

Laraiti Devi Vs. Sia Ram

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Court : Allahabad

Decided On : Mar-22-1957

Reported in : AIR1957All820

Judge : Mukerji and ;Srivastava, JJ.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 and 151 - Order 23, Rule 3

Appeal No. : Civil Revn. No. 934 of 1951

Appellant : Laraiti Devi

Respondent : Sia Ram

Advocate for Def. : Gopal Behari, Adv.

Advocate for Pet/Ap. : S.C. Khare, Adv.

Disposition : Application allowed

Judgement :

Srivastava, J.

1. This is a plaintiff's application in revision. She filed a suit against the defendant, now opposite party, for the recovery of Rs. 8497/-. On the date fixed for final hearing of the case, a compromise purporting to have been arrived at between the

parties was filed in Court. The compromise was signed by the vakil for the plaintiff, the defendant himself and the defendant's counsel. The compromise was put up before the Court and was duly verified on behalf of the plaintiff by her counsel and by the defendant personally. The Court on 30-1-51 passed an order in these terms:

'Parties file compromise.

ORDER

The suit is decreed in terms of the compromise, 35B which shall be part of the decree.'

2. A formal decree was drawn up and was signed on 5-2-51. On 9-2-51 the defendant filed an implication headed as an application under Section 151 Civil P. C., in which he alleged that the plaintiff's son had persuaded him to sign the compromise by practising fraud and misrepresentation. He further said that he had not been allowed to consult his counsel and had signed the compromise without understanding its contents. At the time of the verification also the compromise had not been read out to him. The compromise had thus been obtained by practising fraud on him as well as on the Court, and was liable to be set aside. He also urged that the decree had been passed without complying strictly with the provisions of Order 23, Rule 3, Civil P. C. He, therefore, prayed that the decree be set aside. In support of this application he filed an affidavit.

3. The plaintiff contested the application and denied all the allegations of fraud and misrepresentation. She said that the compromise was a valid one and that the defendant had settled the terms willingly and after understanding each one of them. He had not only signed the compromise petition but had also verified it before the Court. He was therefore not entitled to get the decree passed on the basis of the compromise set aside by filing an application like the one he had filed. It was also urged on her behalf that Section 151 did not apply at all and if the defendant wanted to have the compromise act aside on the ground of fraud he should have sought his remedy in a regular suit.

4. The learned Civil Judge took the view that the provisions of Order 23, Rule 3 had not been strictly followed because the compromise had not been ordered to be recorded. Without there being an order directing the recording of the compromise no decree could have been passed on its basis. As there was no order for recording the compromise the defendant had been deprived of his right of appeal and could therefore agitate the matter under Section 151, Civil P. C. The learned Civil Judge, therefore, quashed the decree passed in the case on the basis of the compromise and set it aside. He required the parties to produce evidence for and against the compromise, and fixed a date for that purpose.

5. The plaintiff has come up in revision against the order and two contentions have been pressed on her behalf. It was urged, in the first place that the compromise having been filed and verified before the Court and a decree having been passed on its basis the learned Civil Judge had no jurisdiction to set it aside under Section 151, Civil P. C. The second contention was that the view of the learned Civil Judge that Order 23, Rule 3, Civil P. C. had not been strictly complied with was not correct. As the order directed the compromise to be a part of the decree it amounted to an order recording the compromise. If the defendant was not satisfied with the order he should have gone up in appeal against it under Order 43, Rule 1, Civil P. C. The question of fraud or misrepresentation which the defendant wanted to raise by his subsequent application could not be legally raised or considered in proceedings under Order 23, Rule 3, Civil P. C.

6. A preliminary objection has been raised on behalf of the defendant that the application in revision is not maintainable as no case had been decided.

7. The preliminary objection has in our opinion no real force. A decree on the basis of the compromise had been passed in favour of the plaintiff. By the order sought to be revised the learned Civil Judge has set aside the decree. The main contention of the plaintiff which has been rejected by the learned civil judge was that after the decree had been passed it was not open to the defendant to have set aside by a mere application. His grievance now is that by rejecting his contention the learned Civil Judge has deprived him of a substantial right. The fact that the learned Civil Judge has fixed a date for considering the evidence of the parties

about the allegations on which the compromise was sought to be avoided by the defendant cannot make any material difference.

