

Onkar Mal Vs. Ashiq Ali

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Court : Allahabad

Decided On : Jan-13-1927

Reported in : AIR1927All318

Appellant : Onkar Mal

Respondent : Ashiq Ali

Judgement :

1. The plaintiff sued to have a certain compromise, which he entered into during partition proceedings in the revenue Court on 22nd July 1921, cancelled. His other reliefs were not granted, so it is not necessary in this Court to consider them. The trial Court dismissed the suit, but it was decreed by the lower appellate Court. The defendant Onkar Mal has come here in second appeal.

2. The foundation of the plaintiff's claim in the plaint was that he was induced to enter into the compromise by undue influence, because at the time of the compromise a criminal charge brought by a servant of Onkar Mal was pending against the plaintiff's servants and Onkar Mal offered the inducement of withdrawing that complaint. It is a fact that a criminal prosecution on some petty theft was pending in the criminal Court and the case was withdrawn on the day that the compromise was entered into. The fact that the case was withdrawn indicates that the charge of theft must be of a trifling nature. The only relevant matter in the judgment of the lower appellate Court is the last para, printed at page 18 of the printed record. It held that undue influence was not proved. It, however,

thought out a new case for the plaintiff and held that the compromise failed because it was void. It held it to be void, because it was a stifling of a criminal prosecution.

3. The compromise as held by the trial Court was a very fair one. Onkar Mal was in possession of three bighas in excess of his one anna share. The plaintiff was the owner of the seven anna share. This seven anna share had been leased to another person by the plaintiff's vendor prior to the sale in favour of the plaintiff. Under the compromise the lessee gave up possession, though it was arranged that for the period of the lease he was to receive the profits of the seven anna share of the property. As to the three bighas in possession of Onkar Mal in excess of his share, he promised under the compromise to pay rent for it to the plaintiff. One of the motives for that compromise may have been the withdrawal of the criminal case, but it cannot be said to be the only motive. There was no unfairness in the agreement between the parties. When a withdrawal of a criminal case of a trifling nature like the one pending against the plaintiff's servants is one of the motives for a compromise, it would not follow that the compromise would for that reason be void. In *Dwijendra Nath Mullick v. Gopi Ram Gobindaram* A.I.R. 1926 Cal. 59, a Bench of the Calcutta High Court held that where the withdrawal of a prosecution was the motive but not the object or the consideration of the agreement, the agreement would not be rendered void under Section 23 of the Indian Contract Act. In the present case the withdrawal of the prosecution was not the consideration for the agreement. The agreement was a fair settlement of dispute between the parties and would possibly have been arrived at even if there had been no criminal prosecution pending at the time against the plaintiff's servants.

4. We set aside the decree of the lower appellate Court and restore the decree of the trial Court and dismiss the plaintiff's suit with costs of all the Courts.