

Jivan Krishna Chakraverty Vs. Ramesh Chandra Das and ors.

Jivan Krishna Chakraverty Vs. Ramesh Chandra Das and ors.

SooperKanoon Citation : sooperkanoon.com/852481

Court : Kolkata

Decided On : Aug-18-1921

Reported in : AIR1921Cal500,65Ind.Cas.47

Judge : Asutosh Mookerjee and ;Panton, JJ.

Appellant : Jivan Krishna Chakraverty

Respondent : Ramesh Chandra Das and ors.

Judgement :

1. We are invited in this Rule to amend the decree of this Court in Jiban Krishna Chakravarti v. Ramesh Chandra Das 44 Ind. Cas. 225. That appeal arose out of a suit brought by one Jiban Krishna Chakraverty against several defendants, one of whom was Monindra Lal Das. During the pendency of the appeal in this Court, there was a compromise between the plaintiff and Monindra Lal Das. The terms of the compromise were evidenced in a lease executed by Monindra Lal Das. The plaintiff obtained a Rule calling upon the defendants to show cause why the compromise should not be recorded. The Rule and the appeal were heard by Mr. Justice Chitty and Mr. Justice Smither on the 22nd November 1917. The Rule was made absolute as between the plaintiff and Monindra Lal Das and it was directed that the compromise be recorded. The appeal also was heard, as there were parties to the appeal other than Monindra Lal Das. The result of the appeal was that it was dismissed. The decree was then drawn up in the following terms: 'the appeal be, and the same is, hereby dismissed,' The plaintiff now seeks to have

this decree amended by the insertion of a statement that as between him and Monindra Lal Das there was a compromise embodied in the lease, which was directed to be recorded at the same time that the appeal was dismissed. The application has been opposed by Monindra Lal Das as also by the other defendants, In so far as defendants other than Monindra Lal Das are concerned, the proposed amendment cannot possibly prejudice their position, because the Rule to have the compromise recorded was discharged so far as they were concerned. It is equally clear that Monindra Lal Das cannot object to the amendment of the decree by insertion of the statement that as between him and the plaintiff there was a compromise embodied in the lease--a compromise which was directed by the Court to be recorded. It has been argued, however, on his behalf that as the compromise was not within the scope of the suit, no decree could be made to give effect thereto under Order XXIII, Rule 3, Civil Procedure Code. This objection is based on a misapprehension of the object of this application; the petitioner does not seek by amendment to have a decree enforcing the compromise; he desires solely to have the compromise recited in the decree pursuant to the order that the compromise be recorded. Such a course is supported by the decision of the Judicial Committee in the case of Hemanta Kumari Debi v. Midnapore Zemindari Co. Ltd. 53 Ind. Cas. 534 : 46 I.A. 240 : 37 M.L.J. 525 : 17 A.L.J. 1117 : 24 C.W.N. 177 : (1920) M.W.N. 66 : 27 M.L.T. 42 : 11 L.W. 301 : 31 C.L.J. 298 : 22 Bom. L.R., 488 : 47 C. 485 (P.C.). When a compromise has been effected between the parties, the proper course to follow is to recite the compromise in the decree in its entirety, but to pass a decree in accordance therewith only in so far as it relates to the suit.

2. The result is that this Rule is made absolute and the decree amended. The decree will be amended in the manner following: 'Upon the hearing of this appeal in a Division Court on the 21st and 22nd days of November 1917 along with Rule No. 979 of 1916 it is ordered and decreed that the compromise mentioned in the lease annexed to this decree be recorded as between the plaintiff and Monindra Lal Das, and that the appeal be, and the same is, hereby dismissed.'

3. We make no order as to the costs of this Rule.

