Before Mr. Justice Sulaiman and Mr. Justice Kendall.

1928
March 1.

QADRI JAHAN BEGAM (PLAINTIFF) *v.* FAZAL AHMAD (DEFENDANT.)*

Civil Procedure Code, order XXIII, rules 1 *and* 3—"*Lawful agreement*"—*Compromise effected during pendency of appeal before High Court—Undue influence—Inherent powers of High Court.*

A suit by a wife against her husband for recovery of her dower-debt was dismissed. Plaintiff appealed to the High Court. Pending the appeal, the parties entered into an agreement in pursuance of which a joint application was made to the trial court stating that the parties had agreed that the suit should be dismissed and asking that the application for compromise should, after due verification, be forwarded to the High Court, so that the appeal might be dismissed in terms of it. The application, after verification by the plaintiff through the munsarim of the court, was sent to the High Court, but before any decree could be passed the plaintiff appellant died, and her heirs were brought upon the record.

Held, on objection taken by the respondent that the appeal could not be proceeded with,—(1) that rule 3, and not rule 1, of order XXIII, of the Code of Civil Procedure was applicable; (2) that the word "lawful" in rule 3 referred to agreements which in their very terms or nature were not "unlawful" and, therefore, might include agreements which were voidable at the option of one of the parties on the ground of undue influence, coercion or fraud: *Nand Lal* v. *Ram Sarup* (1), dissented from; *Budhu Mal* v. *Rup Kour* (2), and *Ala Bakhsh Khan* v. *Kasim Ali Khan* (3), referred to; (3) that although it might be open to the Court, under section 151 of the Code of Civil Procedure, to refuse to record a compromise brought about by undue influence, yet where the person said to have been subjected to undue influence did not repudiate the compromise in her life time and the determination of the question of undue influence would have involved an elaborate and lengthy inquiry, the Court did not

*First Appeal No. 427 of 1924, from a decree of Gauri Prasad, Subordinate Judge of Pilibhit, dated the 5th of July, 1924.

(1) (1927) A. I. R., Lahore, 546. (2) (1890) P. R., No. 81, p. 254.
(3) (1895) P. R., No. 48, p. 203.

consider it necessary to exercise its extraordinary powers under section 151 of the Code. *Sreemati Sabitri Thakurain* v. *Savi* (1), and *Gajendra Singh* v. *Durga Kunwar* (2), referred to.

THE facts of the case are fully stated in the judgement of the Court.

Mr. Haider Mehdi, for the appellant.

Maulvi *Iqbal Ahmad* and Mr. *Muhammad Husain*, for the respondent.

SULAIMAN and KENDALL, JJ. :—This appeal arises out of a suit for recovery of a dower debt brought by Musammat Qadri Jahan Begam against her husband Sheikh Fazal Ahmad. The suit was dismissed by the court below on the ground that it was not proved that any part of the dower debt was prompt and accordingly the suit was premature. An appeal was preferred by the wife and was pending in this Court. Apparently some registered document was executed, purporting to be a compromise (we are not concerned with its terms here), on the basis of which an application was made to the Subordinate Judge, signed by both the parties to this appeal, to the effect that they had agreed that the suit should be dismissed without any further adjudication and that the parties were to bear their own costs. A request was made to the court below that "the said application for compromise, after due verification, be forwarded to the High Court so that the appeal may be dismissed in terms of it". The learned Subordinate Judge deputed his munsarim to get this application for compromise verified by the lady. This was done. He accordingly forwarded it together with the verification and his report. Before any decree could be passed in terms of it the counsel for the appellant intimated that the appellant was dead, and asked for time to bring her heirs on the record. An

(1) (1926) I. L. R., 6 Pat., 108. (2) (1925) I. L. R., 47 All., 637.

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application for substitution of names was filed, which was ultimately granted by a learned Judge of this Court, and the original appellant's father and mother were brought on the record in her place in the array of the appellants. The learned Judge at the time of passing this order did not, however, decide whether they were not bound by any compromise which had been entered into by their predecessor.

