(1944) 02 AHC CK 0002

Allahabad High Court

Case No: Section 115 Application No. 56 of 1942

Mehdi Hasan Mirza and Others		APPELLANT
	Vs	
Gokul Chand and Others		RESPONDENT

Date of Decision: Feb. 23, 1944

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 115
- Encumbered Estates Act, 1934 - Section 46

Hon'ble Judges: Misra, J; Bennett, J

Bench: Division Bench

Advocate: Hyder Husein and Abid Husain, for the Appellant; Akhtar Husain, for the Respondent

Final Decision: Allowed

Judgement

Bennett and Misra, JJ.

This is an application u/s 115 of the CPC read with Section 46 of the Encumbered Estates Act. It is directed against an order passed by the Special Judge 1st grade, Bara Banki, dated the 23rd December, 1941, amending a decree passed on the 1st September, 1937, by agreement between the parties. The amendment was made with reference to the provisions of Clause (iv) of Sub-section (1) of Section 20A and the Explanation to Section 14(5) of the Encumbered Estates Act, these provisions having been added to that Act by the amending Act of 1939 (Act XI of 1939).

2. The decree-holders, who are the opposite-parties in this application, originally preferred a claim against the applicants, who were the applicants u/s 4 of the Encumbered Estates Act, for a sum of Rs. 14,174-13-0 on the basis of a decree for Rs. 10,089-6-0. This decree was passed in a mortgage suit, the mortgage debt incurred on the 30th September, 1912, being for Rs. 2,000 only.

3. The parties entered into a compromise before the Special Judge, and the decree-holders agreed to accept a decree for Rs. 4000 plus Rs. 514/8 costs of the

mortgage suit, with pendente lite and future interest at 4 per cent from the 1st September, 1937.

4. Application was made for amendment of this decree on the 29th November, 1939. In this application it was stated that under the terms of the mortgage deed the amount due to the applicant on the 31st December, 1916, was Rs. 2743-5-3, and it was asked that a sum of Rs. 1486-10-0 with costs and future interest be added to the amount decreed. This application was made in view of the new provisions inserted in Sections 14 and 20A of the Act by the Amending Act of 1939. Subsequently another application was made raising the question of interest for the period from the 22nd July, 1929, the date when the preliminary decree was passed, and the 29th February, 1936, when the application was made under the Encumbered Estates Act.

5. We are not concerned with this later application. It was allowed and the decree-holders were awarded future interest at 41/2 per cent for this period, a decision which is in accord with decisions of this Court that for the purposes of applying the damdupat principle the Special Judge who passes the decree under the Encumbered Estates Act must look to the date of the decree in considering the effect of Section 14 and 15.

6. The Special Judge also allowed the application for amendment u/s 20A(1)(iv).

7. The explanation added to Section 14(5) reads as follows:

"Interest which on or before December 31, 1916, became part of the principal under the express terms of the original contract shall, for the purposes of this section, be deemed to be principal."

Section 20A(iv) reads:--

"(Notwithstanding anything in this Act or any order passed in any proceedings under this Act),--

"If in the determination of any claim under the provisions of Section 14 any interest has not been treated as principal solely on the ground that it was converted into principal on December 31, 1916, or on the ground that it was converted into principal on or before December 31, 1916, in accordance with an express term in the original contract the amount due under such claim shall be redetermined in accordance with the provisions of this Act."

8. The Special Judge was of opinion that the claimants accepted Rs. 4000 as the principal amount in view of the construction which had been placed on Sub-section (5) of Section 14 prior to the addition of the Explanation. The view previously taken was that this Sub-section did not apply where the interest had been converted into principal in accordance with the terms of the original contract. This being the reason in his opinion why the claimants agreed to accept Rs. 4000 only he held that they were entitled to ask for redetermination of their claim under Clause (iv) of Section

20-A, notwithstanding the fact that the decree was a compromise decree. He accordingly increased the sum of Rs. 4,000 to Rs. 5,288 with future interest on this sum from the 22nd July, 1929, to the 29th February, 1936, with proportionate costs, and pendente lite and future interest at 4 per cent.

9. This order has been challenged, as stated, only on the point whether the Court below was justified in amending the decree u/s 20-A, the addition of interest for the period from the 22nd July, 1929, to the 29th February, 1936, not being disputed.

