

Before Mr. Justice Tudball and Mr. Justice Walsh.

WASI-UZ-ZAMAN KHAN (DEFENDANT) v. FAIZA BIBI (PLAINTIFF)*

1915
December,

Act No. X of 1873 (*Indian Oaths Act*), sections 8, 9 and 10—*Principal and agent—Agent holding power-of-attorney to conduct suit for principal—Power of agent to agree to suit being decided according to statement on oath of defendant.*

A lady who was plaintiff in a suit gave to her husband a special power-of-attorney to conduct the case in her behalf "as he should deem fit". He was authorized to compromise or withdraw the suit, to refer it to arbitration and to nominate arbitrators, and finally the plaintiff said that every step that he might take in the conduct of the case was to be considered as having been taken by herself.

Held, that the husband had power to take action under sections 8, 9 and 10 of the Oaths Act, 1873. *Sadashiv Rayaji v. Maruti Vithal* (1) dissented from.

THE facts of this case were as follows :—

One Faiza Bibi brought a suit against the defendant appellant Wasi-uz-zaman Khan pleading that the latter had widened a certain ditch which existed between two plots owned by the parties, at the expense of the plaintiff, that is, he had taken earth from her side of the ditch, and thus reduced the area of her plot and damaged her trees. The suit was contested by the defendant. For the proper conduct of the suit the plaintiff executed a special power-of-attorney in favour of her husband. She gave him full powers to conduct the case as he should deem fit, and in the deed she also set out that he had power to compromise the suit, to withdraw the suit, to refer the point in dispute to arbitration, to nominate and appoint arbitrators, and concluded by saying that every step that he might take in the conduct of the case was to be considered as having been taken by her herself. In the course of the suit the husband stated to the court that if the defendant would take his oath on the *Koran* and swear that no damage whatsoever had been done to the plaintiff or earth removed from her side of the ditch, the plaintiff would abide by that oath and the case should be decided accordingly. The defendant took the oath and he testified that he had not removed earth from the plaintiff's side of the ditch nor had in any way damaged her plot or trees. Thereupon the court of first instance dismissed the suit. The plaintiff appealed. The court below, relying on the decision

* First Appeal No. 129 of 1915, from an order of Muhammad Husain, Officiating District Judge of Ghazipur dated the 7th of June, 1915.

(1) (1890) I. L. R., 14 Bom., 455.

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in *Sadashiv Rayaji v. Maruti Vithal* (1), and also on the ground that the power-of-attorney in favour of the husband did not authorize him to take the step he had taken allowed the appeal, set aside the decree of the first court and remanded the suit to that court for decision on the merits.

The defendant appealed to the High Court.

Mr. *Muhammad Ishaq Khan*, for the appellant.

Maulvi *Iqbal Ahmad*, for the respondent.

TUDBALL, J.—This is an appeal from an order of remand and arises out of the following circumstances. The plaintiff respondent Faiza Bibi brought a suit against the defendant appellant Wasi-uz-zaman Khan pleading that the latter had widened a certain ditch which existed between two plots owned by the parties, at the expense of the plaintiff, that is, he had taken earth from her side of the ditch, and thus reduced the area of her plot and damaged her trees. The suit was contested by the defendant. For the proper conduct of the suit the plaintiff executed a special power-of-attorney in favour of her husband. She gave him full powers to conduct the case as he should deem fit and in the deed she also set out that he had power to compromise the suit, to withdraw the suit, to refer the point in dispute to arbitration, to nominate and appoint arbitrators and concluded by saying that every step that he might take in the conduct of the case was to be considered as having been taken by her herself. In the course of the suit the husband stated to the court that if the defendant would take his oath on the *Koran* and swear that no damage whatsoever had been done to the plaintiff or earth removed from her side of the ditch, the plaintiff would abide by that oath and the case should be decided accordingly. The defendant took the oath and he testified that he had not removed earth from the plaintiff's side of the ditch nor in any way damaged her plot or trees. Thereupon the court of first instance dismissed the suit. The plaintiff appealed. The court below relying on the decision in *Sadashiv Rayaji v. Maruti Vithal* (1), and also on the ground that the power-of-attorney in favour of the husband did not authorize him to take the step he had taken, allowed the appeal, set aside the decree of the first court and remanded the suit to that court for decision on the

