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Court : Rajasthan

Decided On : Dec-15-1960

Reported in : AIR1961Raj209

Judge : Jagat Narayan, J.

Acts : Oaths Act, 1873 - Sections 9; [Code of Civil Procedure \(CPC\) , 1908](#) - Order 3, Rule 4 - Order 23, Rule 3

Appeal No. : Civil Revn. No. 93 of 1957

Appellant : Bansilal

Respondent : Jasraj

Advocate for Def. : S.T. Porwal, Adv.

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

Disposition : Revision allowed

Judgement :

ORDER

Jagat Narayan, J.

1. This is a plaintiff's revision application against a decree of Munsif, Sirohi, dismissing his suit on the special oath of the defendant which was taken by him on

the offer of the pleader of the plaintiff. This offer was made without taking instructions from the plaintiff. The suit was for recovery of a sum of Rs. 513/4/-, Oral and documentary evidence was produced on behalf of the plaintiff in support of his case. The defence was a denial of all the allegations made in the plaint.

The defendant did not, however, examine any witness to rebut the evidence of the witnesses examined on behalf of the plaintiff. A date was fixed for arguments in the suit. On that date the pleader of the plaintiff made an offer to be bound by the oath of Shri Parasnathji to be taken by the defendant. The defendant accepted the offer and took the oath. On this oath the suit was dismissed. Against this decree the plaintiff preferred an appeal which was dismissed by the Civil Judge, who held that the pleader of the plaintiff had implied authority to make an offer on behalf of his client to be bound by the special oath of the defendant.

The terms of the vakalatnama executed by the plaintiff in favour of his pleader do not authorise the latter to make an offer of special oath or to compromise the suit, or to refer it to arbitration. The relevant portion of the vakalatnama runs as follows :

^eSa ca'khyky-----eqdnekeqUntkZ cuoky okyk esa viuh rjQk Is Jheku~ ?kujktth rkrsM dks odhy eqdjj djrk gwa A og esjh rjQ Is bl eqdnesa es gkftj gksdj iSjoh djsxs A odhy lkgc dks viuhekStwnxh oxsj ekStwnxh esa nwljk odhy eqdjj djus dk v[kR;kj gksxk A mudh o mudseqdjj fd, gq;s odhy dk iSjoh eqtdks eUtwj o dcwy gksxk A**

2. The sole question, which arises for determination in this revision application, is whether a pleader not specially authorised to make an offer to be bound by special oath or to compromise the suit Or to exercise any power of a like nature can make such an offer on behalf of his client so as to bind the latter.

3. There is conflict of judicial opinion on the point in India. The earliest case in which the matter was considered is the decision of the Bombay High Court in Sadashiv Rayaji v. Maruti Vithal, ILR 14 Bom 455. It was held in that case that only a party or its pleader or agent specially authorised in that behalf could make an offer under Section 9 of the Oaths Act.

4. The next case is that of Amir v. Mahomed Bakhsh, AIR 1929 Oudh 56. The vakalatnama in that case expressly authorises the pleader to file compromises and confess judgment. It was held that the power given under the vakalatnama was wide, enough to cover an offer contemplated under Section 9 of the Oaths Act.

5. The above decision was followed in Mst. Jasoda v. Gopal, AIR 1931 Oudh 350. The vakalat-nama in that case gave the mukhtar authority to make a compromise, confess judgment or make a reference to arbitration.

6. The next case is that of Mathura Prasad v. Sitaram, AIR 1940 Oudh 314. The vakalatnama in that case did not authorise the pleader to enter into a compromise or to refer the suit to arbitration. Other powers necessary to conduct the case were given under the vakalatnama. The learned Single Judge, who decided the case, was of the opinion that

'if the pleader is authorised by the vakalatnama in his favour to do all proper pairvi in the case and to represent his client in a litigation which may become necessary, even though no express power to compromise the case on his behalf may have been conferred upon the pleader, still the pleader being a duly authorized person to represent the client would be fully entitled to bind the client by offering to abide by the special oath o the opposite party.'

