

Mohibullah Vs. Imami and ors.

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SooperKanoon Citation : sooperkanoon.com/447706

Court : Allahabad

Decided On : Dec-31-1969

Reported in : (1887)ILR9All229

Judge : John Edge, Kt., C.J. and ;Oldfield, J.

Appellant : Mohibullah

Respondent : imami and ors.

Judgement :

John Edge, Kt., C.J.

1. This was an action brought to obtain possession of certain land which, under the terms of an agreement of compromise the defendant had agreed should be decreed to the plaintiff in a previous action. In the previous action the result of the compromise was that the plaintiff obtained a greater quantity of land by the decree than he had originally claimed--i.e., the parties had agreed, in order to put an end to the suit, that the plaintiff should obtain a greater quantity in a certain plot than he had originally claimed. It appears that the Munsif raised an objection to the drawing up of that decree, in accordance with the terms of the compromise, on the ground that the plaintiff was getting more than he claimed, and that the pleaders of the parties there and then admitted that the plaintiff was to have the decree which he was claiming. On that the decree in accordance with the compromise was properly drawn up by the Munsif. I know of no law which prevents the parties to an

action enlarging by consent or compromise the original claim, and getting or allowing a decree for a greater amount of money or land than originally claimed. By consent of the parties and the leave of the Court an action may be amended to cover an increased claim. It was competent to the parties, with the consent of the Munsif, to have a decree prepared, as was done in this case. So far, they acted bona fide.

2. When the plaintiff proceeded to get execution under this decree, the defendant, to my mind most unfairly, raised an objection that the plaintiff could not have execution for a greater quantity of land in the particular plot than he had originally claimed. The Munsif being misled, in my judgment, as to the law, declined to make an order for the larger amount of land mentioned in the decree. Unfortunately the order was not appealed against, but the present suit was brought. It appears to me, so far as this suit is concerned, that it comes within Section 244 of the Civil Procedure Code, which prohibits a separate suit in a case of this kind. Therefore I am of opinion that the present suit cannot be maintained. I however, throw out this suggestion, that the Munsif, having made an error in law, and having been misled into that error by an objection which had been improperly taken by the defendant, may properly, in an application for review, reconsider the order of the 9th April 1885, and give the present plaintiff the benefit of the compromise, so that no injustice and hardship may occur.

3. The appeal is dismissed with costs.

Oldfield, J.

4. I concur.