The setting aside of the decree by itself amounts to a decision of the case within the meaning of the term as used in Section 115, C. P. C. In the Full Bench, case of Ramrichpal Singh v. Dayanand Sarup, : AIR1955 All309 , Agarwala, J. laid down three essential features of a case which must be present before it can be held to be a case decided under Section 115, Civil P. C. These features, according to the learned Judge are: (1) the proceeding should be one in which a claim is made by one party that he is entitled to certain rights by the other party; (2) the rights claimed must be substantial, the grant or refusal of which materially affects the interest of a party and (3) the proceeding must be separate and complete by itself.

All these essential features will be found to be present in the matter now in hand. In the proceedings in which the order sought to be revised was passed the plaintiff claimed the right to maintain the decree which had been passed in her favour on the basis of the compromise. The right which she claimed was a substantial one, the grant or refusal of the right materially affected her interest and the proceedings were separate and complete proceedings which had been started by the defendant's application made after the decree had been passed. We, therefore, find it difficult to accept the contention that the order sought to be revised does not amount to a case decided. The preliminary objection must consequently be overruled.

8. The contention of the learned counsel for the plaintiff is that if the defendant was aggrieved by the order accepting the compromise and making it a part of the decree he should have challenged it in appeal. If it was his case that the compromise was voidable his option on the grounds of fraud or misrepresentation he had his remedy in a regular suit. In any case he had no right to pray for the quashing of the compromise and the setting aside of the decree on an application made under Section 151 C. P. C. This contention appears to us to be well founded. It is well settled that it is not open to any party to invoke the inherent jurisdiction of the court when he had another remedy open to him but did not pursue it.

The only case which the learned counsel for the defendant could refer to in support of the contention that the decree in the present case could be set aside on an application under Section 151 C. P. C. is the case of Sadho Saran Rai v. Anant Rai, AIR 1923 Pat 483 (B). A careful perusal of the case will, however show that it does not in fact support the contention of the learned counsel. It had been found as a fact in that case that gross fraud had been perpetrated not only upon the plaintiff but on the court itself. That was the main reason why the compromise decree passed in that case had been set aside on a mere application.

While dealing with the question whether a compromise decree could be challenged by an application or whether a regular suit was necessary for setting it aside was laid down:

'A distinction has been drawn in the cases of Indian Courts between a fraud practised upon a party and a fraud practised upon the Court. It has been laid down that where the question is whether there was consent in fact there is power in the Courts to investigate the matter in a properly constituted application and to set aside the decree if it is satisfied that a party never in fact consented to it but that the Court was induced to pass the decree on the fraudulent representation made to it that the party had consented to it but that where there is a consent in fact that is to say, where the parties have filed a compromise petition and they admit that they have filed but if the parties allege that the consent was procured by fraud, the Court cannot investigate the matter either in review or in the exercise of its inherent power and that the only remedy of the party is to institute a suit to set aside the decree on the ground of fraud. In other words, the factum of the consent can be investigated in summary proceedings but the reality of the consent cannot be so investigated.'

Applying these principles to the present case it will be found that here the defendant as well as his counsel had signed the compromise along with the plaintiff's counsel. The compromise had been filed in court and had been duly verified. Till that stage there was no allegation of any fraud or misrepresentation. Even the decree had been allowed to be passed on the basis of the compromise. It was only after the decree had been passed that the defendant alleged for the

first time that his consent of the compromise had really been obtained by fraud and misrepresentation practised by the son of plaintiff. Even at that stage no definite allegations were made showing that any fraud had actually been practised on the court.

This was therefore a case in which the taciturn of the consent was not disputed. The only thing alleged was that the consent had been procured by fraud. According to the Patna case also, therefore, the consent decree in the present case could not be set aside in summary proceedings and the only remedy of the defendant if he wanted to challenge the decree was to institute a suit to set aside the decree on the ground of fraud. It therefore appears to us that the learned Civil Judge had really no jurisdiction to set aside the decree in the exercise of his inherent powers under Section 151, Civil P. C. The first contention of the plaintiff's counsel must therefore succeed.

