

## APPELLATE CIVIL.

*Before Khaja Mohamad Noor and Rowland, JJ.*

THAKUR PRASAD SINGH

v.

BABUI HARPEARI KUAR.\*

*Code of Civil Procedure, 1908 (Act V of 1908), Order XXIII, rule 3—recording of compromise should be done at once—passing of decree may be postponed.*

Where a compromise petition duly signed by the parties and pleaders was presented on 2nd May, 1932, but the order directing the compromise to be recorded was not passed until 25th March, 1933, held, that under Order XXIII, rule 3, the court is to pass an order directing the compromise to be recorded and this should be done at once. The court may, if necessary, postpone the passing of the decree till the hearing of the suit if there is a question affecting the interest of other parties who have not joined in the compromise.

Appeal by defendant no. 1.

The facts of the case material to this report are set out in the judgment of Rowland, J.

*Ganesh Sharma*, for the appellant.

*Khurshed Husnain and Phulan Prasad Varma*, for the respondent.

ROWLAND, J.—This is an appeal under Order XLIII, rule 1(m), of the Code of Civil Procedure from an order under rule 3 of Order XXIII recording a compromise between the plaintiff and defendant no. 1 in a suit which was instituted on 2nd January, 1932. The petition of compromise bearing the signature of defendant no. 1 and of his pleader was presented on 2nd May, 1932, but the order directing the compromise to be recorded was not passed until 25th March, 1935. I would like to say at the outset that a court to whom a petition of compromise is

\* Appeal from Original Order no. 93 of 1935, from an order of Babu Raghunandan Prasad, Subordinate Judge of Gaya, dated the 25th March, 1935.

presented should not thus delay passing an order for recording the compromise. Under Order XXIII, rule 3, the court is to pass an order directing the compromise to be recorded and this should be done at once. The court is also to pass a decree in accordance with the compromise so far as it relates to the suit and the passing of the decree may, if necessary, be postponed till the hearing of the suit if there is a question how the interests of other parties to the suit, who have not entered into the compromise, would be affected by it but this is no reason to defer the actual recording of the agreement or compromise. Had a correct procedure been followed in this instance a good deal of trouble would have been avoided. The hearing of the suit commenced on the 15th February, 1935, and on 1st March, 1935, the defendant no. 1 presented a petition asking for leave to file a written statement contesting the suit. His case is that he never entered into a compromise, that on the date when the petition was presented he was not in Gaya at all, that he had put his signature on a blank paper for the purpose of having a written statement in this very suit written out upon it and by fraud of his karpardaz a forged petition of compromise was written on the paper instead of the written statement and was filed in the suit. The point for decision in the appeal is the simple question of fact whether the defendant had entered into the alleged agreement or not. On the plaintiff's side one witness is examined. He is Babu Baikunth Prasad, the pleader who had a vakalatnama from the defendant Thakur Prasad Singh and who signed and presented the petition of compromise which, as I have said, bears the signature of this defendant too. The Subordinate Judge believed the evidence of Babu Baikunth Prasad, who appears to be an elderly, respectable and experienced pleader aged about sixty and coming to the end of his active life as a practitioner. The valuation of his evidence by the Subordinate Judge is entitled to weight as being that of the court before whom he

