

Sripat Vs. Vishwanath and ors.

Sripat Vs. Vishwanath and ors.

SooperKanoon Citation : sooperkanoon.com/464697

Court : Allahabad

Decided On : Feb-22-1973

Reported in : AIR1973All527

Judge : T.S. Misra, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 23, Rule 3

Appeal No. : Civil Revn. No. 400 of 1971

Appellant : Sripat

Respondent : Vishwanath and ors.

Advocate for Def. : K.C. Saxena, Adv.

Advocate for Pet/Ap. : V.K.S. Chaudhary, Adv.

Disposition : Revision allowed

Judgement :

ORDER

T.S. Mishra, J.

1. This is a defendant's application for revision of the order passed in Civil Misc. Appeal No. 4 of 1971 by the District Judge, Hamirpur. The facts giving rise to this revision may be briefly stated as follows:--

2. The plaintiffs opposite parties had filed a suit purporting to be under Section 77 of the Registration Act for a direction to the Sub-Registrar, Tehsil Charkhari, Hamirpur, to register a sale deed executed on 7-8-1967 by Sripat, son of Ram Nath for a consideration of Rs. 250000. On 28th August, 1969, a compromise petition was filed being paper No. 25-ka-of the suit. It appears that this petition was filed by Sripat and Ayodhya Prasad who were duly identified by their counsel. It was also signed by the counsel for Viswanath, the plaintiff No. 1. On that date the Court did not pass any order on that application on the ground that there was no proper claim before it and it appeared that there was some deficiency in Court-fees as well. On 6th September, 1969, the Court on the move made by the counsel for the plaintiff allowed the plaintiff to amend the plaint and pay the Court-fees. The plaintiff consequently moved an application for the amendment of the plaint. That application was however, not opposed and was therefore allowed. The plaint was accordingly amended and the defendant was granted time to file additional written statement. Subsequently by an order dated 13th January, 1970, the Court fixed 7th February, 1970 for verification of the compromise. On 27th January, 1970, the defendant filed an application stating inter alia, that he had not entered into any compromise and the alleged compromise dated 28th August, 1969 was obtained by practising fraud on him and he was not prepared to verify the same. This application was ordered to be put up on 7th February, 1970 and the parties were directed to be ready with their evidence. On 7-2-1970, the statement of Sripat was recorded by the Court and he stated that paper No. 25-ka bore his signature but asserted that the plaintiffs had obtained his signature on that document representing that they were seeking adjournment of the case. The compromise petition as well as the objections were thereupon listed for hearing for 31st March, 1970, but the same could not be taken up on that date as the witnesses had not been served. Ultimately 3rd October, 1970 was fixed for the matter regarding recording of the compromise. The order sheet of the Trial Court disclosed that on 3rd October, 1970, the parties did not adduce any evidence. The arguments were heard and the order recording the compromise was passed. A decree in terms of the compromise was also passed by the trial Court. Aggrieved, the defendant preferred a miscellaneous appeal which was dismissed. The defendant has now come up to this Court.

3. The learned counsel for the applicant urged that having failed to investigate the question as to whether the applicant had entered into the alleged compromise, the trial Court had no jurisdiction to record the compromise. He also urged that the alleged compromise was unlawful and should not have been recorded. The learned counsel for the opposite party, however, contended that Rule 3 of Order 23 of the Code of Civil Procedure did not provide any enquiry into disputed facts collateral to the terms of the compromise and the party alleging fraud could not be allowed to avoid the compromise admittedly executed by him in a proceeding started by an application under Order 23, Rule 3, Civil Procedure Code and that the only course open to the defendant applicant was to proceed by a regular suit for the setting aside of the decree. In my view the first contention raised by the learned counsel for the applicant has force in it. Rule, 3, Order 23 of Civil Procedure Code requires a court to record a compromise if it is proved to the satisfaction of the court that the suit has been adjusted wholly or in part by any lawful agreement or compromise. The Court must, therefore, find out where it is alleged that no compromise took place between the parties as to whether a compromise had in fact been made. In the instant case an application, 25-ka was filed containing the terms of the compromise and praying that the compromise be recorded and decree be passed in terms thereof. The averments made in that application were, however, denied by the defendant in his objection dated 27-1-1970, 35-ga and the defendant stated in unequivocal terms that he had not made any compromise. He also stated that the alleged compromise dated 28-8-1969 was wrong and he was not prepared to verify the same. He had thus very clearly denied to have entered into a compromise with the plaintiffs. The very factum of the compromise was seriously disputed. The defendant reiterated his stand when his statement was recorded by the Court on 7th February, 1970. He had also stated that the plaintiffs had obtained his signature on the alleged compromise on the pretext that they were applying for the adjournment of the case. No doubt the defendant had admitted that he had put his signature on the alleged compromise application but he insisted that no compromise had taken place between him and the plaintiffs and also denied the contents of the said application on 28th August, 1969. The trial Court, however, decided to record the compromise on the ground that the signature of the defendant on the compromise application 25-ka having