9. In view of what has been said above the second contention loses much of its importance. It may however be observed that in taking the view that Order 23, Rule 3, Civil P. C. had not been strictly complied with, in the present case the learned Civil Judge appears to have ignored two facts: (1) That Order 23, Rule 3 only requires that the compromise or adjustment should be ordered to be recorded. It does not lay down how it is to be recorded. In the present case in the order dated 31-1-51 the learned Civil Judge had clearly provided, that the compromise should form part of the decree. That was certainly one of the ways in which the compromise could have been recorded. In the case of Jagat Singh v. Sangat Singh, AIR 1940 PC 70 (C), the decree had been passed on the basis of a compromise without a specific order that the compromise be recorded. The decree was in these terms :

'Ordered that a decree be and the same is hereby passed on the terms and under the conditions embodied in the deed of compromise dated 9th June 1907, as a whole with this reservation that the sum of Rs. 8150 shall be paid within fifteen days from today, in case of failure defendant No. 1 (Bishan Devi) to be entitled to recover that amount by execution'

It was urged that as the compromise had not been ordered to be recorded the decree had not been properly passed. The contention was not accepted and it was held that Order 23, Rule 3 had been sufficiently complied with the decree could be regarded to have recorded the compromise. In the case *Shah Jahan Begam v. Ghulam Rabani* : AIR1935 All738 it was held that the omission to record a compromise was at the most an irregularity which could not be given any importance in view of Section 99 of the Code of Civil Procedure. (2) The order dated 31-1-51 though it did not in terms say that the compromise be recorded was in fact an order under Order 23, Rule 3 and could be appealed against if the defendant really wanted to challenge it vide *Umia Shanker Naranji v. Sheoshankar Prabhashankar*, AIR 1944 Bom 239 (2) (E).

10. The learned Civil Judge thus appears to have given undue importance to the fact that in the order dated 31-1-51 the Court had not specifically provided that the compromise was to be recorded. There was no question of the defendant having been deprived of any right of appeal nor could it be said that on account of that omission the decree passed became one without jurisdiction.

11. The view of the learned Civil Judge that it was possible for the defendant to raise in proceedings under Order 23, Rule 3, Civil P. C., the question whether the compromise had been obtained by fraud or misrepresentation can also not be said to be in consonance with the view of this Court. In the case of *Union of India v. Raghubir Saran* : AIR1957 All120 , a Bench of this Court has laid down:

'A contract vitiated by fraud can be set aside by a decree obtained in a regular suit instituted for that purpose. Order 23, Rule 3 does not provide any enquiry into the disputed facts collateral to the terms of the compromise. The party alleging fraud cannot be allowed to avoid the compromise admittedly executed by it in Miscellaneous proceedings started by an application under O 23, Rule 3, Civil P. C. The Court is bound to give effect to it if it is lawful having regard to its own terms.'

12. The learned counsel for the defendant referred in this connection to the case of *Mst. Kalpa v. Sitaram* 0065/1955 : AIR1955 All187 and urged, that a different view had been taken in that case. This does not appear to be correct, and the two

cases are easily reconcilable. In the case of *Mst. Kalpa v. Sitaram*, (G) the defendant No. 1 who was alleged to have compromised the suit with the plaintiff had repudiated the compromise before it was acted upon by the Court and had alleged that she had neither entered into a compromise nor had she appeared before the Court for the verification of the same. An issue was framed on the point, but the learned Civil Judge held that it was not open to him to go into the question in view of the compromise having been verified earlier before his predecessor. Without considering the question, therefore, he ordered that a decree be prepared in terms of the compromise.

In these circumstances it was held that when the factum of the compromise was itself disputed the Court was bound to go into the question and to record a finding whether the compromise had in fact been arrived at or not. The case was therefore sent back for the decision of that question. The distinction between the case of *Mst. Kalpa v. Sitaram*, (G) and the case of *Union of India y. Raghubir Saran*, (F) lies in the fact that while in the latter case the entering into of the compromise was not disputed but it was sought to be avoided on the ground that it had been obtained by fraud, in the former case the very fact that the compromise has been arrived at was disputed. When a compromise is filed and is alleged to have been made by the parties, before recording it the Court is bound to arrive at a finding on the question whether the compromise has in fact been arrived at or not. That was the only thing that was laid down in *Mst. Kalpa's* case (G).

If the compromise was in fact arrived at the additional question whether it was voidable at the instance of one of the parties on grounds similar to fraud or misrepresentation was according to the *Union of India v. Raghubir Saran* (F) foreign to proceedings under Order 23, Rule 3 and could not be considered in those proceedings. The settled view of this Court thus appear to be that it is not open to a party to avoid a compromise admittedly entered into by it in proceedings under Order 23, Rule 3 by alleging fraud. This is in substance what the defendant wanted to do before the learned Civil Judge.

13. The result is that the order sought to be revised cannot be upheld and the application must succeed. The application in revision is therefore allowed with

costs. The order dated 25-7-51 is set aside.

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