

# BOMBAY HIGH COURT

Vishnu Sitaram Auchat

Vs

Ramchandra Govind Joshi

(Patkar, C.J. Murphy, J.)

04.01.1932

## JUDGMENT

### **Patkar, J.**

1. In this case the plaintiff sued for a declaration that the plaintiff property belonged to his judgment-debtor Vinayak and also prayed for setting aside the order passed in Miscellaneous Application No. 147 of 1927.

2. The learned First Class Subordinate Judge came to the conclusion that the matter was compromised between the parties. In the lower Court it was contended that the defendant was under the influence of opium and did not understand the document on which he had made his signature. The learned Judge disbelieved the statement of the defendant and held that the defendant had no interest in the case and was only a nominee of Vinayak Govind, and that the compromise application was written in consultation with Vinayak with the full agreement of the defendant. He further held that the decree could not be passed in respect of all matters dealt with in the compromise application, but the decree could be passed in terms thereof so far as it related to the suit property, and therefore drew up a decree in terms of the application, Exhibit 49.

3. It is contended on behalf of the appellant, firstly, that the matter was not compromised, that the compromise application was ordered to be filed on August 13, 1929, and the case came on before the Court on several occasions but there was not a final agreement between the parties. Secondly, it is contended, relying on the decision in *Dooly Chand Srimali v. Mohan Lal Srimali*<sup>1</sup> that as a third person was a party to the compromise, a decree could not be passed in terms of the compromise.

4. We agree with the view of the lower Court that the defendant's contention that he was under the influence of opium and did not understand the document on which he made his signature cannot be upheld. On August 13, 1929, a compromise application, Exhibit 49, was presented to the Court, but it appears from the judgment of the learned Judge that the case was heard on

September 5th and 6th when the terms of the sale-deed were discussed before the learned Judge, who made certain suggestions as to the terms to be embodied in the sale-deed. We are of opinion that there was a final agreement of compromise between the parties, and that the decree in terms of the compromise so far as it related to the suit was rightly passed. According to the decision in *Hemanta Kumari Debi v. Midnapur Zamindari Company*<sup>2</sup> a perfectly proper and effectual method of carrying out the terms of Rule 3 of Order XXIII would be for the decree to recite the whole of the agreement and then to conclude with an order relative to that part that was the subject of the suit or to introduce the agreement in a schedule to the decree, but the operative part of the decree should be confined to the subject-matter of the suit. The operative part of the decree so confined to the subject-matter of the suit can be enforced as between the parties to the suit under Section 47 of the Civil Procedure Code. Any agreement as to matters extraneous to the suit can be enforced in a separate suit. In *Dooly Chand Srimali v. Mohan Lal Srimali* a minor not a party to the suit was concerned and was not represented before the Court. In the present case Vinayak Govind and plaintiff and defendant and their pleaders have signed the applications. Exhibits 49 and 50. This point was not specifically taken before the lower Court which has recorded the finding that the defendant was a nominee of Vinayak Govind and the compromise was arrived at by the defendants with the Concurrence of Vinayak Govind. It is not suggested before us that the operative part of the decree is not confined to the subject-matter of the suit.

5. According to the decision in *Bajirao v. Sakharam* (1930) 33 Bom. L.R. 463 the law not merely entitles the parties but compels the Court to record a compromise in accordance with the terms "so far as it relates to the suit" under Order XXIII, Rule 3, but where the compromise is plainly outside the suit, the Court may refuse to incorporate it in the decree; but where it is a consideration of the compromise and therefore intimately connected with it, the words "relates to the suit" are wide enough to embrace such a term of the compromise, as for instance, the consideration for the compromise, even though this consideration may be entirely outside the scops of the suit and relate to property which was never in question in the suit itself. Under Order XXIII, Rule 3, the Court has a duty and not a discretion to record a lawful compromise subject possibly to an inherent power of refusal where a substantial injustice would be worked. See *Sourendra Nath Mitra v. Tarubala*<sup>3</sup>

6. We think, therefore, that the decree as passed by the lower Court is right, but we direct that the compromise as embodied in Exhibit 49 should be appended to the decree in a schedule as it has not been recited in the decree. The findings given by the lower Court are, in our opinion, wrongly recorded. The suit was adjusted by a compromise and the result of the compromise is to set aside the order which was passed in Miscellaneous Application No. 147 of 1927.

7. We would, therefore, confirm the decree of the lower Court with the variation that the

compromise as embodied in Exhibit 49 should be appended to the compromise decree separately in a schedule. The appeal is dismissed with costs.

Cases Referred.

1(1923) I.L.R. 51 Cal. 432

2(1919) L.R. 46 I.A. 240, 246 : s.c. 22 Bom. L.R. 488

3(1930) L.R. 57 I.A. 133 : s.c. 32 Bom. L.R. 645