Budha Lal Vs Sri Ram Chand

Court: Allahabad High Court

Date of Decision: Feb. 26, 1992

Acts Referred: Civil Procedure Code, 1908 (CPC) â€" Order 23 Rule 3

Citation: AIR 1992 All 360 : (1992) 1 AWC 525

Hon'ble Judges: D.S. Sinha, J

Bench: Single Bench

Advocate: S.C. Asthna, A.K. Sharma, B.K. Srivastava, R.K. Asthana and G.C. Bhattacharya, for the Appellant; B.D. Madhyan, for the Respondent

Final Decision: Dismissed

Judgement

1. This first appeal is directed against the judgment and order dated 17th May, 1982 passed by the VI Addl. District Judge, Agra in Civil Appeal

No. 165 of 1981 whereby the learned Judge has set aside the judgment and decree dated 11th March, 1981 rendered by the Munsif, Fatehabad,

Agra in Original Suit No. 420 of 1977 and remanded the case to the trial Court for deciding it afresh.

2. Ram Chand, the plaintiff-respondent, filed a civil suit for partition of the property mentioned in the Schedule "A" to the plaint. The defendant-

appellant filed his written statement resisting the claim of the plaintiff-respondent. The issues were framed and the plaintiff as well as defendant

entered the witness-box. During the course of their statements the plaintiff and defendant made a reference with regard to certain settlement/

compromise which had already been arrived at between them. The parties also made a reference to the terms and conditions of the aforesaid

settlement/compromise. The trial Court decided all the issues except issue No. 5 and gave findings thereon which are not relevant here. While

considering the issue No. 5, which related to the grant of relief to the plaintiff, the trial Court concluded that the suit had to be decreed in terms of

the stipulations of the alleged pre-existing settlement/compromise referred to by the parties in their statements. The trial Court, therefore, passed a

decree under R. 3 of 0. XXIII of the Code of Civil Procedure, 1908 hereinafter called the "Code".

3. The plaintiff-respondent felt aggrieved by the decree of the trial Court and preferred an appeal asserting that there was no valid

settlement/compromise between him and the defendant-appellant as envisaged by R. 3 of O. XXIII of the Code.

4. The lower appellate Court, after considering the facts and circumstances of the case and also examining various authorities of various High

Courts, came to the conclusion that the trial Court was not legally justified in passing the decree in terms of the stipulations of the alleged pre-

existing settlement/compromise referred to by the plaintiff and defendant in their statements. The lower appellate Court was of the view that if the

trial Court was satisfied about the settlement/ compromise, which it was according to the findings arrived at by it on issue No. 5, it should have

directed the parties to file a written settlement/compromise duly signed by them, ordered the same to be recorded and then passed a decree in

accordance therewith. The lower appellate Court being of the view that there was no written settlement/ compromise duly signed by the plaintiff

and defendant before the trial Court, it set aside the decree and judgment of the trial Court and remanded the suit to be tried afresh. Hence this

appeal.

5. The Court has heard Sri G. C. Bhattacharya, learned counsel for the appellant, and Sri B. D. Mandhyan, learned counsel for the respondent, at

length and in detail.

6. Sri Bhattacharya, learned counsel for the appellant, contends that the lower appellate Court fell in error in arriving at the conclusion that the

settlement/compromise ought to have been in writing and duly signed by the plaintiff and defendant. Alternatively, he submitted that the statements

of the plaintiff and defendant, which were in writing and duly signed by them ought to have been treated as a compromise under R. 3 of O. XXIII

of the Code.

7. After giving its anxious consideration to the submissions of Sri Bhattacharya, the Court is of the opinion that none of the contentions of Sri

Bhattacharya has force.

8. Rule 3 of Order XXIII of the Code says that where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by

any lawful agreement or compromise, in writing and signed by the parties, the Court shall order such agreement or compromise to be recorded and

shall pass a decree in accordance therewith. Existence and production of a written compromise between the parties duly signed by them is a must

for proceeding under R. 3 of O. XXIII of the Code.

9. Indisputably, no agreement or compromise in writing and duly signed by the plaintiff and defendant was produced before the trial Court. Merely

a reference of the alleged agreement or compromise already arrived at between them was made in their statements by the plaintiff and defendant.

The statements of the plaintiff and defendant cannot be treated to be the agreement or compromise notwithstanding the fact that the same is signed

by the plaintiff and defendant for the simple reason that by the statements the parties did not settle or adjust wholly or in part the claim in the suit.

What the parties stated in their statements was that there was a pre-existing settlement/ compromise and they were prepared to abide by it if the

conditions of the alleged settlement/compromise were satisfied. This did not satisfy the requirement of the provisions of R. 3 of O, XXIII of the

Code.

10. The contention of Sri Bhattacharya that it was not necessary for the settlement/ compromise, referred to by the plaintiff and defendant in their

statements, to be in writing, and signed by them, is contrary to the express provisions of R. 3 of O. XXIII of the Code. The said provisions

expressly provide for the agreement and compromise to be in writing and duly signed by the parties.

11. The controversy as to whether the agreement or compromise contemplated by R. 3 of O. XXIII of the Code ought to be in writing and duly

signed by the parties or not, has already been put to rest by the Hon''ble Supreme Court in its decision rendered in the case of Gurpreet Singh Vs.

Chatur Bhuj Goel, The Hon''ble Supreme Court has in paragraph 10 of the judgment occurring at pages 403-404 ruled as follows :

Under R. 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise

must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement

or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or

appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties

should be dispensed with. The Court must therefore insist upon the parties to reduce the terms into writing.

12. In view of the aforenoticed decision of the Hon''ble Supreme Court, there is no room to entertain any doubt with regard to the requirement of

the agreement or compromise being in writing and duly signed by the parties under R. 3 of O. XXIII of the Code. The settlement/compromise

cannot be acted upon under the said provision unless the same is in writing and duly signed by the parties.

13. For the foregoing reasons, the inevitable conclusion is that the impugned order is in conformity with law and it does not suffer from any such

infirmity as to invite interference by this Court. This appeal has no force and is dismissed; However, their will be no order as, to costs. The ad

interim order shall stand vacated.

14. The Registry is directed to transmit the record of the Court below forthwith. Further, in view of the fact that the suit giving rise to the instant

appeal is considerably old, the trial Court is directed to expedite, the disposal thereof.

15. Appeal dismissed.