

Ram Sewak vs Ram Sahai And Ors. on 22 February, 1951

Equivalent citations: AIR1952ALL169, AIR 1952 ALLAHABAD 169

JUDGMENT

Agarwala, J.

1. This is a decree-holder's appeal arising out of execution proceedings. A decree for demolition of certain constructions was obtained by the appellant-decree-holder against the respondent. Thereafter, the judgment-debtor made an application under Order 21, Rule 2, Civil P. C. praying that an adjustment of the decree be recorded. Under the alleged adjustment, the decree-holder was alleged to have given up his right to get the decree executed for demolition of the constructions in lieu of receipt of a sum of RS. 1,000. The decree holder replied that no such adjustment had been arrived at. The executing Court came to the conclusion that the adjustment, as alleged by the judgment debtor, had in fact been made and recorded the adjustment accordingly. Against this order, the decree holder went up in appeal to the lower Appellate Court. While the appeal was pending the parties came to terms. A statement was made in Court on 18.11-1945 to the effect that the decree-holder would be deemed to be the owner of one-fourth of the house in dispute, including the constructions and that the judgment-debtor would not claim any compensation for the same from the decree holder; that the decree will be deemed to be fully satisfied and that the parties will bear their own costs. By way of an addendum, it was stated fay the parties that in order to effect a partition of the share of the decree-holder one Prakash Shankar, Vakil, will be deputed to make the partition, that the parties will pay Rs. 100 as his fees, that if any party had any objections to the commissioner's report, the decision of the Court upon those objections will be acceptable to and binding upon the parties and none of the parties will be entitled to appeal against that decision. The addendum clearly shows that the parties intended that the partition was to be effected in execution proceedings and the full satisfaction of the decree was to take effect after the partition had been effected.

2. The case was not, however, decided on that date and soon after the learned Judge before whom the adjustment was made, died. The case was ultimately taken up by his successor three years later. During this interval, the judgment-debtor filed an objection alleging that the decree-holder's share was to be three-sixteenth and not one-fourth. Later on, when the case was ultimately taken up on 28-10-1948, the judgment debtor withdrew his objection and both the parties prayed that the original adjustment as recorded on 18-11-1945, may be considered to be good and valid and that the appeal may be decided accordingly. The learned Judge stated that the compromise between the parties amounted to an adjustment of the decree superseding the previous adjustment as alleged by the judgment-debtor. Then the learned Judge considered the question whether the executing Court could execute the decree in accordance with the new adjustment and observed that he would not decide the point and would leave it to be decided by the executing Court itself, and that it would be open to the decree-holder to make a proper application for execution which would be considered by

the executing Court. Then the learned Judge passed the following order:

"In view of the above, the appeal becomes nugatory and is hereby dismissed. The parties will bear their own costs of both the Courts."

It is against this order that the decree-holder has come up in appeal to this Court. His point is that the lower Appellate Court should not have dismissed the appeal, but that it should have passed a decree in terms of the compromise between the parties. On behalf of the judgment-debtor respondent a preliminary objection has been raised to the effect that no appeal lies, because the matter having been compromised, the decree was a consent decree, from which no appeal lies. Further, according to him a compromise can be given effect to, if at all, under the provisions of Order 23, Rule 3, Civil P. C. only and under no other provision of law; but as this provision in the Code applies to suits and does not apply to execution proceedings, (vide Rule 4 of that Order) the compromise in question could not be recorded at all.

3. The objection that no appeal lies to this Court because there was a consent decree in the case, has no force, because the complaint of the appellant is precisely this that the Court below failed to pass a decree in accordance with the terms of the compromise between the parties. The parties had prayed that the appeal be decided in accordance with the terms of the compromise but instead of acceding to the prayer of the parties the Court dismissed the appeal. It cannot, therefore, be said that the order of the Court below amounted to a consent decree.

4. It is true that Order 23, Rule 3 does not apply to execution proceedings, (as Rule 4 of that Order lays down) but it does not follow that there can be no compromise or adjustment between the parties in execution proceedings. Order 21, Rule 2 says :

"Where any money payable under a decree of any kind is paid out of Court or the decree is otherwise adjusted in whole or in part to the satisfaction of the decree-holder, the decree-holder shall certify such payment or adjustment to the Court whose duty it is to execute the decree, and the Court shall record the same accordingly."

No doubt the Rule contemplates a case of payment or adjustment out of Court and not in the presence of the Court itself. But this fact does not materially alter the duty of the Court. Where in the execution proceedings of a decree the parties agree in the presence of the Court or out of Court that the decree may be executed in a particular manner, there is nothing to prevent the Court from recording the adjustment between the parties. In execution proceedings the law does not fetter the right of parties to enter into contracts or arrive at compromises. Where a contract or compromise relating to the execution, discharge or satisfaction of a decree has been arrived at, the Court is bound to look into it and to take note of it under Section 47, Civil P. C., provided that it has been recorded by the Court is directed by Order 21, Rule 2, Civil P. C. As was held by a Bench of this Court in *Gaya Prasad v. Bam Charan*, A. I. r. (27) 1940 ALL. 184, a compromise of a date subsequent to the final decree in the suit can be recorded under Order 21, Rule 2 in execution proceedings. The Bench relied upon the observations of the Privy Council in *Oudh Commercial Bank Ltd., Fysabad v. Bind*

Basni Kuer, 1939 ALL L. J. 481 at p. 487, to the effect that:

"The Code (Civil Procedure Code) contains no general restriction of the parties' liberty of contract with reference to their rights and obligations under the decree and that if they do contract upon terms which have reference to and affect the execution, discharge or satisfaction of the decree the provisions of Section 47 involve that questions relating to such terms may fall to be determined by the executing Court."

If the adjustment is made in an appeal from a decision of the executing Court the Appellate Court itself can record the compromise as it has all the powers of the executing Court, under the provisions of Section 107, Civil P. C. The Court below, therefore, had power to record the compromise which was arrived at before it and should have ordered that it be recorded under Order 21, Rule 2, and the appeal should have been disposed of accordingly. The argument that an appellate Court could not do this, as a decree would have to be passed by the lower Appellate Court and if the decree is passed in terms of the compromise it will offend against the provisions contained in Order 23, RULE 4, has no force. As already stated, the record of the adjustment is to be under Order 21, Rule 2 and not under Order 23 at all.

5. I, therefore, allow this appeal set aside the orders passed by both the lower Courts and order that the adjustment of the decree arrived at between the parties on 18-11-1945 read with the statement made on 26-10-1948 shall be recorded under Order 21, Rule 2, Civil P. C. The costs shall be borne by the parties. Leave to appeal under the Letters Patent is refused.