merits. It is contended before us on behalf of the defendant appellant that the special power-of-attorney in favour of the plaintiff's husband gave him full power to take the step which he did take. It is urged that the decision mentioned above is not correct and should not be followed. It has been pointed out that in certain cases the guardian of a minor has been allowed to take the step contemplated by sections 8, 9 and 10 of Act X of 1873. The latter cases do not help us in any way. In so far as the special power-of-attorney in the present case is concerned, I have examined the terms of it carefully and find that the plaintiff gave very extensive powers to her husband, for instance, to abandon the suit as well as to compromise it. I have not the slightest doubt whatsoever that the husband as agent of the lady had full power to take the step which he did take. Sections 8, 9 and 10 of Act X of 1873 clearly contemplate that the action mentioned therein can be taken by a party to a suit. In the Act itself there is no language which goes to show that the word "party" can be used only in its restricted sense and not in the wider sense. The considerations which are to be found at page 458 of the ruling in I. L. R., 14 Bombay, are considerations which really apply to a person who takes the oath rather than to a person who makes the offer. I can see no good reason why a "duly" authorized agent of a party should not make the offer contemplated in section 9. In the present case I am satisfied that the plaintiff's husband had full power to take this step in view of the language of the power-of-attorney on the record. In my opinion the decision of the first court is correct and the order of the court below should be set aside.

WALSH, J.—I agree. My only reason for desiring to say anything is that I think it important that people should understand the extent to which they are bound by the acts of persons whom they employ with general authority to do acts on their behalf, and that it is equally important that persons who deal with such agents should understand the extent of the authority given to the latter, and also because we are differing from the reported decision of two Judges of the High Court of Bombay, which is now of fifteen years' standing. That decision is one which I am unable to follow. Under such authority as was given in that case, which in

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substance resembles the authority given in the present case, if indeed it is not stronger, the agent could do any act which he deemed proper for the purpose of the conduct of the suit. The acts of the agent are acts of the parties. Act X of 1873 enables a party to make the offer which was made in the case before us. That is a step in a suit which, however rare in its occurrence, may arise as an incident in a suit. I see no reason why an agent authorized to conduct a suit is not authorized to take the step provided by Act X of 1873. The reasons given by the Bombay High Court, as my learned brother has pointed out, appear to be directed to questions relating to the person who takes the oath and not to the person who makes the offer. It is for this reason that I feel less hesitation in differing from the Bombay High Court. In my opinion the offer made here is contemplated by and included in the authority given by the plaintiff to her husband, by whose acts in the suit the plaintiff is bound.

BY THE COURT.—The appeal is allowed. The order of the court below is set aside and the decree of the first court is restored with costs in all courts.

Appeal allowed.

REVISIONAL CRIMINAL.

Before Mr. Justice Tudball and Mr. Justice Walsh.

EMPEROR v. GOBIND SAHAI.*

1915
December, 8,
21.

Criminal Procedure Code, section 369—Review of judgement—Power of High Court to review its orders on the criminal side—Rules of Court, chapter VII, rule 8—Finality of order.

Held, that the High Court has no power to review an order dismissing an application for revision made by an accused person. *In the matter of the petition of F. W. Gibbons* (1) and *Queen-Empress v. Durga Charan* (2) followed.

But so long as an order is not sealed as required by chapter VII, rule 8, of the Rules of Court, it is not final, and it is open to the Judge who passed it to alter it. *Queen-Empress v. Lalit Tiwari* (3) and *Emperor v. Kallu* (4) followed.

THE fact of this case were as follows :—

The applicant Gobind Sahai was called upon by a Magistrate of the first class to show cause why he should not be bound over

* Criminal Revision No. 1136 of 1915.

(1) (1886) I. L. R., 14 Calc., 42.

(3) (1899) I. L. R., 21 All., 177.

(2) (1885) I. L. R., 7 All., 672.

(4) (1904) I. L. R., 27 All., 92.