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Court : Punjab and Haryana

Decided On : Mar-22-1976

Reported in : AIR1976P& H287

Judge : R.S. Narula, C.J. and; D.S. Lamba, J.

Acts : Oaths Act, 1969 - Sections 9; Oaths Act, 1873 - Sections 9 to 12; Evidence Act, 1872 - Sections 20

Appeal No. : Second Appeal No. 63 of 1972

Appellant : Thakur Singh and ors.

Respondent : inder Singh

Advocate for Def. : H.L. Sarin, Sr. Adv. and; M.L. Sarin, Adv.

Advocate for Pet/Ap. : R.L. Luthra, Adv.

Disposition : Appeal dismissed

Judgement :

R.S. Narula, C.J.

1. In a suit for specific performance of an alleged agreement by which defendant-appellant agreed to execute a deed transferring the ownership rights of a specific piece of land measuring 17 Kanals and 18 Marlas, an agreement was arrived at

between the counsel for the parties in the trial Court after a good deal of evidence had already been led by them. This happened on August 19, 1971. Shri Brij Mohan Lal, counsel for the plaintiff, made the following statement:--

'Suit of the plaintiff may be dismissed, if Thakar Singh defendant takes oath in the Kandh Sahib Gurdwara that suit land is not of the plaintiff and he has not made any agreement of it in favour of plaintiff. In case he does not take oath suit of the plaintiff may be decreed.'

The statement was signed not only by Brij Mohan Lal Advocate but also by the plaintiff's son Sohan Singh. On that statement being made on behalf of the plaintiff, Thakar Singh defendant made the following statement on oath before the trial Court:--

'I accept the offer of the counsel of the plaintiff; suit may be decided according to it.'

Thakar Singh's statement was thumb-marked by him and also signed by his Advocate. The following order was thereupon passed by the trial Court on that date:--

'In view of the statements of counsel of parties and defendant Thakar Singh, I appoint Gurmukh Singh to administer oath to Thakar Singh defendant as stated by the counsel of the plaintiff, that Thakar Singh made no agreement in favour of plaintiff of the suit land. If he takes oath suit will be dismissed, otherwise the same would be decreed. His fee is fixed at Rs. 30 to be paid half and half by parties.'

It may be noticed et this stage that Inder Singh plaintiff (who is present before us today) is stated to be more than 100 years old. It is the common case of both sides that his son Sohan Singh has been actively prosecuting this litigation on his behalf. It may also be of interest to note that Inder Singh plaintiff and Thakar Singh, contesting defendant, are real brothers and the claim relates to certain land which is alleged to have been allotted in excess to Thakar Singh in lieu of the joint land which had been left behind by the parties in Pakistan. What happened in pursuance of order of the Court dated August 19, 1971, was that Gurmukh Singh

who is stated to be the Reader of the Court of Shri A.C. Rampal, the learned Sub-Judge before whom the case was pending at the trial stage, went to the Kandh Sahib Gurdwara along with plaintiff's son Sohan Singh, defendant Thakar Singh and certain counsel. On his return, he submitted his report on the same day in the following words:--

'I am appointed as Local Commissioner for administration of oath to Thakar Singh. Thakar Singh has taken oath as per statement in Court in the presence of Sohan Singh son of Inder Singh plaintiff. Submitted.'

On the receipt of the above report, the trial Court recorded the statement of plaintiff's counsel, which is also signed by plaintiff's son Sohan Singh wherein it is recorded that the suit of the plaintiff may be dismissed and it is added that Thakar Singh defendant had taken an oath. After that statement of the counsel for the plaintiff, the suit of the plaintiff was dismissed by the Court of Shri A.C. Rampal 'in view of statement of counsel of plaintiff'. No objections were filed against the report of the Commissioner. Mr. Sarin's case is that his client was not even given breathing time and there was no opportunity to file any objections.

2. An appeal against the decree was preferred by the plaintiff to the Court of the District Judge. Shri Ved Parkash Sharma District Judge, Gurdaspur, allowed the plaintiff's appeal by his judgment dated May 31, 1972. The learned Dist. Judge held that Shri Brij Mohan Lal, Advocate for the plaintiff, had no power to consent to the settlement of the case by an oath being taken by the opposite party under S. 9 of the Indian Oaths Act, 1873, nor did Section 36 of the Code of Civil Procedure. 1882, give him any such authority as no specific power to that effect had been given to him in the Vakalatnama executed in his favour by the plaintiff. In addition, he held that the trial Court acted in an indecent haste to decide the case inasmuch as the report of the Commissioner did not specifically show that Thakar Singh had actually stated in the Gurdwara and the Commissioner had not even reported as to where and in whose presence the statement was made by Thakar Singh. An objection was taken by the learned District Judge to the words spoken by Thakar Singh not having been recorded by the Local Commissioner. Notice was also taken of the difference in the statement required to ba given by Thakar Singh on

oath between what had been stated by the Advocate for the plaintiff and what had been recorded in the order of the trial Court The decree of the trial Court was set aside for the foregoing reasons and the case was odrered by the lower appellate Court to be remanded to the trial Court for re-decision on merits.