The learned counsel for the respondent has taken a preliminary objection that the present heirs are not entitled to continue this appeal. His first contention is that the application in substance was one for the withdrawal of the appeal and did not amount to an adjustment or a compromise. We cannot accept this contention. The application which was filed in the court of the Subordinate Judge did not purport to be an application to withdraw the appeal. On the other hand, it expressly mentioned that there was a compromise between the parties under which the appeal was to be dismissed and the parties were to bear their own costs. The case therefore undoubtedly falls, not under order XXIII, rule 1, but under rule 3 of that order. Before a decree can be passed in terms of this compromise it is to be proved to the satisfaction of this Court that the appeal has been adjusted wholly or in part by a lawful agreement or compromise between the parties. The learned advocate for the respondent argues that, inasmuch as the compromise signed by the lady is duly verified, it must be assumed that it was a lawful compromise. We are of opinion that the adjustment of the appeal is something distinct and independent from the compromise being a lawful one. The execution of the application for compromise and its due verification before an officer appointed by the court below is a proof that the appeal

had been adjusted wholly by the parties. That, however, does not necessarily show that the adjustment was necessarily lawful.

Order XXIII, rule 3, does not merely say that the agreement or compromise should be binding on the parties. It speaks of its being "lawful". The rule is imperative and it would be the duty of the court to order such agreement or compromise to be recorded unless it finds that the compromise is not lawful.

The affidavit filed on behalf of the appellants suggests that the lady may have been under the undue influence or coercion of the defendant at the time when she entered into the compromise. It is not expressly mentioned that any fraud was committed on her, but the learned vakil for the appellants contends that the application implies that such fraud was committed. Lastly he argues that according to the allegations contained in the affidavit she was suffering from death-illness at the time and the relinquishment of her dower, which would deprive the heirs of their rights, had the effect of defeating the provisions of the Muhammadan law.

In our opinion the word "lawful" in order XXIII, rule 3, does not merely mean binding or enforceable. A contract which is brought about either by undue influence, misrepresentation or fraud is, under sections 19 and 19A of the Indian Contract Act, merely voidable and not absolutely illegal or unlawful. Section 23 of the Act indicates when the consideration or object of an agreement is unlawful. These are cases where it is forbidden by law or is of such a nature that, if permitted, it would defeat the provisions of any law, or is fraudulent, or involves or implies injury to any person or property, or where the court regards it as immoral or opposed to public policy. We think that the word

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"lawful" in order XXIII, rule 3, refers to agreements which in their very terms or nature are not "unlawful", and may therefore include agreements which are voidable at the option of one of the parties thereto because they have been brought about by undue influence, coercion or fraud. The learned vakil for the appellant has strongly relied upon the case of *Nand Lal* v. *Ram Sarup* (1), where ADDISON and AGHA HAIDER, JJ., held that where the document was obtained by the exercise of undue influence it cannot be said that the suit had been adjusted by a lawful agreement or compromise as required by the provisions of order XXIII, rule 3, of the Code of Civil Procedure. With great respect to the learned Judges we are unable to agree with their interpretation of the word "lawful" in the rule. Their attention was apparently not drawn to two earlier cases of their own Court, where a contrary opinion had been expressed: *Budhu Mal* v. *Rup Kour* (2) and *Ala Bakhsh Khan* v. *Kasim Ali Khan* (3).

