

Madras High Court

Daturam Devkar vs T. Govindarajulu Naidu And Ors. on 6 August, 1969

Equivalent citations: AIR 1971 Mad 42

Bench: Palaniswamy

ORDER

1. The question of law that arises for consideration in these applications is about the scope and effect of the leave to defend granted under O. VII, Rule 5 of the Original Side Rules. The relevant facts are these, Daturam Devkar, the plaintiff, instituted this suit on 2-3-1968 for recovery of the amount due to him under a promissory note, which, according to him, was executed on 1-1-1968 by the defendants in his favour. The first defendant is a registered firm, of which the partners are defendants 2 to 6. The suit was laid under the summary provisions of the Original Side Rules. After the institution of the suit, the plaintiff filed Appln. No. 926 of 1968 on 2-4-1968 for attachment of certain moveable before judgment. The attachment was ordered on 26-4-1968. When the warrant was taken out for execution on 22-5-1968, defendants 3, 5 and 6 are said to have compromised the matter by submitting to a decree as prayed for and are alleged to have passed a document in that respect to the plaintiff. But this compromise was not filed into court immediately. On 18-6-1968, the plaintiff filed Appln. No. 1191 of 1968 for attachment of certain immovable properties before judgment. When that petition was pending defendants 1, 5 and 6 filed Appln. No. 1322 of 1968 on 5-7-1968 under O. VII, Rule 5 of the Original Side Rules praying for unconditional leave to defend the suit.

In that application, the plaintiff entered appearance and took time for counter, and the matter was adjourned from time to time. That petition came on for hearing on 28-8-1968, when there was no representation on behalf of the plaintiff and no counter was also filed. The Master allowed that application on that date. But even on 25-7-1968, the plaintiff had filed Appln. No. 1514 of 1968 under O. XXIII, Rule 3 of the C. P. Code, for passing a decree in terms of the compromise, already adverted, to against defendants 3, 5 and 6. That application is being opposed on the ground that the alleged document was obtained from those defendants under threat of attachment and coercion and that they did not compromise the matter, much less submit to a decree.

When this application was taken up for enquiry, Radhakrishnan, the fifth defendant, gave evidence stating inter alia that his signature was taken under threat and coercion. At this stage, Mr. S. K. L. Ratan, advocate appearing for the plaintiff, sought the leave of the learned Judge, Ismail J., before whom the matter came up for hearing to retire from the case, obviously for the reason that, according to the plaintiff, the compromise memo was prepared by Mr. S. K. L. Ratan in his office. The learned Judge adjourned the matter accordingly. Thereafter, permission was given to Mr. Ratan to retire from the case. The plaintiff subsequently filed Appln. No. 1546 of 1969 praying for permission to examine Sri Ratan and two other witnesses and also sought the permission of the court to cross-examine the respondents upon the facts stated in their affidavits. Subsequently defendants 1, 5 and 6 took out Appln. No. 1510 of 1969 alleging inter alia that the signatures of defendants 3, 5 and 6 were obtained in the compromise under threat and coercion, that the Master has since granted leave to defend the suit, that the Appln. No. 1514 of 1969, to record the compromise should not be enquired into, but should be dismissed and that the suit should be taken

up for trial on its merits. This application is, of course, opposed by the plaintiff.

2. The question is whether, on account of the grant of leave to some of the defendants to defend the suit, Appln. No. 1514 of 1969 filed by the plaintiff to record the compromise should be dismissed. From the relevant dates already noted, it would be seen that Appln. No. 1514 of 1969 to record compromise was filed on 25-7-1968 when Appln. No. 1322 of 1968 taken out by defendants 1, 5 and 6 for leave to defend was pending. The unconditional leave, as already noticed, was granted only on 28-8-1969. Mr. Vasantha Pai, appearing for the defendants, contended that consequent on the grant of leave to the defendants to defend, the application to record the compromise should not be gone into and that the defendants are, as of right, entitled to contest the suit on merits without being subject to an enquiry as to the truth or validity of the compromise. This submission raises a question as to the effect of the leave to defend. Omitting the words which are not necessary, the relevant portion of O. VII, Rule 5 of the Original Side Rules reads thus-

"In any case in which the plaint and summons are in the form prescribed in the order the defendant shall not defend the suit unless he obtains leave to defend from the master as hereinafter provided. In default of the defendant obtaining such leave, or if he fails to defend in pursuance of such leave, the allegations in the plaint shall be deemed to be admitted and the plaintiff shall be entitled to a decree for the sum claimed in the plaint....."

