(1966) 04 AHC CK 0009

Allahabad High Court

Case No: Second Appeal No. 4857 of 1961

Jokhan		APPELLANT
	Vs	
Ram Deo and Others		RESPONDENT

Date of Decision: April 15, 1966

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3

Citation: AIR 1967 All 212

Hon'ble Judges: Gangeshwar Prasad, J

Bench: Single Bench

Advocate: M. Asif Ansari, for the Appellant; Raja Ram Agrawal, for the Respondent

Final Decision: Allowed

Judgement

Gangeshwar Prasad, J.
This is a defendant''s second appeal arising out of a suit in respect of some plots of agricultural land.

2. One Sheo Raj was a hereditary tenant of the plots, in suit before the enforcement of the U. P. Zamindari Abolition and Land Reforms Act. He died leaving behind his widow Smt. Sirtaji as his heir. On 18-5-1954 Jokhan defendant, who is a collateral of Sheo Raj, filed suit No. 706 of 1954 in the revenue Court u/s 59/61 of the U. P. Tenancy Act of 1939 impleading Smt. Sirtaji as a defendant. He alleged that the plots in suit were his hereditary tenancy and sought a declaration to that effect by the Court. The suit was decreed on the basis of an admission of Jokhan''s claim purporting to have been made by Smt. Sirtaji. On 28-6-1954 Nandan, father of the respondents, filed an application in suit No. 706 of 1954 for setting aside the decree passed in that suit, stating that Smt. Sirtaji had died before the institution of the suit, and that the admission of the plaintiffs'' claim purporting to have been made by Smt. Sirtaji was really made by an imposter set up by Jokhan himself. Subsequently, on 25-9-1954 Jokhan and Nandan filed in that suit an application in the nature of a

compromise and proved that the decree originally passed in the suit be set aside, Nandan be impleaded as a defendant and the suit be disposed of in terms of the compromise. It was stated in the application that the (sic) had agreed that Smt. Sirtaji was dead and the parties were her heirs. It was further stated that in fact Sheo Raj had surrendered the plots in favour of the zamindars who had thereafter settled the plots of List A in favour of Sarju, uncle of Jokhan, and those of List B in favour of Nandan, and that Jokhan, as heir of Sarju was in possession of the plots of List A and Nandan was in possession of the plots of List B. neither party having any right or interest in the plots shown in the list of the other party. A decree in terms of the compromise was passed on 21-10-1954. The present suit was filed by Nandan against Jokhan defendant in the civil Court for a declaration that be is Sirdar of the plots in suit and the decree dated 21-10-1954 passed in suit No. 706 of 1954 by the revenue Court is not binding on him. There was also an alternative prayer that in case the plaintiff was found to be out of possession over any of the plots in suit he may be put in possession. Nandan died shortly after the institution of the suit and the respondents, who arc his sons were brought on record in his place. The suit was decreed by the trial Court and its decree was confirmed by the lower appellate Court. The defendant has come up in appeal to this Court.

3. The grounds on which the validity of the decree passed in suit No 706 of 1954 was challenged were mainly these. Firstly, the revenue Court had no jurisdiction to entertain the suit and the decree passed by it was therefore, a nullity. Secondly, the decree was vitiated by fraud inasmuch as it had been agreed between the parties to the compromise that the plots of List A belonged to Nandan while plots of List B belonged to Jokhan fraudulently contrived to gel the lists mentioned in the reverse order The plaintiffs, however, claimed to have continued in possession of the plots in suit. Briefly stated the defence was that no fraud had been practised by the defendant, and that the compromise filed in Court was in accordance with what had been agreed to by the parties and was binding on them. It was also pleaded that the suit was barred by the provisions of Section 11 C. P. C. and Section 116 of the Evidence Act.

4. The findings of the Courts below are to the following effect. Sheo Raj never surrendered any of the disputed plots and they devolved upon Smt. Sirtaji after the death of Sheo Raj, and then upon Nandan after the death of Smt. Sirtaji. Jokhan defendant, who claimed to have been in possession of the disputed plots even during the life time of Sheo Raj and Smt. Sirtaji, was in possession not on his own account but on behalf of Sheo Raj and Smt. Sirtaji as their helper in cultivation and he did not, therefore, acquire any right or interest in any of the plots. Smt. Sirtaji had died on 8-4-1954 and the suit was, therefore, instituted against a dead person. The suit was also not entertain able by the revenue Court because on the allegations made by Jokhan he could only claim Sirdari rights after the enforcement of the U. P. Zamindari Abolition and Land Reforms Act, and a declaration of such rights could have been granted only by the civil Court at the time of the institution of the suit.

The compromise decree having been passed by a Court without jurisdiction was a nullity. Further, the decree amounted to a transfer of the land held by Nandan as a Sirdar and was as such invalid. The Courts below have, however, found that actual possession of the disputed plots is with the defendant, as it was with him in the life lime of Smt. Sirtaji. They have also found that the allegations of fraud made by the plaintiffs have not been established.

5. There can be no doubt that the revenue Court had no jurisdiction to entertain suit No. 706 of 1954. Hereditary tenancies had come to an end and irrespective of any imaginary or real cause of action alleged to have accrued to the plaintiffs of that suit before the enforcement of the U. P. Zamindari Abolition and Land Reforms Act, no suit for declaration u/s 59/61 of the U. P. Tenancy Act of 1939 could have been instituted. It is sufficient in this connection to refer to the Division Bench decision of this Court in Shital Prasad v. Board of Revenue. 1962 All LJ 90. The decree passed by the revenue Court in suit No. 704 of 1954 must, therefore, be regarded as totally devoid of all force and effect and it can neither bar the present suit nor be made the basis of any claim in respect of the properly to which it related.