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deposed and a perusal of his deposition leaves the same impression on us as it did on the lower Court. Nothing appears in any way to discredit the testimony of this witness. He says that the defendant Thakur Prasad Singh is personally known to him; that the defendant came to Gaya and signed the vakalatnama in his presence. He proves the signature of the defendant on the compromise petition but does not remember whether this signature was actually placed on the petition in his presence. He is, however, certain that Thakur Babu told him of the compromise and that it was on Thakur Babu's instruction that he filed the petition. The defendant, Babu Thakur Prasad Singh, examines himself and says that he was not in Gaya. He has to explain not only the filing of the compromise petition but also the filing of a petition of satisfaction in another case. It was an execution taken against him for money for a sum of nearly Rs. 5,500. Vakalatnama and petition of satisfaction were filed on the same day as the compromise petition in the suit. It is the defendant's case that instead of coming to Gaya personally for these important matters he entrusted blank papers as well as the money to a karpardaz named Kedar, that Kedar was to get the petitions filed through a pleader but that he does not know the name of the pleader. The defendant by the way does not seem to know the name of the karpardaz very well, for he gives at one stage in his deposition Kedar Nath and at another stage Kedar Prasad. Apart from this, the defendant has also to explain why, if he was under the impression all along that a written statement was being filed, he did not take any further steps in the suit and did not discover the fraud practised until nearly three years later. He has his explanation for this that he was ill and went travelling to various places in India. If we take this as meaning that he had confidence in the karpardaz, that confidence must have terminated at latest when he dismissed this karpardaz, an event which he dates at

eight or nine months before his challenge to the compromise. The explanations offered are improbable, inconsistent and unworthy of belief and a mere perusal of the deposition of this defendant shows him up as a witness on whose testimony it would be in the highest degree unsafe to rely. He examines two other witnesses in support of his case. One is a pleader who proves some papers in connection with the execution case which was satisfied by this defendant on the 2nd of May, 1932. He proves nothing as to whether the defendant on that occasion came to Gaya or not. The other is Sahdeo Lal, who is said to be the present karpardaz of Thakur Prasad Singh. He supports the story of the signing of blank papers and vakalatnamas. His evidence cannot, I think, be given any higher value than that of his principal, Babu Thakur Prasad Singh. Neither of them appears to have observed that if a blank paper had been sent for the purpose of being used for a written statement it would require to bear two signatures—one for the body of the written statement and one for the verification. Therefore, the mere fact that the petition, which we are considering, bears just the one signature is a circumstance strongly against the paper having been ever intended for the other purpose which is suggested on behalf of the defendant. In fact Mr. Ganesh Sharma appearing for the appellant could press before us only one circumstance as supporting the case of his client, that is to say, he pointed out that in the execution case which was satisfied on the occasion in question the property which was attached and was actually put up for sale at the time was the very property in dispute in this suit. Hence it is suggested that the defendant no. 1 of this suit would hardly have cared to pay out so large a sum of money to save from sale a property in which he was not really interested, and it is suggested further that if defendant no. 1 had a real interest in the property he was not very likely to enter into a compromise surrendering all his rights. The question

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whether the merits of the defendant no. 1's case in the title suit were such that he was unlikely to enter into a compromise is a question only remotely relevant to the determination of the point at issue before us, namely, whether he actually did enter into the compromise. But assuming that this line of reasoning might be available to the defendant, it is not shown whether the Rs. 5,000 and odd which were paid to the decree-holder in that case actually came from funds of the defendant no. 1 or from elsewhere. The plaintiff for instance might have been inclined to settle with the defendant by providing him with the means of satisfying that decree. This is a matter on which evidence has not been gone into and it is unnecessary to speculate. At any rate, I am not inclined to accept the bare word of the defendant that he sent this large sum through his karpardaz, and apart from that there is nothing in the record to prove that the defendant could not have had sufficient inducement to have entered into the alleged compromise. The direct evidence to my mind clearly establishes that he did enter into that compromise and the finding of the Subordinate Judge is quite correct.

I would dismiss the appeal with costs. Let the record be sent down to the lower court at once for further proceedings in the suit.

KHAJA MOHAMAD NOOR, J.—I agree.

*Appeal dismissed.*

### APPELLATE CIVIL.

*Before Khaja Mohamad Noor and Varma, JJ.*

RUCHWAR LIME AND STONE COMPANY

v.

SECRETARY OF STATE FOR INDIA IN COUNCIL.\*

*Lease—assignment—construction—forfeiture clause,  
whether should be construed strictly—contract to assign a*

\* Appeal from Original Decree no. 68 of 1935, from a decision of Rai Sahib Bhuneshwar Prasad Pande, Subordinate Judge of Shahabad, dated the 7th March, 1935.

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2, 5.  
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