromise were lawful.

The learned Civil Judge held that as the compromise had been verified in Court, it was not open to him to find out if the compromise had in fact been made. There may be cases in which a person by false personification obtains a verification of a compromise in Court purporting to be a compromise on behalf of the defendant or the plaintiff. If it is not open to a party subsequently and before an order for record of compromise has been passed to prove that he did not make or verify the compromise, it would mean that the Court could take no action even if a fraud was practised upon it. That evidently could not be the intention of the law. We do not propose to express any opinion about the merits of defendant No. 1's allegation in this case, lest it should prejudice the case of the parties at the trial, but there is no doubt that the allegations made by defendant No. 1 were in respect of the factum of the compromise and should have been gone into by the Court below. The Court has not gone into the merits of this allegation and the only course open to us is to set aside the order dated 8-2-1951, passed by the Court below and send back the case for retrial.

5. We accordingly allow the appeal and set aside the order passed by the Court below and remand the case with directions to readmit it to Its original number and to proceed according to law. The lower Court should first of all decide as to whether there had been a compromise between the parties & if it was a lawful compromise. If the Court below is satisfied, it would be open to the Court to order the compromise to be recorded and pass a decree in terms of the compromise. If, however, it is not established that there had been a compromise between the parties or that it was not a lawful compromise, the Court shall proceed to try the suit on merits.

6. Costs in this Court shall be the costs in the suit.