7. The next case is that of Jagdish Narain v. Rasul Ahmad, AIR 1952 All 29. The question, which arose for decision in that case, was whether the pleader had power to compromise the suit. The question of offer of a special oath under Section 9 of the Oaths Act was not involved, but that power is analogous to the power of compromising the suits. In that case the vakalatnama authorises the pleader to file compromise or admit claims on behalf of his client. It was held that the words used in the 'vakalatnama were wide enough to include the power not only of presenting the petitions of compromise signed by the parties themselves, but also to enter into a compromise and to file the petition of compromise in Court.

8. The next case is that of Narainsingh v. Harbuxsingh, AIR 1943 All 312, in which the learned Single Judge followed the Oudh decisions referred to above.

9. There are two important decisions of their Lordships of the Privy Council bearing on the point. In *Smt. Saratkumari Dasi v. Amulyadhan Kundu*, AIR 1923 PC 13, the appellant executed a power-of-attorney appointing several persons as her vakils to argue her case, to inspect the records, execute documents and deposit and withdraw monies and do all such other acts. Their Lordships observed that it has been well established that a vakil appointed under such a power-of-attorney was not endowed with power or authority to compromise the suit, he was thus retained to argue.

This decision is directly applicable in considering whether or not a pleader who is not specifically empowered to compromise the suit on behalf of his client by a vakalatnama can do so under his implied authority. It cannot be seriously disputed that a pleader who cannot enter into a compromise on behalf of his client without his specific authority cannot make an offer on his behalf under Section 9 of the Oaths Act so as to bind him.

10. In AIR 1952 All 29, referred to above, the above decision of the Privy Council was distinguished on the ground that Rule 4 of Order 3 of the Code of Civil Procedure has since been amended in 1926 introducing Sub-rule (5) which authorises the pleader to plead upon filing a memorandum of appearance signed by himself. It is noteworthy that this amendment did not allow the pleader to act without a vakalatnama duly authorising him to do so.

Entering into a compromise or making an offer under Section 9 of the Oaths Act amounts to acting on behalf of his client. The amendment of the Code of Civil Procedure, in my opinion, therefore, does not affect in any way the decision of their Lordships of the Privy Council given in the above case.

11. In *Sourendranath Mitra v. Tarubala Dasi*, AIR 1930 PC 158, it was held by their Lordships of the Privy Council that an advocate admitted to practice by the appropriate court in India when briefed in a suit had implied authority of his client to settle the suit by compromise, where he did not derive his authority from an express written vakalatnama. They observed that where the legal representative in court derives his authority from an express written authority, such as a vakalatnama, different considerations may well arise.

12. The above decision was followed by a Division Bench of this Court in *Satyanarain v. Balchand*, ILR (1954) 4 Raj 905: ((S) AIR 1955-Raj 59). It was made clear that the decision would only apply where an advocate is not appointed on the basis of any written vakalatnama.

13. Both the above Privy Council decisions-were relied upon in *Ramappayya v. Subbamma*, ILR(1948) Mad 647 : (AIR 1949 Mad 98). It was observed as follows :

'It is difficult to see how an express and explicit direction or power to conduct and defend a suit, which must mean to contest it, includes a direction or power to compromise it.'

I am in respectful agreement with this view. I have no doubt that a pleader who is not expressly authorised to compromise a suit or to refer it to arbitration or to make an offer under Section 9 of the Oaths. Act by the terms of his vakalatnama cannot do so, so as to bind his client. It may be mentioned here that in none of the decisions in which a contrary view was taken with the exception of AIR 1952 All 29 the decision of their Lordships of the Privy Council in AIR 1923 PC 13 was referred to.

14. Another decision to which my attention was drawn by the learned counsel for the respondent is that of a Full Bench of the Nagpur High Court in *Jiwibai v. Ramkuwar Shrinivas*, AIR 1947 Nag 17. In that case also no reference was made to the decision of the Privy Council in AIR 1923 PC 13.

15. For the reasons stated above, I am of the opinion that the pleader of the plaintiff had no authority to make an offer under Section 9 of the Oaths Act on behalf of the plaintiff. I accordingly allow the revision application, set aside the decree of the lower appellate court and the trial court and remand the suit for decision in accordance with law. In the circumstances of the case, I direct the parties to bear their own costs.