3. The unsuccessful defendant then filed this appeal against the order of the learned Additional District Judge When the appeal came up before a learned Single Judge of this Court, he noticed the contention of the counsel for the defendant-appellant that an Advocate has an inherent right to enter into a compromise and that even if the provisions of the Indian Oaths Act, 1873, could not apply on account of the repeal of that Act by the Oaths Act 44 of 1969, nothing could stop the Advocate of the plaintiff-respondent in settling the case on the basis of certain conditions. Since, in the opinion of the learned Single Judge, this question was one of importance and there is also some judicial opinion to the effect that the provisions of the Act were against public policy, the learned Judge thought it proper that the case should be decided by a larger Bench and, therefore made this reference on October 4, 1973.

4. At the hearing of this appeal before us, Mr. R.L. Luthra, the learned counsel for the defendant-appellant, referred to the basic decision of their Lordships of the Privy Council in Sourendra Nath Mitra v. Tarubala Dasi, AIR 1930 PC 158; the judgments of two learned Single Judges of this Court in Mst Bachni v. Kartar Singh, AIR 1963 Punj 376 and Suraj Bhan v. Jogi Ram, 1973-75 Pun LR 498 - (AIR 1972 Punj 398) and the Full Bench decision of the Kerala High Court in Chengan Souri Nayakam v. A.N. Menon, AIR 1968 Ker 213; and submitted that Advocates in India have inherent right to enter into a compromise on behalf of their clients even if no such specific authority is conferred on them in their Vakalatnamas unless such an authority is expressly excluded by a special stipulation in the Vakalatnama or otherwise countermanded by a client. It is unnecessary to discuss this point further as Mr. H.L. Sarin, the learned senior counsel for the plaintiff-respondent, has frankly conceded this issue. He docs not deny that in the absence of an express stipulation to the contrary, his client's counsel in the trial Court had authority to enter into a compromise with the other side in Court.

5. Mr. Sarin has, however, argued that the effect of the repeal of the 1873 Act by the 1969 Act and the express exclusion of the provisions contained in Sections 9 to 12 of the 1873 Act is that no suit can now be compromised on the basis of a special oath. Sections 8 to 12 of the Act X of 1873 were in the following terms:--

'8. If any party to, or witness in, any judicial proceeding offers to give evidence on oath or solemn affirmation in any form common amongst, or held binding by, persons of the race or persuasion to which he belongs, end not repugnant to justice or decency and not purporting to affect any third person, the Court may, if it thinks fit, notwithstanding anything hereinbefore contained, tender such oath or affirmation to him.

9. If any party to any judicial proceeding offers to be bound by any such oath or solemn affirmation as is mentioned in Section 8, if such oath or affirmation is made by the other party to, or by any witness in, such proceeding, the Court may, if it thinks fit, ask such party or witness, or cause him to be asked, whether or not he will make the oath or affirmation:

Provided that no party or witness shall be compelled to attend personally in Court solely for the purpose of answering such question. 10. If such party or witness agrees to make such oath or affirmation, the Court may proceed to administer it, or if it is of such a nature that it may be more conveniently made out of Court, the Court may issue a commission to any person to administer it, and authorize him to bake the evidence of the person to be sworn or affirmed and return it to the Court.

11. The evidence so given shall, as against the person who offered to be bound as aforesaid, be conclusive proof of the matter stated.

12. If the party or witness refuses to make the oath or solemn affirmation referred to in Section 8, he shall not be compelled to make it but the Court shall record, as part of the proceedings, the nature of the oath or affirmation proposed, the facts that he was asked whether he would make it and that he refused it, together with any reason which he may assign for his refusal.'

The whole of the 1873 Act has been repealed by Section 9 of the 1969 Act. Whereas provisions corresponding to other Sections of the 1873 Act have been made in the new Act, no provisions have been made therein corresponding to Sections 9 to 12 of the old Act. The only effect of the exclusion of Sections 9 to 12 of the old Act is that if any party to any judicial proceeding offers to be bound by any special oath and the Court thinks it fit to administer such an oath to the other party consenting thereto and such oath is taken by the other party, the evidence given on such oath as against persons who offered to be bound as aforesaid would no more be conclusive proof of the matter stated in such deposition. In the instant case, it is significant to note that no special oath was prescribed. The counsel for the plaintiff in his statement (which has already been quoted above) did not prescribe any special oath nor any special form of the oath but merely offered the defendant-appellant to take oath and make statement on the two crucial points in issue in a particular Gurdwara. He was not required to swear by the Gurdwara or by Guru Granth Sahib or in any other special manner. In these circumstances, it appears to us that the compromise arrived at between the counsel for the plaintiff on behalf of his client and the defendant-appellant would be covered by Section 20 of the Evidence Act and the plaintiff would be bound by the statement made by the defendant on the two crucial issues if the same is found to have been made strictly in accordance with the terms offered by him.