10. We have heard arguments at some length on the point whether the necessary condition precedent existed for the application of Clause (iv) of Section 20-A so as to confer jurisdiction on the Special Judge to amend the decree. As we have shown the Special Judge was of opinion that the reason why the claimants were willing to accept Rs. 4000 was that there was at that time reason to think that they could not claim more. Learned Counsel for the applicants has argued both that there was no determination of any claim when the compromise decree was passed, and also that the finding of the Court below as to the reason for the acceptance of Rs. 4000 by the claimants is not warranted because it is based solely on surmise. There is nothing on the record to show why they did accept this amount, and learned Counsel argued that there may have been other reasons. With neither argument are we inclined to agree. Having regard to the nature of the definition of "decree" in Section 2 of the Code of Civil Procedure, we have no doubt that when the decree was passed there was a determination of the rights of the parties by the Court, for "decree" means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit. And as regards the reason why the claimants consented to take only Rs. 4,000, we see no reason to doubt the view adopted by the lawer Court, that being the only reason which it appears could have influenced them. There is nothing to show that any other reason existed.

11. But we do not consider that the fact that there was a determination of the claim or that the reason for the calculation was that accepted by the Court below is sufficient to dispose of the matter. It is clear that the determination of the claim must be a determination by the Court, and it is, therefore, equally clear that it is necessary for the purpose of this clause to ascertain whether in making that determination the Court was influenced by the consideration stated therein. If in fact it was only the parties who were influenced by this consideration, and not the Court, then we do not consider that the condition is satisfied. If the reason which influenced the Court in determining the claim is sought, it can, we think, only be the fact that the parties agreed to the sum stated. Upon their expressing their agreement there was no reason why the Court should have considered the question further, even though, as the record shows, it had perused the pleadings. The agreement of the parties was the clear foundation for the decree, and there was no reason why on this agreement the Court should have considered the effect of the

provisions of Sub-section (5) of Section 14.

12. On the question of the effect of a compromise decree we were referred to the Privy Council case of Rajunder Narain Rae v. Bijai Govind Singh (1838) 2 Moo. Int. App, 181 where it is said with reference to a sulehnama that it is not an instrument declaratory of the rights, but of the claims of the parties; it is an agreement to compromise conflicting and doubtful interests. It does not profess to investigate or decide, but to waive the decision of the strict rights of the parties, and to settle the amount each party is to receive, for the Sake of certainty and peace. It follows that where parties have agreed to settle their disputes by a compromise decree, it is not for the Court to consider whether that decree is in accordance with their legal rights.

13. In the Madras case of Raja Kumara Venkata Perumal Raja Bahadur v. That the Ramasamy Chetty (1910) 33 Mad. 75 at p. 80 it was said:

"The basis of a compromise decree is of course a contract between the parties to the litigation and the principles applicable to contracts would often have to be considered in determining the rules of estoppel applicable to such decrees; at the same time such a decree can not be regarded as a mere contract, and has got a sanction far higher than an agreement between parties. The arrangement between them is adopted by the Court and acquires all the solemnity of a judicial pronouncement. The parties to the decree can not, therefore, put an end to it at their pleasure in the manner that they could rescind a mere contract."

14. Learned Counsel for the opposite parties contended that the determination was really a determination of the parties. We are clearly of opinion that the decree cannot be regarded in this light. He referred us to cases such as Huddersfield Banking Co. Ltd. v. Honry Lister and Son Ltd. (1895) 2 Ch. 273, Wilding v. Sanderson (1897) 2 Ch. 534 at 543 and Aushootosh Chandra v. Tara Prasanna Roy (1884) 10 Cal. 612, which show that decrees can be amended in cases of Fraud, misrepresentation or mistake, whether by suit or on an application in review; but we have not been shown any authority for the view that where there has been a mutual mistake of law, and not one of fact, amendment would be justified. Learned Counsel did not in fact attempt to support the order of amendment purely on such general grounds, but sought to reinforce from them his argument that Clause (iv) of Sub-section (1) of Section 20A was applicable. We are unable to see how they help when the provisions of the clause are clear.

15. For the reasons we have given we are of opinion that Clause (iv) of Sub-section (1) of Section 20-A has no application to the facts of the case, and that consequently the Special Judge had no Jurisdiction to amend the decree, except as regards the addition of interest for the period from the 22nd July, 1929, to the 29th February, 1936.

16. We accordingly allow this application with costs and setting aside the order of the Special Judge we restore the original decree for Rs. 4,514-8-0 adding thereto

interest thereon at 4 1/2 per cent for the 22nd July, 1929, to the 29th February, 1936, and allowing pendente lite and future interest at 4 per cent.