

FULL BENCH

Before Sir Shah Muhammad Sulaiman, Chief Justice, Justice
Sir Lal Gopal Mukerji, and Mr. Justice King

SAHU SHYAM LAL (DEFENDANT) v. SHYAM LAL
(PLAINTIFF)*

1933
April, 26

Civil Procedure Code, order XXIII, rule 3—Compromise decree—“So far as it relates to the suit”—Part of the compromise going outside the subject matter of the suit—Decree incorporating and giving effect to the whole compromise—Validity of decree—Jurisdiction.

A suit for dissolution of partnership was compromised, one of the terms being that the defendant was to pay a certain sum in instalments; and certain property specified in the compromise was to be deemed hypothecated for the due payment, in default of which the plaintiff might realise his money by sale of the property in execution of the compromise decree. A decree was passed incorporating and giving effect to the whole compromise. The compromise was not registered, nor attested as a mortgage deed would be. In execution of the decree the property was sold and the decree-holder purchased it. The question arose as to whether he had obtained a good title. *Held* that the decree was not one passed without jurisdiction and neither it nor the sale founded on it was a nullity, and the purchaser had got a good title.

So long as the compromise relates to the suit, the court has full authority under order XXIII, rule 3 of the Civil Procedure Code to pass a decree in terms of the compromise even though it might not have, strictly speaking, formed the subject matter of the suit.

No doubt it is the duty of the court, under order XXIII, rule 3, to see that although the whole of the compromise between the parties is recorded, the operative portion of the decree is confined to that part only which relates to the suit. A proper and effectual method of carrying out the terms of the rule would be for the decree to recite the whole of the agreement and then to conclude with an order embodying those matters which relate to the suit, or the agreement could be

*Second Appeal No. 201 of 1933, from a decree of Pran Nath Aga, Additional Subordinate Judge of Moradabad, dated the 4th of November, 1929, confirming a decree of Maharaaj Bahadur Lal, Munsif of Chandausi, dated the 30th of April, 1929.

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introduced in a schedule to the decree; but, in either case, although the operative part of the decree would be properly confined to the actual subject matter of the then existing litigation, the decree taken as a whole would include the agreement. But it does not necessarily follow that if the court does not strictly follow this direction, it is acting without jurisdiction.

Even in cases where a part of the compromise does not, strictly speaking, relate to the suit and nevertheless the court decides that it relates to the suit and incorporates it into the operative portion and passes a decree in terms of it, the decree is not a nullity and not one passed without jurisdiction, but would be binding upon the parties to the decree and its validity cannot be questioned in the execution department, nor can any title derived under it be attacked.

The expression, "so far as it relates to the suit", in order XXIII, rule 3 is wider than the expression, "so far as relates to so much of the subject matter of the suit as is dealt with by the compromise", which occurred in section 375 of the former Code; and matters which may not, strictly speaking, be the subject matter of the suit itself as brought may yet "relate to the suit".

Mr. *Panna Lal*, for the appellant.

Mr. *S. N. Seth*, for the respondent.

SULAIMAN, C. J., MUKERJI and KING, JJ. :—This case has been referred to a Full Bench because of certain important questions of law which arise in it. It appears that Sahu Shyam Lal instituted suit No. 125 of 1923 in the court of the Subordinate Judge of Moradabad for dissolution of his partnership with Kalyan Das and others. On the 25th of December, 1923, the parties compromised their dispute and a written compromise was filed in court. Under this compromise, apart from the liability to pay Rs.1,000, the defendant agreed that Rs.1,500 were further due to the plaintiff from the defendant and he agreed to pay the amount in annual instalments of Rs.150 each, spread over a number of years. It was also provided that in default of payment of any instalment, the whole of the amount would become due and would be payable

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with interest at 1 per cent. per mensem and it further provided that the property specifically mentioned in the compromise would remain (*makful* and *marhum*) hypothecated and mortgaged for the amount due to the plaintiff and that the defendant shall not transfer or encumber the same property and that in case of breach of any of the conditions the plaintiff would be entitled to realise the amount by sale of the aforesaid property by execution of this decree without bringing a fresh suit.

The court passed a decree in terms of this compromise and incorporated the whole of the compromise into the decree. It may be noted that this compromise was neither registered nor was it attested as a mortgage deed would be.

Subsequently one Gopal Ram brought a money suit No. 439 of 1926 against Kalyan Das and others and obtained a decree. After attaching the property mentioned in the previous decree he proceeded to execute his decree by sale of the same. Sahu Shyam Lal applied that his charge over the property should be declared at the time of the auction. This request was granted. The auction sale in execution of Gopal Ram's decree took place with the announcement of the incumbrance and the property was purchased for Rs.14 by Munshi Shyam Lal, who is a different person from Sahu Shyam Lal.

