APPELLATE CIVIL.

1891
December 3.

Before Mr. Justice Straight and Mr. Justice Knox.

MUHAMMAD ZAHUR (PLAINTIFF) *v.* CHEDA LAL (DEFENDANT)*

Civil Procedure Code s. 375—*Act X of* 1873 (*Indian Oaths Act*) *s.* 11—*Adjustment of suit.*

The question in a suit was whether the purchase-money for a house, which had been paid by the defendant, had been paid out of his own funds or out of monies belonging to the plaintiff. A witness for the defence having made statements apparenty favourable to the plaintiff's case, the pleaders for both parties signed and presented to the Court a petition that if upon a particular bond in the witness's possession it should be stated that the money was received through the defendant, the Court should decree the suit, otherwise the suit should be dismissed.

Held that this arrangement was not an adjustment or compromise of the suit within the meaning of s. 375 of the Civil Procedure Code, so as to determine the jurisdiction of the Court and necessitate its passing a decree according to the arrangement.

The Oaths Act (X of 1873) does not constrain a Court to pass a decision in favour of a particular party. If a party to a suit says he will be bound by the oath of a particular person, s. 11 of the Act only means that *pro tanto* he will be bound, *i. e.*, so far as the matter of that evidence is concerned, and that evidence will be conclusive as to its truth as against him throughout the whole of the litigation. But it in no way compels the Court trying the case to accept it as conclusive.

Vasudeva Shanbog v. *Narsina Pai* (1) approved.

The facts of this case sufficiently appear from the judgment of Straight, J.

Mr. *Amiruddin*, for the appellant.

Mr. *Conlan* and Babu *Rajendra Nath Mukerji* for the respondent.

STRAIGHT, J.—This second appeal relates to a suit brought by Cheda Lal, the plaintiff-respondent, against Muhammad Zahur, the defendant-appellant, to obtain possession of two-thirds of a house of which the plaintiff is admittedly the proprietor to the extent of one-third. The case for the plaintiff as stated in the plaint shortly was that Hulas Rai was the owner of the house, that he, the plain-

* Second appeal No. 1424 of 1888, from a decree of Maulvi Zain-ul-abdin, Subordinate Judge of Moradabad, dated the 6th August 1888, confirming a decree of Maulvi Muhammad Abbas Ali, Munsif of Nagina, dated the 15th May 1888.

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tiff, had acquired one-third of it, and that in consequence of disputes between himself and Hulas Rai that person had refused to sell to him the other two-thirds. Consequently, said the plaintiff, "I had to get a third person to act in the matter as purchaser, and that third person was Muhammad Zahur, the defendant, who is now in possession, but to whom I handed the purchase-price of the house, nemely, Rs. 590, and who refuses to give me possession, alleging that he and not I was the purchaser of that two-thirds of the house."

The defendant denied the plaintiff's story and asserted that he was the purchaser of the house; that he found the money from his own proper funds, and that he paid it to Hulas Rai. It was upon that condition of facts as stated on both sides that the cause went to trial before the Munsif, and he stated certain issues for determination, into which I need not more particularly enter, because the main issue to be determined was, "did the defendant purchase the two-thirds of the house for and on account of the plaintiff and with his money, and was the amount paid by the defendant for the plaintiff Rs. 590."

The cause went to trial and a number of witnesses were called for the plaintiff, and witnesses were also called for the defendant. In the course of the trial, namely, upon the 12th April a witness of the name of Maula Bakhsh was being examined on behalf of the defendant, and it was a matter to which he was deposing that the money paid by the defendant to Hulas Rai was the money of the defendant. He was apparently asked questions to show whether the plaintiff and defendant were not upon terms of intimacy such as might naturally lead the plaintiff to entrust the defendant with the task that he said he had entrusted him with. It was to be borne in mind that, according to the Munsif's judgment, a body of testimony had been given to show that such was the existing state of things. Upon the 11th April 1888, the pleaders for the plaintiff (Maula Bakhsh having then been apparently examined as a witness) put in a petition which professed to be filed on behalf of the plaintiff, and was signed by the plaintiff's pleader, and the pleader for the

defendant, and in that document there was a passage to the following effect, "that in the bond written by Salig Ram which is in the possession of Maula Bakhsh, if there be not the following words, namely, that the money was received through Muhammad Zahur, let the Court decide the case against the plaintiff in this suit, if the words are written, let the Court pass judgment for the plaintiff. To this decision the parties have no objection."

Then there was an order made upon that document:—"the pleaders for the parties have put it before me and verified; it is ordered that Maula Bakhsh, the witness for the defendant now in Court, put forward the bond written by Salig Ram, the money of which Maula Bakhsh has paid and got the bond back."