The question is whether leave to defend obtained by the defendant would place them in such a position as to entitle them to say that under all circumstances they should be allowed to go to the trial of the suit, irrespective of any other right that might have accrued in favour of the plaintiff, whether before or after the grant of such leave. The only right, which the defendants, in whose favour leave to defend is granted have, is to defend the suit because the consequence of default to obtain leave is that they shall be deemed to admit all the allegations in the plaint and that in consequence of such a result, the plaintiff is entitled to a decree for the amount claimed in the plaint. If the argument of Mr. Vasantha Pai were to be accepted, it would lead to anomalous results. It cannot be said that if leave is granted, the plaintiff and the defendants cannot enter into a lawful compromise of the subject-matter of the suit. If such a compromise is made, it would be certainly open to the plaintiff to approach the court to record the compromise and it would not be open to the defendants to contend that because they have obtained the leave of the court to defend, they are entitled to the trial of the suit and should not be called upon to face an enquiry as regards the truth or otherwise of the compromise which the plaintiff may put forward. It would make no difference if the leave to defend is granted subsequent to the compromise as in the instant case. We have already noticed that the application for recording compromise was filed before leave was granted and, therefore, it is not necessary for us to consider the question as to what the consequence would be if the application to record compromise is filed after the leave is granted. Order XXIII, Rule 3, C. P. Code reads thus:--

"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." It would be seen from the languages used that it is the duty of the court to find out whether the suit has been adjusted wholly or in part by any lawful agreement or compromise, if one of the parties comes forward with an application to record the compromise. In *Seethai Achi v. Meyyappa Chettiar*, 66 Mad LJ 517 = (AIR 1934 Mad 337), the plaintiff laid the suit against the defendants calling for accounts. During the pendency of the suit, the matter was settled between the plaintiff and the defendants along with another person. After the compromise, the plaintiff wanted to withdraw the suit. The person who was not a party to the suit, but who was a party to the compromise, applied to the court to be made a party in the suit and also applied to record the compromise. On behalf of the plaintiff, it was contended that he was entitled to withdraw the suit and cannot be compelled to face an enquiry as to the truth or otherwise of the compromise. A Bench of this court consisting of Sundaram Chetty and Pandrang Row JJ. held that though the plaintiff has got a right to withdraw the suit, such right is subject to certain exceptions and that the application made by the third party to be impleaded as a party to the suit should be enquired into, that the application to record the compromise should be decided on its merits and that the withdrawal of the suit by the plaintiff cannot deprive the third party the right to obtain an adjudication on his application.

3. In *Kuppuswami Reddi v. Pavanambal*, another Bench of this Court held that under Order XXIII Rule 3 C. P. Code, a compromise cannot be attacked by alleging that it is voidable having been brought about by fraud, undue influence and duress, that if the compromise is lawful, that is, not contrary to law, the Court is obliged to record it and that the mere fact that it may be voidable is no reason for a court to refuse to record it.

4. Mr. Vasantha Pai, appearing for the defendants, was unable to cite any authority to sustain the argument that the obtaining of the leave of the Court to defend the suit filed under the summary procedure entitles the defendants to say that any compromise, which the plaintiff may put forward should not be enquired into and that they should have the right to defend the suit alone. If the application filed by the plaintiff to record the compromise is allowed, the defendants, against whom it has been filed, will not be entitled to contest the suit on its merits. But if that application is disallowed, those defendants would be entitled to go to the trial of the suit on its merits. The defendants, against whom Appln. No. 1514 of 1968 to record the compromise has been filed, are defendants 3, 5 and 6. But Appln. No. 1510 of 1969 has been filed by defendants 1, 5 and 6, the first defendant being the firm of which defendant 2 to 6 are partners. The question as to the validity and binding nature of the compromises on the first defendant will have to be gone into in Appln. No. 1514 of 1968.

If the compromise is found to be true and valid and binding on the first defendant, even the first defendant would not be entitled to ask for a trial of the suit on its merits. But, if the compromise is true and valid and binding only on the persons who were eo nomine parties to the compromise and is not valid and binding on the firm, the first defendant, then certainly the first defendant would be entitled to the trial of the suit on the merits. With these observations, I dismiss Appln. No. 1510 of 1969. No costs. Leave is granted to the plaintiff to examine Mr. Ratan and the other to witnesses and to the cross-examine defendants 3, 5 and 6 with regard to the counter-affidavits filed in Appln. No. 1514 of 1968.

5. Appln. No. 1514 of 1968 is directed to be posted at an early date for continuing the enquiry.

6. Order accordingly.