When Sahu Shyam Lal executed his decree in suit No. 125 of 1923 by sale of this property Munshi Shyam Lal, the auction purchaser, objected, but his objection was disallowed and the property was again sold at auction in execution of Sahu Shyam Lal's decree and the property was purchased by Sahu Shyam Lal for Rs.550.

The present suit was instituted by Munshi Shyam Lal principally against Sahu Shyam Lal for a declaration that the purchase made by him previously was

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good and that the property was vested in him and that the present purchase by Sahu Shyam Lal was invalid and not binding upon him.

Both the courts below have decreed the suit in favour of the plaintiff, holding that the compromise in suit No. 125 of 1923 was in the nature of creating a mortgage on immovable property, and not being registered was inadmissible in evidence and the court acted without jurisdiction in so far as it created a mortgage on immovable property. It was held that all subsequent proceedings including the auction purchase by Sahu Shyam Lal were null and void. Sahu Shyam Lal has come up in appeal to this Court and challenges the finding of the courts below.

It is quite obvious that if the court had no jurisdiction to incorporate any part of the compromise into the decree, the decree would be *ultra vires* and therefore void and a nullity and the auction purchase would fall with it. On the other hand if the court had jurisdiction to entertain the compromise, then even if it acted in an irregular manner or acted illegally or committed an error of law the decree when passed would be one passed with jurisdiction and binding on the parties unless set aside in appeal or by way of review of judgment.

It is possible to conceive of cases where a civil court would not have jurisdiction to pass a decree even if it is based on a compromise between the parties. For instance, a small cause court may not have jurisdiction to deal with rights to immovable properties, or a revenue court may not have jurisdiction to deal with immovable property, or even a Munsif's court may not have pecuniary jurisdiction to deal with properties of higher valuation, or again a civil court may not have jurisdiction to deal with matters which are exclusively within the jurisdiction of the revenue courts. On the other hand, it appears to have been contemplated

by the legislature that there may be matters which are irrelevant to the suit and should be ignored by the court and only such matters as relate to the suit be incorporated in the decree.

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Order XXIII, rule 3 of the Code of Civil Procedure provides that where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject matter of the suit, the court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to the suit. These words appeared in the old section 375 but the section proceeded to add "and such decree shall be final so far as relates to so much of the subject matter of the suit as is dealt with by the agreement, compromise or satisfaction".

It seems to us that the expression "so far as it relates to the suit" is somewhat wider than the expression "so far as relates to so much of the subject matter of the suit as is dealt with by the compromise". It is certainly possible to conceive of matters which may not, strictly speaking, be the subject matter of the suit itself as brought and yet they may relate to the suit. It therefore follows that so long as the compromise relates to the suit the court has full authority under this rule to pass a decree in terms of it even though it might not have, strictly speaking, formed the subject matter of the suit.

Similarly there is nothing in section 2 of the Code of Civil Procedure, which defines the decree, which would prevent the court from passing a decree in terms of the compromise which relates to the suit although it may not be called the subject matter of the suit. All that it requires is that the court may determine the rights of the parties in regard to all or any matters in controversy in

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the suit, viz., matters that may be in controversy in the suit and matters that may be brought in by the parties. If the property has not been included in the suit it can be so included by a proper amendment of the plaint. The court would therefore have proper jurisdiction to deal with it. The fact that the court deals with it before going through the formality of amending the plaint would be an illegality or non-compliance with the provisions of the second schedule, and not necessarily a question of jurisdiction. Where the court has jurisdiction to deal with the property, having regard to its nature, character and valuation, the mere fact that it was not originally included in the plaint would not oust the jurisdiction of the court when it was acting upon the agreement of the parties.

No doubt it is the duty of the court to see that although the whole of the compromise between the parties is recorded, the operative portion of the decree is confined to that part only which relates to the suit. This point was emphasised by their Lordships of the Privy Council in *Hemanta Kumari Debi v. Midnapur Zamindari Co.* (1). Following the observations made by their Lordships of the Privy Council on page 495, we think that a perfectly proper and effectual method of carrying out the terms of this section would be for the decree to recite the whole of the agreement and then to conclude with an order embodying those matters which relate to the suit, or it could introduce the agreement in a schedule to the decree; but in either case, although the operative part of the decree would be properly confined to the actual subject matter of the then existing litigation, the decree taken as a whole would include the agreement.

It is incumbent on courts to follow this direction and to see that the final order passed by the court is correct. But it does not necessarily follow that if the court does not strictly follow this direction, it is acting without jurisdiction.

(1) (1919 I. L. R., 47 Cal., 485.

