

PATNA HIGH COURT

Ramdas Sah

Vs

Jagarnath Prasad

A.F.O.O. Nos. 99 and 216 of 1956

(V. Ramaswami, C.J. and Kanhaiya Singh, J.)

10.08.1959

JUDGMENT

V. Ramaswami, C.J.

1. Miscellaneous Appeal No. 99 of 1956 is instituted on behalf of opposite Party no. 1 against the order of the Subordinate Judge of Chapra, dated the 31st January, 1956, in Miscellaneous case No. 8 of 1955. Miscellaneous Appeal No. 216 of 1956 is instituted on behalf of opposite parties nos. 4 and 5 against the order of the Subordinate Judge of Chapra of the same date in Miscellaneous Case No. 38 of 1955.

2. The first point taken on behalf of the appellants is that the compromise decree in Title Suit No. 2 of 1948 required registration, because plot no. 2240 was outside the scope of the suit, and in the absence of registration the compromise decree was not effective with regard to plot No. 2240. We do not think there is any substance in this argument. It appears that the plaintiff in the partition suit in the present case claimed exclusive title to plot no. 2240 but sought a decree for partition with regard to other properties. In the compromise decree there was an agreement between the parties that plot no. 2240 be exclusively allotted to the plaintiff and since the title of the plainatiff to plot no. 2240 was taken as part of the consideration for the compromise entered into between all the parties and since it is an integral part of the compromise it is obvious that title to plot no. 2240 was within the scope of the partition suit and the decree is operative even with regard to plot no. 2240 in the absence of registration. The point has been fully dealt with in a jurgment of this Court in Miscellaneous Appeal No. 237 of 1953, decided on the 27th July, 1955, and also in two other decisions, *Ramjanam Tewary v. Bindesbwari Bai*¹, and *Jagdish Chandra Sinha and another v. Dr. Sir Kamesnwar Singh Bahadur*² The question whether a particular term of a compromise relates to the subject-matter of the suit is obviously a question to be answered on the frame of the particular suit, the relief claimed in the suit and the matters arising for decision on the pleadings of the parties. The term is comprehensive enough, and if the compromise relates to all the matters which fall to be decided in the case, it cannot be said that any part of the compromise is beyond the subject-matter of the suit. In other words, where the compromise is really an adjustment of the rights and differences in respect of all matters in disputebetween the parties and the

compromise purports to be a final settlement and adjustment of these disputes on a fair and satisfactory basis acceptable to all, it must be held to relate to the suit. Applying the principle to the present case we hold that the title to plot no. 2240 was the subject-matter of the compromise and adjustment between the parties and so it falls within the scope of the suit and the compromise decree does transfer title to plot no. 2240 even without it being registered.

3. The second point taken on behalf of the appellants is that there was no proper assignment of the decree by the sale-deed of 1949 and there could be no substitution of the transferee in the execution case within the meaning of Order 21 rule 16, Code of Civil Procedure. It is contended on behalf of the respondents that on a proper construction of the sale-deed there was an assignment of the decree in favour of the transferee, and in support of this submission reference is made not only to the language of the sale-deed (Ext. 5) but also to the circumstance that in the course of the execution case delivery of possession had already been effected on a number of properties except plot no. 2240. Such an allegation is made in paragraph 8 of the substitution petition, dated the 14th March, 1955, and it is not controverted in the objection petition filed by the appellants in the miscellaneous case. It has been pointed out in *Periakatha Nadar v. Mahalingam*³, that under the provisions of Order 21 rule 16, no particular form of assignment is required; on the contrary, any document in writing which clearly shows that the intention was to assign the decree is sufficient compliance of order 21, rule 16, Code of Civil Procedure. In the present case by considering the language of the document (Ext. 5) and also the surrounding circumstances of the case we are satisfied that in substance there was an assignment of the decree in favour of the transferee with regard to plot no. 2240. We, therefore, reject the argument of learned Counsel on this point.

4. Lastly, the point was taken on behalf of the appellants that there was no justification for the learned Subordinate Judge to restore the execution case under the provisions of section 151 of the Code of Civil Procedure . Having heard learned Counsel on this point we are satisfied that there is no substance in this argument also. It appears that the application for substitution was made by the transferee on the 14th March, 1955, in Miscellaneous Case No. 8 of 1955. There was an order of the Court dated the 20th June, 1955, to the effect that the execution case should be placed after the disposal of Miscellaneous Case No. 8 of 1955, but through some inadvertence the execution case was dismissed on the 3rd September, 1955, even before the disposal of the Miscellaneous Case No. 8 of 1955. In these circumstances it is plainly the duty of the court to correct its own mistake and we think that there was proper justification for the Subordinate Judge to restore the execution case under the provisions of section 151 of the Code of Civil Procedure . For all these reasons we hold that there is no merit in these appeals. We accordingly dismiss both these appeals' with costs.

Appeals dismissed.

Cases Referred.

¹ AIR 1951 Pat 299

² AIR 1953 Pat 178

³ AIR 1936 Mad 543