

(2006) 05 AHC CK 0277

Allahabad High Court

Case No: Second Appeal No. 2722 of 1977

Lajja Ram Lalam (since deceased)
represented by Smt.
Chandramukhi and Others

APPELLANT

Vs

Kanhai Chandra and Others

RESPONDENT

Date of Decision: May 26, 2006

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3
- Registration Act, 1908 - Section 17, 17(1), 17(2)

Citation: (2006) 4 AWC 3229 : (2006) 4 CivCC 8

Hon'ble Judges: Sunil Ambwani, J

Bench: Single Bench

Advocate: S.S. Nigam, H.S. Nigam and K.C. Saxena, for the Appellant; Ganga Prasad, J.N. Chatterjee, A.N. Bhargava and Anshu Chaudhary, for the Respondent

Final Decision: Dismissed

Judgement

Sunil Ambwani, J.

Heard learned Counsel for the parties.

2. This second appeal arises out of O.S. No. 508 of 1970, Raska Nand v. Lajja Ram, for specific performance of contract. The suit was decreed on 27.5.1976. The Civil Appeal No. 141 of 1976 arising, thereof was dismissed with directions to defendant-appellant to execute sale deed within six months, of the constructed building in accordance with the terms and conditions of the compromise dated 14.3.1969, in default whereof the deed shall be executed through Court, at the cost of defendant-appellant.

3. The facts giving rise to the suit in brief are that the plaintiff and Brij Bihari were owners of Khasara plot No. 211 with an area of 1.65 acres, Thok Dusayat Patti Shamlat. The plaintiff filed a suit in 1946. Raska Nand v. Brij Behari for partition. The

property scheduled in the plaint fell in the share of the plaintiff and he got possession over it in 1949. A portion of the property was taken by the State Government for which the plaintiff got compensation. There was a bagicha, a puce a building, a well, a pit and a samadhi in the disputed property. The plaintiff executed a sale deed in favour of the defendant of a part of the plot. The plaintiffs are also owners of a part of the building shown in red colour and a land shown in white in the plaint map.

4. The defendant purchased part of plot No. 211 and part of building from Brij Behari, etc. and got a sale deed executed in their favour. The Police Department and Municipality took specific portions of the building on rent. The Police Department established a police outpost in a portion and Municipality established an octroi post in a tin shed. The Municipality paid rent to the plaintiff whereas rent of the police outpost at the rate of Rs. 10 per month was collected by defendant for three years. He did not pay the plaintiffs share of the rent.

5. The plaintiff filed a Small Cause Court Suit No. 55 of 1968 for recovery of rent. In this suit the parties entered into a compromise on 14.3.1969, the terms of which were as follows :

(A) The plaintiffs and the defendants were co-sharer of the building in which police out post exists and each of them had 1/2 share.

(B) The plaintiffs, within six months, will pay Rs. 800 to the defendants of his share and then they will become owner of the building and land of plot No. 211 and will be entitled to recover rent from police department. The defendant will recover rent from Police Department of the out post building till the plaintiffs pay him Rs. 800 his share.

(C) If the plaintiffs fail to pay Rs. 800 to the defendants within time, their suit will be dismissed and they will have no title or ownership In the disputed property.

6. The Court verified the compromise on 12.2.1970. The plaintiff deposited Rs. 800 in the Court on 30.4.1970 and moved an application with a prayer that the sale deed be executed in their favour according to the compromise. The application was dismissed with remarks "As there is no entry in writing on the part of the defendant to make registration (ineligible) of the plaintiffs." The plaintiffs alleged that if his right is not accepted then the plaintiffs are at least entitled to recover the rent of their share from the defendant and the position of the parties will be that of, before filing of the compromise.

7. The defendant contested the suit alleging that he Is the owner of the building of which Police Department is the tenant. He does not know whether the plaintiffs recovered rent from Municipality for octroi post. The terms of the compromise should have been complied with by the plaintiff treating the date of deposit w.e.f. 14.3.1969 and not from 12.2.1970. There was no such agreement between the

parties which binds the defendant to execute the sale-deed In favour of the plaintiffs. The defendant also took the plea of under-valuation and payment of insufficient court fees.

8. The trial court held that the defendant recovered rent for three years from the Police Department at the rate of Rs. 10 per month. The compromise dated 14.3.1969 in Small Cause Court suit was effective only from the date when it was verified by the Court under Order XXIII, Rule 3, C.P.C. The subject-matter of the suit is rent and not extinguishment of the rights of the parties. The compromise, therefore, could be arrived at even in the Court of Judge, Small Cause and that under the compromise, which is in effect an agreement between the parties, on the payment of Rs. 800 by the plaintiff within six months, he will become owner of the entire building. The agreement was nothing but a contract, and that the contract came into force from the date the Court verified it. The date from which six months were to run was not given in the compromise. This date in any case would not fall before the date the compromise was verified and became effective. The trial court thus held that the period of six months will run from 12.2.1970 and not from 14.3.1969 and that since the plaintiffs had paid Rs. 800 within six months from 12.2.1970, he is entitled to a decree of specific performance of contract. The law requires registration of documents of the value of more than Rs. 100 of immovable property u/s 17 of the Registration Act, and thus the sale deed shall be registered.