It is, however, possible to take the view that, independently of order XXIII, rule 3, the court has inherent jurisdiction under section 151 of the Code to refuse to record a compromise which has been brought about by undue influence: *Sreemati Sabitri Thakurain* v. *Savi* (4). The majority of the Judges in *Gajendra Singh* v. *Durga Kunwar* (5), invoked their inherent jurisdiction for recording a compromise, independently or order XXIII, rule 3. But where the person who is said to have been subjected to undue influence did not repudiate the compromise in her life time and is now dead, and the question of the alleged undue influence will involve an elaborate and lengthy inquiry which cannot be satisfactorily made in a summary proceeding, we are not bound to exercise any extraordinary discretionary

(1) (1927) A. I. R., Lahore, 546. (2) (1890) P. R., No. 81, p. 254.
(3) (1895) P. R., No. 48, p. 203. (4) (1926) I. L. R., 6 Pat., 108 (128).
(5) (1925) I. L. R., 47 All., 637.

powers, assuming that such powers exist. This matter can best be re-agitated in a separate suit.

The learned vakil for the appellants has next contended that under the Muhammadan law a relinquishment of a debt during *marz-ul-maut* so as to deprive the heirs was unlawful, inasmuch as such a bequest would defeat the provisions of the Muhammadan law which makes such bequest invalid unless assented to by the heirs. In our opinion, when the validity of a bequest is contingent upon the consent of the heirs it cannot be said that such a bequest is forbidden by the law, or defeats the provisions of any law, nor can it be said that it is necessarily void *ab initio*. It would, therefore, be very difficult to hold that this bequest was unlawful within the meaning of order XXIII, rule 3. Furthermore, this would necessitate an elaborate inquiry into the question whether the deceased was in fact suffering from *marz-ul-maut* at the time, and whether the property bequeathed by her exceeded a one-third share of her estate, which matters cannot be conveniently inquired into in these summary proceedings.

We are further of opinion that the question of the relinquishment of the dower does not substantially arise in these proceedings. That is contained in a registered compromise alleged to have been executed by her, which is not before us. The application which has been forwarded to this Court by the Subordinate Judge merely contains a prayer that the appeal should be dismissed and that the parties should bear their own costs. We are, therefore, not called upon to consider whether a valid relinquishment of the dower debt had been made by the lady, or whether such relinquishment is binding on her heirs after her death. The application for compromise under which the parties agreed that the appeal should be dismissed and the parties should bear their

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own costs has been duly proved and verified. This shows that this appeal at any rate has been wholly adjusted, and there is nothing to show that in its nature such a compromise was unlawful.

Under these circumstances we are of opinion that we must order that the compromise should be recorded and a decree should be passed to the effect that the appeal has been compromised and is hereby dismissed. The parties will bear their own costs of these proceedings.

Appeal dismissed.

Before Mr. Justice Boys and Mr. Justice Ashworth.

1928
March, 2.

BHOGI RAM (PLAINTIFF) *v.* KISHORI LAL (DEFENDANT).*

Act No. XXVI of 1881 (*Negotiable Instruments Act*), *section* 46—*Act No. I of* 1872 (*Indian Evidence Act*), *section* 92, *proviso* (3)—*Promissory note—Suit on note—Defendant entitled to give evidence of collateral agreement delaying payment of note.*

There is nothing in law to debar the maker of a promissory note from pleading as a defence to a suit thereon that as a matter of fact the note was given for a special purpose and was not payable until the happening of a certain specific event which, so far, had not yet happened.

Sheo Prasad, Ram Prasad v. *Gobind Prasad* (1), followed. *Sri Ram* v. *Sobha Ram, Gopal Rai* (2), dissented from.

THE facts of this case are stated at some length in the judgement of BOYS, J.

Sir *Tej Bahadur Sapru*, Babu *Piari Lal Banerji* and Babu *Satish Chandra Das*, for the appellant.

Pandit *Shiam Krishna Dar*, for the respondent.

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* Second Appeal No. 1593 of 1926, from a decree of Shamsul Hasan, Additional Subordinate Judge of Muttra, dated the 4th of September, 1926, reversing a decree of Gopal Chand Sharma, Munsif of Muttra, dated the 21st of December, 1925.

(1) (1927) I. L. R., 49 All., 464. (2) (1922) I. L. R., 44 All., 521.