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In some cases it may be very easy to split up the compromise into two parts,—the first which relates to the suit and the second which does not relate to the suit, and then it would be very easy for the court to incorporate into the operative portion of the order the part which relates to the suit, and to exclude the other which does not relate to the suit. On the other hand, there can be a compromise which mixes up various matters in such a way as to make it impossible to separate the part which exclusively relates to the suit and another part which does not so relate to the suit. It will therefore be the duty of the court to decide which relates to the suit and which does not relate to it. Such a question obviously is a question of law to be decided by the court which is called upon to pass a decree on a perusal of the compromise. The court in deciding this matter may err, but the court would have jurisdiction to decide a point of law wrongly. Except in cases where the court had no jurisdiction to entertain the matter at all, a wrong decision would make the decree valid and binding on the parties. No doubt there has been some conflict of opinion on this point. It was held in the case of *Mohibullah v. Imami* (1) that a court had jurisdiction to award to the plaintiff a larger amount than was claimed if the amount is decreed on a compromise between the parties. In a later case in *Raghubans Mani Singh v. Mahabir Singh* (2) there was an observation at pages 80-81 which was in the nature of an *obiter dictum* that the decree of a court will be enforceable as a decree only so far as it relates to the subject matter of the suit. The learned Judges were not called upon to decide whether, if the court wrongly decided that a certain agreement related to the suit and passed a decree on it, the decree would be a nullity and would not be binding on the parties to it. The view which has prevailed in Madras and also in Oudh seems to be to the effect that even though it incorporates some part of it which did not, strictly speaking, relate to the

(1) (1887) I. L. R., 9 All., 229.

(2) (1905) I. L. R., 28 All., 78.

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suit, it would nevertheless not be *ultra vires*. On the other hand, the earlier Calcutta cases and some cases of the Punjab Chief Court seem to lay down that a court could not pass a decree in terms of the compromise which do not relate to the suit.

We think that even in cases where a part of the compromise does not, strictly speaking, relate to the suit and nevertheless the court decides that it relates to the suit and incorporates it into the operative portion and passes a decree in terms of it, the decree is not a nullity and not one passed without jurisdiction, but would be binding upon the parties to the decree and its validity cannot be questioned in the execution department, nor can any title derived under it be attacked. In this view of the matter it is not necessary for us to consider the question whether the compromise did or did not attempt to create a mortgage. *Prima facie*, having regard to the language used and the intention that the property shall not be liable to be transferred or encumbered so as to prejudice the plaintiff, it was in the nature of a mortgage. The mere fact that it was not registered or not properly attested would not make a document inadmissible, but we think it is not necessary to express any final opinion on the point in this case.

It has been contended before us that inasmuch as the court has merely ordered that the decree should be passed in terms of the compromise it was not necessary to incorporate the whole of the compromise into the operative portion of the decree. No doubt the lower court intended to incorporate the whole of the compromise into the operative part of the decree as was actually done when the decree was prepared. We might also add that even if our view had been different, we would not have readily accepted the contention that the direction, that the money decree to be paid in instalments should be realised in case of default by sale of the property specified in the execution department, would necessarily

be a provision which would amount to an agreement not relating to the suit.

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We accordingly allow the appeal and setting aside the decree of the court below dismiss the suit with costs throughout.

APPELLATE CRIMINAL

Before Mr. Justice King and Mr. Justice Iqbal Ahmad
EMPEROR v. RAGHO RAM*

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Indian Penal Code, section 477A—Falsification of register with intent to conceal previous embezzlement—“Intent to defraud”—“Dishonestly”—Indian Penal Code, sections 23, 24.

The word “dishonestly” does not occur in section 477A of the Indian Penal Code, and all that is necessary to bring a person within the purview of that section is that he should have altered or falsified any book or paper etc. wilfully and with intent to defraud.

The terms “fraud” and “defraud” are not defined in the Indian Penal Code, but it is clear that if the intention with which a false document is made is to conceal a fraudulent or dishonest act which had been previously committed, the intention cannot be other than an intention to defraud. The concealment of an already committed fraud is a fraud.

A document that is made with the intention of concealing a dishonest act already committed is made “dishonestly” within the meaning of section 24, read with section 23, of the Indian Penal Code as it facilitates the retention of the wrongful gain already made.

Making a false document with a view to prevent persons already defrauded from ascertaining that misappropriations had been committed, and thus to enable the person who committed the misappropriations to retain the wrongful gain which he had secured, amounts to the commission of a fraud and brings the case under section 477A of the Indian Penal Code.

* Criminal Appeal No. 501 of 1932, by the Local Government from an order of R. K. Mitter, Sessions Judge of Jaunpur, dated the 9th April, 1932.