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Court : Himachal Pradesh

Decided On : Mar-30-1951

Reported in : AIR1951HP60

Judge : Chowdhry, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 and 141 - Order 21, Rule 2 - Order 23, Rule 4

Appeal No. : Civ. Revn. No. 13 of 1950

Appellant : Sarjit

Respondent : Ramanand and ors.

Advocate for Def. : A.C. Mehta, Adv.

Advocate for Pet/Ap. : Bakshi Sita Ram, Adv.

Disposition : Application dismissed

Judgement :

ORDER

Chowdhry, J.

1. Ramanand resp's. suit to pre-cmpt a sale was decreed by the Subordinate Judge of Rohru against the present petnr. Sarjit, the vendee, on condition of his

depositing the purchase money within two months. The deposit was made beyond the prescribed time and Ramanand's prayer in execution of the decree for possession of the property was resisted by Sarjit on that ground. Sarjit's objection has been dismissed both by the Ct., executing the decree & by the appellate Ct. the Senior Subordinate Judge, Rampur, on the ground that Ramanand had within the prescribed time made an offer both of payment to Sarjit & of deposit in the Ct. which passed the decree, but that both the offers had been wrongfully refused. Sarjit has, therefore, come up to this Ct. in revn.

2. On one of the dates fixed for the hearing of this revn. it was stated by the learned counsel for the parties that a compromise had been arrived at, & they wanted time to enable the petnr. to file the compromise. The revn. was accordingly adjourned, but on the adjourned date no compromise was filed & it was contended, by the learned counsel for the resp. that the certification of the adjustment & the recording of that adjustment as duly certified now lay within the jurisdiction of the execution Ct. under Order 21, Rule 2, Civil P. C., & that no interference by this Ct. in exercise of its revisional jurisdiction was any longer called forth because Order 23 of the Code did not apply to proceedings in execution of a decree or order in view of Rule 4 of that order.

3. On the other hand, it was contended by the learned counsel on behalf of the petnr. that as Order 23, Rule 3 of the Code applies to appeals (as no doubt it does, as held in *Uttam Singh v. Munshi*, A. I. R. (12) 1925 Lah. 145), it should also apply to revns. &, therefore this Ct. as a Ct. of revn. is empowered under that Rule to determine the terms of the compromise which has admittedly been arrived at between the parties, to record the terms of that compromise & to pass a decree in accordance therewith.

4. The learned counsel for the resp. cited before me two rulings *Krishna Nair v. Kavalappara Mooppil*, A. I. R. (2) 1915 Mad. 41, & *Ramchandra v. Balmukand*, 29 Bom. 71. Both those were appeals against orders of lower appellate Cts. under Order 41, Rule 5, Civil P. C. refusing to stay execution, & the objection that the appeals in the H. C. did not lie because the appellate Cts. which passed the orders were not Cts. executing the decree within the purview of Section 47 of the Code

was upheld. No such question has arisen before me since I am not required to pass an order under Order 41, Rule 5 as a Ct. of appeal. These rulings have, therefore, no application.

5. In my opinion, the objection taken on behalf of the resp. Ramanand ought to be upheld but on different grounds. To my mind this Ct. is precluded from determining the terms of the compromise, ordering the compromise to be recorded & passing a decree in accordance therewith because Order 23 applies neither to execution proceedings nor do a revn. That it does not apply to execution proceedings is clear enough from the specific provision of B. 4 of that Order. The correct provision of the Code applicable to adjustments in execution proceedings is Order 21, Rule 2. But the Ct. to which an adjustment has to be certified, & by which the certification is to be recorded under that Rule, is 'the Ct. whose duty it is to execute the decree', which cannot certainly be predicated of this Ct. but only of the Ct. of the Subordinate Judge of Rohru.

6. The other bar to my taking any action on foot of the alleged compromise is equally insurmountable, Order 23 of the Code, which is the only provision under which I am called upon to act, applies to withdrawal & adjustment of suits. But a revn. is not 'a civil proceeding instituted by the presentation of a plaint', which is the description of a suit given by their Lordships of the P.C. in *Hansraj v. Dehra Dun-Mussorie Electric Tramway Co. Ltd.*, 54 ALL. 1067. Nor can the provisions of Order 23 be made applicable to revns. by application of Section 141 of the Code since, as has been laid down by their Lordships of the P. C. in *Thakur Prasad v. Fakir-ullah*, 17 ALL. 106, the proceedings held to in Section 141 relate only to original matters in the nature of suits. Their Lordships have laid down in that ruling as follows :

'The proceedings spoken of in Section 647 (of the old Code which was replaced by Section 141 of the Code in 1908 & which if anything was more general than the present section) include original matters in the nature of suits such as proceedings in probates, guardianships & so forth & do not include executions.'

I am further supported in this view by the following two rulings : *Hafasji v. Mangalgirji*, A.I.R. (33) 1946 Bom. 201 & *Mohd. Sadaat Ali Khan v. Administrator*,

Corpn. of City of Lahore, A.I.B. (36) 1949 Lah. 186 (F. b.). Both these were no doubt cases relating to the applicability of o. 22 of the Code to revns. but the principle on which that Order was held not applicable to revn. proceedings applies with equal force against the applicability of o. 23 to such proceedings.

7. For both the above reasons, therefore, I hold that the proper forum for the determination of the terms of the compromise, the recording of that compromise & passing suitable orders in accordance therewith is the execution Ct. & not this Ct.

8. Furthermore, it is discretionary with the H.C. to interfere or not in exercise of its revisional jurisdiction according to the circumstances of a particular case. Such discretion in favour of interference would not generally be exercised where a party has another remedy open to him. The remedy in the present case is the taking of suitable action under Order 21, Rule 2, Civil P. C. in the Ct. whose duty it is to execute the decree.

9. For reasons recorded above, I do not deem it fit to pass any order in this revn. & in the special circumstances of the case, I make no order as to the costs of this revn.