6. Mr, Sarin has then submitted that the record of this case does not show as to what Thakar Singh defendant-appellant, exactly stated in the Gurdwara. On the last hearing, there was some dispute about the parties having gone to the Gurdwara or not having gone there at all. We, therefore, sent for the parties. Thakar Singh, defendant-appellant is stated to be ill. His son Dalip Singh is present before us. Inder Singh plaintiff who, as already stated, is a very old man, is also present in Court Both of them have told us that Thakar Singh had gone to Gurdwara Kandh Sahib and that the plaintiff had sent his son Sohan Singh. The plaintiff has also admitted before us that when Sohan Singh came back from the Gurdwara, he told the plaintiff that Thakar Singh had taken a false oath. None is, however, able to state as to what exact words were uttered by Thakar Singh in the Gurdwara as neither Dalip Singh nor Inder Singh plaintiff were present there. What was stated by Thakar Singh at the spot would be known only either to him or to

Gurmukh Singh, Local Commissioner, unless there was by chance any other independent person. Mr. H.L. Sarin has suggested that if the appeal has to be allowed and if the order has to be set aside, the lower appellate Court should be directed to hold an enquiry into the question whether Thakar Singh had or had not, in fact, stated both the things in his statement on which the plaintiff had through his counsel, agreed to have the suit dismissed.

7. We, however, find another infirmity in the case of the defendant-appellant. In the statement made by Shri Brij Mohan Lal, Advocate for the plaintiff, he had offered to have the suit dismissed only if the defendant were to take oath in the specified Gurdwara, (a) that the suit land was not of the plaintiff; end (b) that the defendant had not made any agreement in respect of land in favour of the plaintiff. This was the offer which had been accepted by the defendant While purporting to accept the compromise arrived at between the parties in the above terms, the learned Subordinate Judge somehow omitted to mention one of the two essential ingredients of the statement which was to be made by the defendant in order to succeed in the suit in terms of the compromise. The order (as already quoted in the earlier part of this judgment) stated that if Thakar Singh had said that he made no agreement in favour of the plaintiff of the suit land, the suit was to be dismissed. He did not specify the other condition on which the counsel for the plaintiff had made the express offer.

8. Mr. Luthra has contended that, notwithstanding the erroneous order of the Court, the Oath Commissioner had, in fact, given an opportunity to the defendant to make statement on both the points as his report mentions that the defendant had taken oath 'as per statement in Court.' The learned District Judge is correct in remarking that the report of the Commissioner is beautifully vague and does not convey anything. We would normally have acceded to Mr. Sarin's request to have the matter further enquired into by the lower appellate Court if the order of the Court had been inconsistent with the compromise between the parties. The Local Commissioner was confined to the directions given to him by the trial Court. He is presumed to have confined his actions within the scope of that authority. That being so, Thakar Singh's statement on oath is presumed to have been confined to only one of the two points on which he was expected to speak on oath in order to

succeed in the suit in terms of the compromise. The statement made by Thakar Singh on oath in the Gurdwara in accordance with the order of the trial Court dated August 19, 1971, could not, therefore, fulfil the requirements of the offer made by the counsel for the plaintiff.

9. We agree with the learned District Judge that the trial Court appears to have acted in an indecent haste. The fact that the counsel for the plaintiff-respondent agreed to the dismissal of the suit on learning that Thakar Singh had taken the oath, does not make any difference as the statement made before the Local Commissioner is presumed to have been made in terms of the order given by the Court to the Local Commissioner. In fact, it appears to us that Thakar Singh was not to make an oral statement and the compromise between the parties envisaged that his statement was to be recorded. Court cases are not decided on oral statements which do not become part of the record. The Oath Commissioner does not appear to have done his duty properly in not recording the statement and has merely submitted a laconic report to the effect that the defendant had made a statement on oath. The learned Subordinate Judge should not have accepted this kind of report of the Commissioner and should have insisted on the Commissioner's going back to the Gurdwara and recording the statement of the defendant in terms of the offer made by the counsel for the plaintiff.

10. For the foregoing reasons, we are unable to allow this appeal and dismissing the same, uphold the order of the learned District Judge. The parties are directed to appear before the trial Court on April 19, 1976. They are left to bear their own costs. The lower Court record should be returned immediately.

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