Now it is important to my view of this case to see what the precise state of things was at that moment. Evidence had been given to show that the relations of the plaintiff and the defendant were of an intimate and very friendly character. Maula Bakhsh had been examined, and had made some admissions apparently favorable to the plaintiff's case, and these pleaders, probably more in advertence to the credit to be attached to Maula Bakhsh than for any other purpose, entered into this arrangement, which was what? That if Maula Bakhsh produced, or did not produce, a particular bond for Rs. 435 which had been redeemed by Maula Bakhsh as the purchaser of the house, then the plaintiff would be discredited to that extent or the witness Maula Bakhsh would be discredited.

I, however, much regret that through mistake upon my part when this appeal was originally argued I did not precisely appreciate the nature of this particular document. I was under the impression, and my brother Knox says he was also under the impression, that it was a document which was mixed up with the payment of the alleged Rs. 590 by the plaintiff to the defendant, Muhammad Zahur. It is in consequence of that confusion that the delay has taken place by reason of this remand order having been made. However, in my opinion it is fully competent for my brother Knox and myself, we having made no decree in this case as yet, to correct

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the mistake we fell into and to see that due justice is done to the parties irrespective of that remand order.

Mr. *Amiruddin* who supported the appeal, and who, both on the former occasion and the present occasion, has put forward every fair argument that could be used in support of his views, has contended that the moment the agreement of the 11th April 1888, was filed in Court and the moment of Maula Bakhsh had been examined and produced the bond and the name of the defendant was found upon it, the jurisdiction of the Court to try the case ceased, and it had no alternative but then and there upon that material alone to proceed to decree in favour of the appellant.

I cannot agree with that view. I think it proceeds upon a misapprehension of the mode in which our Courts have to deal with a case under ss. 373 and 375 of the Code of Civil Procedure and a misapprehension of what is the true scope and operation of the Oaths Act of 1873. In my opinion, there being a suit pending in the Court of the Munsif, that suit could only be disposed of by a decree of some sort, either a decree passed upon the evidence and in reference to all the materials upon the record, or a decree passed upon an agreement for adjustment between the parties falling within the terms of s. 375, Code of Civil Procedure. Now I entirely agree with every word that is said by Mr. Justice Muttusami Ayyar in *Vasudeva Shanboy* v. *Naraina Pai* (1). The learned counsel for the appellant with his naturally acute mind omitted to notice that upon that particular agreement, as it stood, the Court could pass no decree, but something else had to be done, namely, the witness had to be examined, and Mr. Justice Muttusami Ayyar has clearly pointed out in that case that that makes a very considerable difference and removes agreements of such a character from being recorded as an adjust- ment within the meaning of s. 375.

But lest the learned counsel should suppose that I have not fully considered this matter, I will deal with it in the aspect of the Oaths Act, and, if he were to place his argument upon that statute, I would rule that the Oaths Act does not constrain a Court to pass a decision in favour of a particular party. If a party to a suit says,

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he will be bound by the oath of a particular person as read by the light of s. 11 of that statute it means no more than this, that *pro tanto* he will be bound, that is to say, in so far as the matter of that evidence is concerned, and that evidence will be conclusive as to its truth, and the truth of that evidence will be conclusive as against him throughout the whole of that litigation. But it in no way compels the Court trying the case to accept that evidence as conclusive. It may act solely upon that evidence, and in many cases it would act wisely to do so. But, on the other hand, it may be unwise in some cases to do so, for instance, where the evidence, as in the present case, is so vague as not to convey any satisfactory idea to the mind of the Court.

I do not think that the document of the 11th April 1888 was an adjustment of the suit between the parties within the meaning of s. 375 which compelled the passing of the decree in its terms, and consequently I do not think that the evidence of Maula Bakhsh was conclusive of the suit. That being so, I think there is nothing whatever to be said for this second appeal. The learned Subordinate Judge upheld the conclusions of the Munsif that the defendant bought the house for the plaintiff and that the plaintiff found the money with which the two-thirds of the house was purchased, and that therefore the two-thirds was the property of the plaintiff and the defendant had no right to resist his prayer for ejectment from those premises. I dismiss the appeal with costs.

KNOX, J. I concur.

Appeal dismissed.

Before Sir John Edge Kt., Chief Justice, and Mr. Justice Straight.

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January 5.

KADIR BAKHSH AND ANOTHER (APPLICANTS), *v.* BHAWANI PRASAD, (OPPOSITE-PARTY).*

Insolvency—Procedure in case of dishonest applicant—Powers of the Court—Civil Procedure Code, ss. 350, 359 *—Construction of statutes—Reference to statement of Objects and Reasons and to Report of Select Committee.*

A Court is competent to take action under s. 359 of the Civil Procedure Code at the instance of a creditor, after the hearing under s. 350 has determined.

* Appeal No. 13 of 1891, under s. 10, Letters Patent.