

Haridas Modak Vs. Ramdas Modak

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Court : Kolkata

Decided On : Mar-11-1930

Reported in : AIR1931Cal205

Appellant : Haridas Modak

Respondent : Ramdas Modak

Judgement :

Rankin, C.J.

1. In my opinion, the order made by the lower appellate Court must be set aside. The position is that the plaintiff brought a suit for partition of his homestead against the defendant who was his brother. After a certain amount of evidence had been taken apparently it appears that the parties came to an agreement which is contained in a joint petition presented to the Court on 20th November 1925. It states that the parties have decided to settle the suit or the parties have determined to dispose of the suit on certain terms, but

as it is necessary to have some time in order to complete all that is to be done according to the settlement, it is prayed that the suit may be postponed to-day and may come up for hearing Thursday next.

2. So the only order that was to be made by the Court was an order of adjournment and the case was to come before the Court on Thursday next. Why was it to come before the Court on Thursday next It appears that, apart from

certain declarations upon matters outside the suit which had been stipulated between the parties by Clause (3) the plaintiff was to execute a kabala in favour of the defendant in respect of his share ' of the property mentioned in para 1 and the defendant was to execute a kabala in the favour of the plaintiff in respect of his share of the property mentioned in para 2, and the said properties were thus to be mutually exchanged by the kabalas. There were certain other clauses which declared that the plaintiff would have no interest in a certain house and that the defendant admitted that the property which had been given to the plaintiff's wife belonged to her, and the defendant had no interest or claim upon it. Then the last clause was that 'the parties will complete everything before Thursday next.' The case being adjourned for those reasons until Thursday, the question is: What was the bargain between the parties Did the parties mean to commit themselves to the bargain as it was stated on the 20th November, or did they mean to wait till Thursday and then have a completed settlement-the kabalas exchanged and everything finished and nothing to do by execution of compromises, execution of the solenama, but a complete, clean and final settlement-each person having a declaration by a kabala to show what he had to get It is abundantly clear to my mind that the intention was the latter. It was not intended that they agreed by the solenama to something and that the parties were to be remitted to the process of execution to compel the performance of each kabala by the other. When Thursday came, it is perfectly certain that parties had not executed their respective kabalas. The plaintiff put in a petition in which he said that the defendant had not done what he had agreed to do. Thereupon the Judge instead of saying:

Very well, if he has not done what he agreed to do and it is not your fault, as he has not done what he agreed to do, it is obvious that the bargain or settlement has come to nothing.

proceeds without taking any evidence at all to say that the plaintiff wanted to resile from his bargain. Of course the plaintiff was wanting to resile from his bargain for the perfectly good reason that the defendant was not willing to perform his part. What the learned Judge could have done at the instance of the plaintiff or defendant was to make an enquiry as to whether the defendant had failed to do what he had promised and whether he had failed by reason of some causes

afforded by the plaintiff. The learned Judge did not purport to do that at all. He purported to say:

Well, there is nothing now in this suit. It is quite clear that, as far as the homestead is concerned, there must be a partition;

and he decreed a partition. The defendant is not satisfied with that. He goes to the learned Judge and the learned Judge finds apparently for no reason at all, that the whole of the compromise is to be thrust upon the plaintiff, there being before him, as far as I know, no evidence whatever to show whether the defendant was in the right or the plaintiff was in the right, and he proceeds to record this compromise petition on the basis that, on 20th November, there was a complete settlement of the whole case, and whether anything was done on the following Thursday or not did not affect the matter. In my judgment that is entirely wrong. Whether an appeal lies or does not lie, at all events, we have power to set aside the decree in revision, and in my opinion, we ought to make an order in revision setting aside the decree of the learned District Judge and the decree of the trial Court not being objected to by the plaintiff, restoring the decree of that Court with costs in all Courts. The hearing-fee in this Court is assessed at two gold mohurs.

C.C. Ghose, J.

3. I agree.

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