

(1950) 11 AHC CK 0031

Allahabad High Court

Case No: Civil Revision No. 49 of 1949

Ram Sarup

APPELLANT

Vs

Nanak Ram

RESPONDENT

Date of Decision: Nov. 27, 1950

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 8, Order 23 Rule 3

Citation: AIR 1952 All 275 : (1951) 21 AWR 155

Hon'ble Judges: Brij Mohan Lal, J

Bench: Single Bench

Advocate: Kartar Narain Aggarwal, for the Appellant; M.L. Chaturvedi, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

Brij Mohan Lal, J.

This is an application in revision by the plffs. They brought a suit as representatives of the Hindu community of the town of Hathras for an injunction restraining the opposite parties from making certain constructions round a well & a temple of Shiva. Permission of the Court was obtained under Order 1, Rule 8, Civil P. C. The suit was decreed by the trial Court, but an appeal was preferred against that decision by the opposite parties. While the case was pending in the appellate Court, the suit was compromised & a decree was passed accordingly.

2. Sometime afterwards, the plffs., who were respondents to the appeal, applied to the appellate Court to have the compromise decree set aside. It is significant that the application was not pressed before the learned judge on the ground that the compromise was fraudulent, collusive or improper. A suggestion had been made in the petition of objection that the lawyers had no authority to enter into the compromise; but that position also was given up before the learned judge. The only point that was pressed before him was that no compromise could be effected in a

suit, in which permission of the Court had been obtained under Order 1, Rule 8, C. P. C., without obtaining the Court's permission. It is this aspect of the case which has been argued before me.

3. I have heard the learned counsel for the applicants. In my opinion, there is nothing in law which requires the permission of the Court before any such compromise can be effected. Order 1, Rule 8, C. P. C. says nothing about securing any such permission. Order 23, Rule 3 C. P. C. which empowers the Court to record a compromise, is also silent about obtaining any such permission. Where-ever it was the intention of the law that such permission should be taken, it has expressly said so, e.g., in the case of minors (Order 32, Rule 7 C. P. C.).

4. The applicants were the representatives of the Hindu public for the purposes of the suit. It was open to any other person, who thought that his interests would not be safeguarded by the applicants, to come up before the Court & to apply to be impleaded as a co-plffs. If this was not done & the applicants were allowed to continue the proceedings, they represented the Hindu public for the purposes of the suit. If they entered into a compromise there is no reason why the compromise should not be binding. There was no reason for the Court to interfere or to exercise its own discretion as to the propriety or otherwise of the compromise, before recording the said compromise.

5. The learned counsel for the applicants has cited the case of "Jenkins v. Robertson I L R (1867) Sc. 117. This case was explained away in the case of "In re South American & Mexican Co., Ex parte Bank of England (1895) 1 Ch 37. It was pointed out therein that the case cited by the learned counsel for the applicants was a case under the law of Scotland. That case is no authority for the law in this country.

6. So far as the Indian law is concerned, the authorities are against the applicants' view. The case of "Krishnamachariar v. Chinnammal", 18 I C 369, was a case similar to the present one. There also the suit was one in respect of which permission had been taken u/s 30, Civil P. C. (Act XIV (14) of 1882) which corresponded to the present Order 1, Rule 8, C. P. C. In that case also the compromise was arrived at between the parties in the appellate Court. It was held that the compromise was binding & that the plffs. who had instituted the suit in a representative capacity had the authority to compromise.

7. A similar view was taken in the case of "Muthukaruppa Ethandar and Others Vs. Appavoo Nadar and Others,

8. In view of these authorities, I am of the opinion that the Court's permission was not at all necessary in order to make the compromise binding. The revision, therefore, fails. It is dismissed with costs.