
(1922) 02 MAD CK 0010
In the Madras High Court

Alamelu Ammal

APPELLANT

Vs

Rama Aiyar and Another

RESPONDENT

Date of Decision : 22-02-1922

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151

Citation : (1922) 43 MLJ 290

Judgement

1. We have before us a Civil Revision Petition and an appeal against an order.
2. The appeal against the order can be dealt with shortly. The order in question is one regarding a compromise between the parties. Decree in terms of that compromise was passed later. It is impossible to see how there can be an appeal against the order, when it has become merged in the subsequent decree,
3. The appeal against the order must be dismissed with costs.
4. The Civil Revision Petition is against an order of the lower court refusing on the application of the plaintiff, here petitioner, to set aside the decree already referred to as passed in pursuance of the compromise. Unfortunately that application was headed as made u/s 151 of the CPC for the exercise of the inherent powers of the court, The lower court quite rightly refused to use its inherent powers in this case with reference to authority, including the dictum of Srinivasa Aiyangar J., in Arunachallam v. Sabapathy 33 M.L.J. 499 to the effect that the proper way to displace a decree in the circumstances alleged is by a review petition or a separate suit. It is urged before us that in fact the plaintiff petitioner is restricted to a separate suit; but although we find references in the authorities, including that already specified, to a separate suit as being the proper and

preferable way for the party to proceed, we cannot find, and have not been shown any reason for supposing that it is the only way open to him and

that if his case can be brought within the provision of the code relating to review, that method of proceeding also is not available to him. The fact

that the petition in the present case was headed as u/s 151 does not in our opinion debar us from proceeding with it under any other provision,

which we may find actually applicable.

5. To turn to the merits the plaintiff asked for the interference of the court on the ground that her signature to the compromise petition was given at

the instance, not of her opponent in the litigation, here respondent, but of one of her relatives who was acting as her agent, that she signed without

enquiring what the paper was and with the idea that they asked for her signature just as they previously thereto obtained her signature in connection

with the proceedings in the suit. Having signed in ignorance of what she was signing, she was surprised later to hear that the suit had been

compromised. She contends firstly that she cannot be bound by the signature thus obtained and that the facts referred to are Such new matter as is

contemplated in Order 47, Rule 1 of the Code of Civil Procedure. She has also put forward a contention with reference to the defendant's failure

to comply with one term of the compromise for the payment of Rs. 1000 cash. As regards that we need only say that it is for her to enforce the

decree, in which that term was embodied, and that the contention relating to it is irrelevant in the present connection.

6. Returning to the first contention which is relevant, that her having affixed her signature to the compromise at the instance of an agent in ignorance

of its contents vitiates it and that this is a new and important matter within the meaning of Order 47, Rule I we observe that her responsibility for the

compromise was the foundation of the decree, which was passed thereon, and that, if that foundation can be (as she contends) removed, clear

reasons for setting aside the decree would be made out. It seems to us that the matter is new; and it is certainly important and we are not prepared

at present to say that it was through any lack of diligence that she did not make any use of it in the trial before the decree was passed.

7. In these circumstances we are obliged to set aside the lower court's order and to remand the petition to it in order that it may deal with it as a

review petition on its merits. In doing so, we express no opinion as to the exact scope of the legal principles applicable to the plaintiff's present

contention. It will be for the lower court to ascertain by enquiry what facts she can prove and having ascertained them to apply to them the law. In

case the facts alleged in the affidavit are established and it is found that the plaintiff merely signed the compromise on misrepresentation of or in

ignorance of its meaning and without enquiring as to its meaning in consequence of her confidence in her agent, the question may arise whether

those considerations are sufficient to render the compromise void or voidable. On that question we do not propose at this stage to say anything.

We simply observe that it is raised by the facts as stated in the affidavit and that the answer to it and also to the question whether the facts stated in

the affidavit can be established by evidence will be for the lower court to consider.

8. In remanding the petition we observe that this aspect of it, as a petition for review, was never so far as appears pressed on the lower court. In

the circumstances we are constrained to direct the plaintiff to pay costs of the respondent defendant in the lower court and here to date. Costs

must be paid into the lower court before it disposes of the petition, a reasonable time for the making of the payment from the receipt of the records

in the lower court being fixed by it. If the payment is not made within that time, the lower court will be at liberty to dismiss the petition. If it is made,

it will proceed to deal with it on its merits in the light of the foregoing. The petitioner undertakes to pay the difference between the duty already

paid on her petition to the lower court and the duty payable on a review petition. She must make this payment into the lower court similarly with

the payment already directed of the respondent's costs. If she does not make the payment, the lower court will be similarly entitled to dismiss the

petition.