been admitted, the formal execution thereof was established. The appellate Court below also laid stress on the fact that the application containing the compromise bore the signature of the defendant who was a literate person and if the defendant felt aggrieved on account of any fraud having been played on him, he should have brought a regular suit for setting aside the decree pass-ad on the alleged fraud. It clearly appears that the assumption which the Courts below made is unsustainable, that assumption being that the defendant having admitted his signature on the document, 25-ka (compromise application) an inference of formal execution thereof should be made, In my opinion, from the facts narrated above no such inference could be drawn. The defendant had merely admitted his signature on the said application, 25-ka. He had how-over, not admitted the contents of that application. On the other hand he had specially denied the contents thereof in his objection, 35-ga. In these circumstances the mere admission of signature on the document in question could not be treated as an admission of the contents thereof. As the defendant had denied to have entered into the compromise, the Court below had to give a finding as to whether there had or had not been a compromise between the parties and then also to decide if the compromise was lawful. It is only after the Court is satisfied that there had in fact been a compromise and further that the compromise was a lawful one there would be no option left to the Court but to record it and pass a decree in terms thereof. But, whenever there is a dispute between the parties whether the compromise had really been arrived at or not, the Court must before proceeding to record the agreement or pass a decree in accordance therewith require to be satisfied that the compromise pleaded by any party had in fact been made. In the present case the trial Court instead of recording a clear finding as to whether a compromise had been made or not and if made was it a lawful one observed that the signature of the parties being admittedly on 25-ka-I, inference of the formal execution for the compromise should be made and therefore proceeded to record the compromise. The Courts below have thus not gone into the merits of the allegations, hence the only course open to me is to set aside the impugned order and send back the case for retrial.

4. The learned counsel for the applicant urged that the alleged compromise was unlawful and no decree could be passed in terms thereof inasmuch as the plaint

was amended after the alleged compromise was filed and the Sub-Registrar was not impleaded as a defendant in the case. The contention that the Sub-Registrar was a necessary party to the suit has, however, no substance. The suit was obviously filed under Section 77 of the Registration Act to obtain registration of a document. Section 77 of the Registration Act says that when registration has been refused under Section 72 or Section 76, a suit may be brought in the Civil Court having local jurisdiction where the registration office is situate to enforce the registration. In the present case the sale deed was presented before the Sub-Registrar for registration. The Registrar issued a summons to Sripat to appear before him to admit execution. Sripat, however, did not turn up to admit execution. Consequently the Sub-Registrar refused to register the document. An application was thereupon filed before the District Registrar. Sripat appeared before him through a counsel but filed no objection. Sripat in his statement recorded before the District Registrar admitted that he had signed the deed in question but did not go to the office of the Sub-Registrar to get the deed registered because the amount mentioned in the deed was low. The District Registrar having found the contention of Sripat to be correct rejected the application of Viswanath and Ayodhya Prasad Vide his order dated 3rd April, 1968. The plaintiff therefore filed the suit under Section 77 of the Registration Act. The Registrar obviously passed that order under the provisions of the Indian Registration Act after making the necessary enquiries. He took evidence and provisionally adjudicated upon the right of the plaintiffs to have the document registered. He thus exercised his jurisdiction under the provisions of the Indian Registration Act. The said order was thus passed in the exercise of a judicial function. Consequently there is no reason why the Registrar should be made a party to a suit under Section 77 of the Indian Registration Act. It is immaterial whether the order passed by the Registrar was erroneous. The order obviously was made against the plaintiffs who were interested in the deed and was passed in favour of the defendants. The plaintiff being aggrieved would have for his adversary not the Registrar or Sub-Registrar but the defendant, the [Registrar, being in no way interested in the final adjudication. That being so, the Registrar would not be necessary party to the suit filed under Section 77 of the Indian Registration Act.

5. In the result, the revision is allowed with costs. The judgment and decree passed by the appellate Court below are set aside. The order and the decree dated 3rd October, 1970 passed by the trial Court are also set aside. The order dated 3rd October, 1970 passed on the application, 25-ka-I is also set aside. The case is remanded to the trial Court with the direction to readmit the suit to its original number and proceed to decide it and the application 25-ka-I and the objection 35-ga-I in accordance with law. The trial Court should first of all decide as to whether there had in fact been a compromise between the parties and if it was a lawful compromise. If the Trial Court is satisfied that there had been a compromise between the parties and it was a lawful compromise, it would be open to it to order the compromise to be recorded and pass a decree in terms thereof. The parties shall be entitled to adduce such evidence as they may deem fit and proper in support of their respective contentions in regard to the said applications 25-ka-I and 35-ga-I. The record shall be sent back to the Court below Without delay.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com