

Mohammad Hasnain vs Yusuf Husain And Ors. on 22 September, 1955

Equivalent citations: AIR1956ALL121, AIR 1956 ALLAHABAD 121

JUDGMENT

Randir Singh, J.

1. This is a second appeal arising out of a suit for possession of a house and for arrears of rent. The suit came up for settlement of issues on 16-9-1952, before the trial Court. An application was made by the parties for time up to 16-10-1952, on the allegation that the parties were having a talk of a compromise and the compromise, if made, would be filed on 16-10-1952. The compromise, according to the plaintiffs' allegation, was arrived at by plaintiff 1 and the defendant and in pursuance of that compromise a sum of Rs. 108/- together with Rs. 12/- was paid to plaintiff 1 and a compromise deed was written out.

The compromise, though made on 16-9-1952, presumably after the application for grant of time had been made, could not, however, be filed in Court as it required the approval and signatures of the other two plaintiffs who were not present in Court. After 16-9-1952, the signatures of the other two plaintiffs were obtained and the compromise which had been written out, was to be filed in Court on 16-10-1952. The defendant, however, did not turn up on the 16th October and an order for proceedings to be ex parte against him was passed by the Court.

An application for the setting aside of this ex parte order was made in November, 1952. The ex parte order was set aside, and the defendant was allowed to file his written statement. In the written statement filed by the defendant he definitely alleged that the suit had been adjusted by a compromise and the terms of the compromise were given by him in para 13 of the amended written statement. An issue was then framed as to whether there had been a lawful adjustment. The parties led evidence and the Court ultimately came to the conclusion that the defendant had failed to prove that the terms of the compromise were those mentioned by him in para 13 of the written statement.

No opinion was expressed by the trial Court as to whether the allegations of the plaintiffs with regard to the terms of the compromise were correct. The trial Court, however, refused to give effect to the compromise as plaintiffs 2 and 3 were no parties to the compromise. The defendant then went up in appeal and the pleas taken by him in paras 13 and 14 were reiterated in the grounds of appeal.

The learned Civil Judge who decided the appeal came to the conclusion that the evidence adduced by the plaintiffs with regard to the terms of the alleged compromise was more reliable as compared to the evidence produced by the defendant. He, however, agreed with the view taken by the trial

Court without expressing any opinion about the terms of the compromise as alleged by the plaintiffs. The defendant has now come up in second appeal.

2. Order 23, Rule 3, Civil P. C. is as follows: "Where 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, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the suit". A perusal of these words clearly shows that if the Court is satisfied on the evidence adduced before it that a suit has been lawfully adjusted in whole or in part the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith. It is not open to the Court to go into the merits of the case without first deciding whether there has been a lawful adjustment, and if so the terms of the adjustment.

In the present case it was admitted by the plaintiffs that there had been a compromise between the defendant and plaintiff 1 in terms mentioned in Ex. 4, and in pursuance of the compromise the money which was to be paid by the defendant had been paid. The compromise could not be filed in Court on 16-9-1952 only because the approval of the other two plaintiffs to the compromise had not been obtained. Ex. 4 clearly shows that after this compromise had been arrived at between the defendant and plaintiff 1, the approval and signatures of the other plaintiffs were al-

so obtained.

All that remained to be done was the filing of the compromise on the date fixed for the same after the defendant had put his signatures. The defendant, however, did not turn up on that date and he set up in his written statement, which he was allowed to file subsequently, the terms of compromise which were different from those mentioned in Ex. 4.

It is, therefore, clear that both parties admitted that there had been an adjustment but there was a difference with regard to the terms of the adjustment. It was, therefore, the duty of the Court to find out what were the terms of the adjustment and the Court having found that the plaintiffs' allegations were correct, it was the duty of the Court to have passed a decree in terms of the compromise Ex. 4.

3. It has been argued on behalf of the respondents that the defendant having failed to sign the compromise which was written out the compromise did not become complete, and the defendant having resiled from it the plaintiffs could not claim a decree on the basis of the compromise Ex. 4. I am unable to agree with this contention. If the defendant has set up a false story about the terms of the compromise the story could be rejected. The compromise became a completed compromise as soon as the approval of the other two plaintiffs had been obtained to the compromise. Even if the defendant refused to sign the compromise, the compromise could be proved in Court and a decree passed in terms of it.

Both the lower Courts appear, therefore, to have fallen into error under the impression that the defendant's signatures were necessary to the completion of the compromise. If there has been an

adjustment, even if none of the parties affixes his signatures to the document embodying the terms of the compromise, it is open to the parties to prove the actual terms of the compromise and claim a decree in terms of the compromise. The claim of the plaintiffs should have been decreed in terms of the compromise as mentioned in Ex. 4.

4. It was very wrong of the defendant to have set up in para 13 of his written statement that the terms of the compromise were those mentioned in para 13 and he seems to have stuck to his contention even in the lower appellate Court. He should, therefore, bear the costs of the plaintiffs of both the Courts below.

5. As a result the appeal is allowed and the suit is decreed in terms of the compromise as mentioned in para 4. The plaintiffs shall get their costs in the two Courts below, but the parties shall bear their own costs of this appeal.