

MISCELLANEOUS CIVIL.

Before Coldstream and Bhide JJ.

RAMZAN AND OTHERS (PLAINTIFFS) Petitioners

versus

GOPAL DAS, DECEASED, REPRESENTED BY JAITHA
NAND AND OTHERS (DEFENDANTS) Respondents.

Civil Miscellaneous No. 143 of 1935.

Advocate — authorised only to plead for a litigant — without a power of attorney — whether can compromise the case — Civil Procedure Code, Act V of 1908, Order III, rule 4.

Held, that although an Advocate or Vakil may not act on behalf of any person without a power of attorney, he may plead for any person without such power of attorney on filing in Court a memorandum of appearance.

And, such Advocate may agree to a valid and binding compromise without any power of attorney, as the power to compromise is inherent in the position of an Advocate in India.

Sourendranath Mitra v. Tarubala Dasi (1), relied upon.

Rules and Orders of the High Court, referred to.

Petition for review of the judgment passed by Coldstream and Bhide JJ. in C. A. No. 791 of 1930, on 27th November, 1934, modifying that of Mir Ghulam Yazdani, Senior Subordinate Judge, Multan, dated 20th January, 1930, and granting the plaintiffs a decree in terms of the compromise.

MOHAMMAD ALAM, for Petitioners.

ACHHRU RAM and INDAR DEV, for Respondents.

The judgment of the Court was delivered by—

COLDSTREAM J.—This is a petition submitted by four persons through Mr. Mohammad Alam for review of the judgment of this Court in First Appeal No. 791

of 1930, delivered on the 27th of November, 1934, modifying a decree passed in favour of those four persons by the Senior Subordinate Judge at Multan. The four petitioners were the plaintiffs in the suit in which the decree was passed by the Senior Subordinate Judge. That decree had ordered that a certain entry in the record of rights of the village to which the parties belong should be amended by the substitution of the words '*abadi deh*' for the words '*abadi chah*' in the revenue records. Against that decree the defendants in the suit appealed to this Court on the 24th of April, 1930. After an adjournment had been granted on the understanding that there was some chance of a compromise, the counsel appeared before us on the 27th of November, 1934, and declared that the dispute had been compromised and that the parties were agreed that a decree should be passed declaring that the entry in the land revenue records '*abadi chah*' which replaced the earlier entry '*abadi deh*' would not affect the rights of the plaintiffs, whatever those rights were before the new entry was made. In view of this declaration this Bench accepted the appeal and passed a decree in the terms of the compromise as described to us.

It is necessary to notice here that the four petitioners had conducted the suit in the Court of the Senior Subordinate Judge as representing a large body of residents of the village Kothewala.

It is contended before us by Mr. Mohammad Alam on the petitioners' behalf that our judgment of the 27th November, 1934, should be reviewed on the ground that the petitioners' counsel, Mr. Ghulam Mohy-ud-Din, had not been authorised by them in writing to compromise on the terms stated to have been

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agreed upon and incorporated in the judgment of this Court.

There is upon the record no instrument in writing authorising Mr. Ghulam Mohy-ud-Din to act or appear in the suit or appeal. There is, however, no doubt that he was the counsel for the petitioners, on whose behalf he had submitted the list of documents which they desired to have printed for the purpose of the appeal, and on whose behalf he appeared before us at least on two occasions. It is not denied that Mr. Ghulam Mohy-ud-Din was the petitioners' counsel, and indeed the petition itself refers to him as such.

In support of his contention that the absence of any instrument in writing is an error apparent on the face of the record justifying interference in review, Mr. Mohammad Alam has referred us to Order III, rule 4 of the Civil Procedure Code, and to the rules framed by the High Court in their Rules and Orders, Volume V, Chapter 6-B, "Powers and duties of Advocates and Vakils." These rules reproduce generally the provisions of the Code of Civil Procedure. They forbid any Advocate or Vakil to *act* for any person in any Court unless he has been appointed by an instrument in writing as required by Order III, rule 4 of the Code of Civil Procedure. But they do not forbid an Advocate or Vakil to *plead* on behalf of any person without a power-of-attorney. An Advocate or Vakil engaged for the purpose of pleading only must, according to these rules, file in Court a memorandum of appearance. On behalf of the respondents it is argued by Mr. Achhru Ram that the power to compromise an appeal is an implied power inherent in the position of an Advocate in India and, therefore, no power-of-attorney is necessary to empower a counsel to

agree to a valid and binding compromise. In support of this argument he has referred to *Sourendranath Mitra v. Tarubala Dasi* (1) where the Privy Council has discussed the question at some length and given cogent reasons for laying down this proposition. In face of this judgment it must, I think, be held that the power to compromise may be validly exercised by an Advocate who has been authorised only to appear.

It follows that Mr. Ghulam Mohy-ud-Din was competent to enter into a valid compromise on behalf of his clients, even in the absence of a power-of-attorney. The absence of a power-of-attorney in such circumstances would be no more than an irregularity which would not affect the validity of the compromise and the decree passed upon it.

We dismiss this petition accordingly with costs.

A. N. C.

Petition dismissed.

(1) (1930) I. L. R. 57 Cal. 1311, 1317 (P. C.).

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