

Maksudan Misra Vs Addl. District Judge and Others

None

Court: Allahabad High Court

Date of Decision: April 17, 2007

Acts Referred:

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

Citation: (2007) 3 AWC 3033 : (2009) 106 RD 377

Hon'ble Judges: S.U. Khan, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

S.U. Khan, J.

Heard learned Counsel for the parties.

2. O.S. No. 137 of 1975, Rameshwar Pande v. Surendra Misra and Ors. was decided on the basis of compromise on 24.3.1975 by IIIrd

Additional Munsif, Ballia (compromise was dated 23.3.1979). In the said suit, petitioner was one of the defendants. Respondents No. 5 to 8, who

were also defendants in the said suit, are real brothers of the petitioner. The only other defendant in the suit was Sheo Shanker Pande, respondent

No. 4. There were only these six defendants in the suit. Petitioner filed application for setting aside the compromise decree, which was registered

as Misc. Case No. 42 of 1979. Copy of the compromise or Judgment and decree passed on the basis of compromise have not been annexed

alongwith writ petition. The petitioner and one of his brothers had entered into compromise through their counsel Sri Ram Adhar Tiwari. The other

three brothers had themselves signed the compromise. The petitioner came forward with the case in his restoration application that he had not

signed the vakalatnama. The petitioner did not adduce any expert evidence in respect of his alleged signatures on the vakalatnama. The trial court

compared the admitted and disputed signatures of the petitioner and found both of them to be exactly similar. In the absence of expert evidence or

even in the presence of expert evidence, such course is open to the Court. The trial court/IIIrd Additional Munsif, Ballia, therefore rejected the

petitioner's application on 8.4.1982. Against the said order, petitioner filed Civil Revision No. 118 of 1982. The A.D.J., Ballia, dismissed the

revision on 13.2.1986, hence this writ petition.

3. The petitioner had also pleaded that he was in military service and in March, 1979, he had not come to Ballia for signing vakalatnama. For

signing vakalatnama, presence at the place, where vakalatnama has been filed, is not necessary. The trial court was perfectly justified in comparing

the signatures by himself. Moreover, none of the other four brothers of the petitioner ever raised any objection to the compromise decree.

4. It has been argued by the learned Counsel for the petitioner that by virtue of Order XXIII, Rule 3, C.P.C. as amended through C.P.C.

Amendment Act, 1976, it was necessary that the compromise should have been signed by the petitioner himself, hence compromise signed by the

advocate was not sufficient. The argument is not tenable. Supreme Court in Rachakonda Venkat Rao and others Vs. Late R. Satya Bhai, by

L.R's. Smt. Rajkumari and others, has held that the said amended provision does not apply to the suits, which were pending at the time of the

aforesaid amendment. The instant suit was filed in the year 1975, hence amended provision was not applicable. By virtue of Explanation added to

Order XXIII, Rule 3, C.P.C. by Allahabad High Court w.e.f. 31.8.1974 along with other amendment in the main rule, it was provided that

compromise included a Joint statement of the parties concerned or their counsel recorded by the Court.

5. Accordingly, I do not find any error in the impugned orders. Writ petition is dismissed.