9. The appellate court confirmed the findings of the trial court. It further held that the suit was not undervalued and that the court fees paid was sufficient. The compromise was a contract and will come into force with effect from the date when it was verified and accepted by Judge, Small Causes Court. The compromise preserved and protected the interest of both the parties and was an agreement, which could be enforced. The appellate court further held that the plaintiffs-respondent have established that they were ready and willing to perform their part of the contract. The right and title in the building will not pass through the compromise as the suit was only for arrears of rent. The Judge, Small Causes Court did not have jurisdiction to decide the question of title and of relinquishment of the title. Further the want of registration of compromise deed will not make it unenforceable against plaintiffs-respondent. The plaintiffs, however, have a right for specific performance of the contract and also for declaration that the compromise decree is not binding upon them in so far as the same is in adjudication of the rights and title to the building construction. The findings and the conclusion drawn by the trial court were confirmed and the appeal was dismissed with direction to execute the sale deed within six months, failing which the sale deed shall be executed through Court.

10. Learned Counsel for the appellant has raised following substantial questions of law to be considered in this appeal :

(i) Whether the Judge, Small Causes Court has jurisdiction to verify and accept the compromise decree, which in effect amounts to relinquishment of the title and creating rights in favour of a party in the property in suit?

(ii) Whether the compromise entered Into between the parties in the Court of Judge, Small Causes Court, takes shape of an agreement, which can be enforced by regular civil court in a suit for specific performance of contract?

(iii) In case the first two questions are answered in affirmative whether the date of payment of Rs. 800, which have begun to run from the date of compromise or the date when the compromise was verified by the Court?

11. Order XXIII, Rule 3 CPC provides for compromise of suit. Where it is proved to the satisfaction of the Court that the suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass decree in accordance therewith, so far as it relates to parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit. The Explanation to Rule 3 provides that an agreement for compromise, which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of the Rule. The Small Causes Court established under the Judge Small Causes Court provides for deciding the suits relating to properties where the relief claimed is of rent or eviction, does not ordinarily decide questions of title. The agreement however entered into between the parties settling the matter may not be in a nature, which is not the same as the subject-matter of the suit. If the agreement is otherwise lawful and is not a result of any fraud and misrepresentation, and the Court accepts the agreement, and disposes of the suit accordingly, the terms of the agreement bind the parties as a contract. Unless the terms of the contract necessarily involve execution of the deed of conveyance, the registration is not necessary for its enforcement.

12. The memorandum of the compromise became part of the orders of the trial court and the suit was disposed of in terms thereof: The Court should strictly enforce the terms. In *Salkia Businessmen's Association v. Howrah Municipal Corporation* AIR 2001 SCW 2922 the Supreme Court held that if Courts are not to honour and implement their orders, based on compromise, and encourage party litigants to invent methods, to short circuit and give a go-bye to the obligations and liabilities incurred by them, the rule of law will be a casualty.

13. In [Byram Pestonji Gariwala Vs. Union Bank of India and others](#), it was held that a compromise decree is binding, executable and operates as res judicata, even if it extends beyond the subject-matter of the suit. In [Bhoop Singh Vs. Ram Singh Major and others](#), , the Supreme Court held that where compromise decree creates new

rights, which require registration, it must be registered. Sub-section (1) of Section 17 of the Registration Act, 1908 mandates that the instruments enumerated in Clauses (a) to (e) shall be registered compulsorily if the property to which they relate is immovable property, the value of which is Rs. 100 or upwards. The exception in Clause VI of Section 17(2) is meant to cover that decree or order of a Court including a decree or order expressed to be made on a compromise, which declare the preexisting rights and does not by itself create new right, title or interest in the immovable property of the value of Rs. 100 or upward. The Court should examine each case whether parties had pre-existing right or whether under the order or decree of the Court one party aggrieved or suffered to extinguish the same and create right, title or interest in present in immovable property of value of Rs. 100 upwards in favour of other party for the first time, either by compromise or pretended consent.

14. In the present case the agreement was entered between the parties in the suit in the proceedings of the suit and thus the agreement could be enforced only with effect from the date when the agreement was verified by the Court. The plaintiffs had deposited Rs. 800 in terms of the agreement and was entitled to ownership of the building and the land in the tenancy of the Police Department. Since the ownership part of the compromise decree was not enforceable by Judge, Small Causes Court, the plaintiffs had to take recourse to file a suit for specific performance of contract, more so when the agreement provided for transfer of ownership rights, which were new rights created by compromise of more than Rs. 100 the deed required registration u/s 17 of the Registration Act.

15. The questions raised by the appellant are decided accordingly.

16. The second appeal is dismissed.