6. From this it does not, however, follow that the compromise as distinct from the decree passed on its basis is also devoid of all force and effect It is apparent from the judgments of the Courts below that they thought that the compromise would stand or fall with the decree in which it was embodied, and it cannot remain intact even as a compromise if the decree based on it is found to be altogether lacking in validity. Here the Courts below have been in error.

7. It is well established that a compromise decree has, no greater validity than the compromise on which it is founded and the decree remains subject to all the incidents of the agreement which it adopts. A compromise decree has accordingly been described as only a contract with the command of a Judge superadded to it. It follows as a corollary from this proposition that while the invalidity of a compromise would destroy the validity of the decree based on it, the invalidity of the decree would not necessarily destroy the validity of the compromise. If the Court which attached its command to the decree was not competent to do so, the compromise would still retain its character of a contract and would not lose its force and effect as such on account of not having acquired or having been deprived of that strength which the command of the Court had purported to add to it. In Shadi Ram v. Amin Chand AIR 1930 Lah 937, it was held by a learned Judge of the Lahore High Court that a compromise which has merged in a decree does not become extinct upon the decree being set aside. Likewise, a compromise does not become extinct on account of having, merged in a decree which is found to be without jurisdiction, but survives the extinction of the decree and continues to have the legal force and effect which it would have had if it had not been incorporated in a decree.

8. The position, therefore, is that the compromise in question remains to be judged as a compromise and its effect remains to be determined on that basis. As has been

noted above, the Courts below have held that apart from the fact that the decree was passed by a Court having no jurisdiction there is another reason for holding the compromise decree to be a nullity, namely, that it amounted to a transfer of the interest of a Sirdar. It may be taken that what was meant was that the compromise itself was vitiated on account of being a contract forbidden by law or of being of such a nature that, if permitted, it would defeat the provisions of law. But here again there was a mistake. The compromise did not purport to be a transfer but only an acceptance and recognition of pre-existing rights. On this aspect of the case I can do no better than refer to the decision of the Supreme Court in Ram Charan Das Vs. Girjanandini Devi and Others, . In that case a family settlement was sought to be impeached inter alia, on the ground that it amounted to a transfer prohibited by Section 37 (a) of the U. P. Court of Wards Act, 1912. With reference to this objection to the validity of the family settlement Mudholkar, J. speaking for the Court, observed:

"Here the transaction in question is a family settlement entered into by the parties bona fide for the purpose of putting an end to the dispute among family members Could it be said that this amounts to a transfer of or creation of an interest in the property?"

Further on his Lordship said:

"In the first place once it is held that the transaction being a family settlement is not an alienation, it cannot amount to the creation of an interest. For, as the Privy Council pointed out in AIR 1914 44 (Privy Council) , in a family settlement each party takes a share in the property by virtue of the independent title which is admitted to that extent by the other parties. It is not necessary, as would appear from the decision in Rangaswami Gounden v. Nachiappa Gounden 46 I A 72: AIR 1918 PC 196, that every party taking benefit under a family settlement must necessarily be shown to have, under the law, a claim to a share in the property. All that is necessary is that the parties must be related to one another in some way and have a possible claim to the property or a claim or even a semblance of a claim on some other ground as, say affection"

I may also draw attention to an earlier passage in the judgment of his Lordship which is as follows:

"The consideration for such a settlement, if one may put it that way, is the expectation that such a settlement will result in establishing or ensuring amity and goodwill amongst persons bearing relationship with one another. That consideration having passed by each of the disputants the settlement consisting of recognition of the right asserted by each other cannot be permitted to be impeached thereafter".

9. The question that has really to be determined in the instant case is whether the compromise in question was a valid and binding family settlement and can be

upheld as such. Certainly in determining that question it has to be seen, in the light of the pleadings, evidence and circumstances, whether what the parties really intended was a transfer of some of the plots and they resorted to the device of giving a false appearance to the transaction in order to circumvent the law and to save it from the statutory prohibition against transfer. If such was the case the compromise was a mere camouflage and it cannot be regarded as a transaction ''entered into by the parties bona fide for the purpose of putting an end to the dispute among family members'' But otherwise, it cannot be treated as a transfer merely on the basis that on an investigation of the antecedent rights of the parties it is established that the property in dispute belonged in entirety to one of them only. Of course the compromise will have to satisfy the conditions of a valid family settlement, even if it did not amount to a transfer, before it can be held to be binding.

10. From what has been staled above it is clear that the case has not been approached from the correct point of view and an essential question involved in the case has not been decided The decision of that question requires a review of the whole evidence from a different perspective and it appears therefore, necessary to remand the case to the lower appellate Court for being decided afresh The findings on questions of fact and on the question of jurisdiction already recorded in the judgment of the lower appellate Court under appeal shall be accepted by the lower appellate Court on remand, and only the validity of the compromise filed in suit No. 706 of 1954 and its force and effect shall be decided in the light of the observations made above.

11. The appeal is allowed, the decree of the lower appellate Court is set aside and the case is remanded to the lower appellate Court for being decided afresh in accordance with the directions given above. Parties will bear their own costs in this appeal.