

LAHORE HIGH COURT

Fazal Rasul Khan

Vs

Mohd-ul-Nisa

(Harries, C.J.)

23.12.1943

JUDGMENT

Harries, C.J.

1. This is a Letters Patent appeal from a judgment of a Single Judge of this Court reversing a decree of the lower appellate Court and dismissing a plaintiff's suit for a declaration.

2. One Jiwan Khan made a gift of a half share of a certain house to his wife Mt. Khibi. Jiwan Khan had a son Fazal Rasul by another wife and in the lifetime of Jiwan Khan, Fazal Rasul brought a suit against Mt. Khibi for a declaration that the gift made to her by his father would not affect his reversionary rights. Whilst this suit was pending, Jiwan Khan died and eventually the parties settled their differences. On 10th May 1916 a written compromise was filed in Court and statements of counsel on behalf of the parties were recorded. Thereafter, the Court instead of passing a decree in terms of the compromise passed an order in these words: " Suit compromised and accordingly dismissed. Each party shall bear its own costs."

3. According to the terms of the compromise, it was provided that Mt. Khibi should remain in possession of the house and land in dispute during her lifetime but that she was to have no right to sell or mortgage the property. Fazal Rasul, on the other hand, undertook that on the occasion of the marriages of Mt. Khibi's daughters he would pay her a sum of ₹ 100/- in respect of each marriage. There was also a provision that if Fazal Rasul did not make such payments, Mt. Khibi would have the right to sell or mortgage the property in dispute to obtain such sums.

4. On 11th March 1939 Mt. Khibi made a gift of her share in the house in dispute to her daughter Mt. Mohammad-ul-Nisa. The present appellant thereupon brought a suit which gives right to this appeal for a declaration that this gift was void and ineffectual against him. The main allegation was that Mt. Khibi under the compromise could not alienate this property and that therefore the gift was void as against the plaintiff. In short, the plaintiff based his case upon the compromise which had been entered into in the earlier litigation. The trial Court came to the conclusion that

the compromise effected immovable property of a value exceeding ₹ 100/- and that it was inadmissible in evidence for want of registration. He therefore dismissed the plaintiff's suit. On appeal, the learned District Judge came to the conclusion that the compromise did not require registration and he reversed the decree of the trial Court and decreed the plaintiff's suit. In second appeal a learned Judge of this Court upheld the view of the trial Court, reversed the decree of the lower appellate Court and dismissed the plaintiff's suit.

5. The only point which has been argued before us is whether this compromise required registration. If the compromise had been incorporated in the decree, then it is clear that no registration would be required. The respondent's contention has been throughout that this compromise was never embodied in the order or decree of the Court. The appellant, on the other hand, contends that the compromise is so incorporated and therefore registration was unnecessary.

6. A compromise is referred to in the order because it is said "suit compromised and accordingly dismissed." No particular compromise is referred to but it is merely said that the parties have compromised and the suit is therefore dismissed. What the order means is this that the parties have settled their differences and that there is nothing left to adjudicate upon and the suit must fail and is dismissed. In my view, such a statement cannot possibly be said to embody the terms of a particular compromise and unless the terms of this particular compromise are in some way embodied in the decree or the order, then the document must be registered.

7. If the phrase had been "suit decreed in the terms of the compromise or suit dismissed in terms of the compromise" it might well be argued that the particular compromise in question had been embodied in the order or decree. Where it is said that a suit is decreed in terms of a compromise, the decree is unintelligible unless the particular compromise is referred to. In fact, the decree involves a reference to the compromise and before the terms of the decree can be ascertained, the compromise must be read. In such a case, it can well be said that the compromise has been embodied and forms part of the decree. In such a case, no registration is required.

8. However, where a decree or order of the Court is quite intelligible and its meaning is plain without reference to any other document such as a compromise then such a decree or order cannot possibly be said to embody any particular compromise. Looking at the terms of the order in this case, it is unnecessary to refer to any document. The order states that the parties have settled their differences and compromised and therefore the suit is dismissed. There is no reference to any particular compromise or to any material document, the order is clear that the suit is dismissed because the parties have settled the matter. In such a case, where the decree is self-contained and no reference is necessary to any other document to give it its full effect, then such a decree cannot be said to embody a compromise so as to render registration unnecessary.

9. Great reliance was placed by Mr. Aggarwal on behalf of the appellant on a case in *Pichai Pillai v. Subbaraya*¹ in which my learned brother delivered judgment. In that case there had been

proceedings under Section 145, Criminal P.C., which had been compromised and certain statements had been recorded by the Court. The Court passed an order of one word, namely, "Lodge". In subsequent litigation, use was

¹ A.I.R. 1938 Mad. 531

sought to be made of the agreement arrived at between the parties and an objection was taken that the documents were inadmissible for want of registration. The Bench held that the documents had been incorporated in an order by reason of the word "Lodge". My Lord pointed out that the word "Lodge" had in relation to the legal proceedings a very definite meaning and further that if the documents were not referred to, the word "Lodge" by itself was incomprehensible. At page 532 my Lord observed that the order has been expressed in one compressed word "Lodge" but the word is pregnant and must have been meant to convey a good deal more than a mere order of dismissal. The word "Lodge" when used in regard to Courts is usually meant to convey a deposit of a formal document of information or complaint etc. Applying this meaning to the facts of this case, it appears to us that it was meant to incorporate the statements made by the parties and convey that in view of these statements it was unnecessary to proceed any further. We are strengthened in this interpretation by the fact that without referring to the statements the order is incomplete and indeed incomprehensible.

10. An order such as "decree passed in terms of the compromise" would be utterly incomprehensible without reference to the compromise and therefore the compromise could be regarded as embodied in the decree. But as stated " the parties have compromised and the suit is therefore dismissed" is quite comprehensible and intelligible without reference to any particular form of compromise and that being so the particular compromise which led to the dismissal cannot be said to have been in any way embodied in the decree. In the present case, the order really means that because the parties had settled, the suit had to be dismissed. It did not mean that the suit was dismissed on the particular terms arrived at between the parties by their compromise.

11. In that view of the case, it is clear that the document required registration and as it was not registered the view of the learned Single Judge that the compromise was inadmissible is unassailable.

12. The result, therefore, is that this appeal fails and is dismissed with costs.

Abdur Rahman, J.

13. I agree.