
(1979) 01 OHC CK 0001
In the Orissa High Court
Case No : Civil Revision No. 98 of 1978

Bhaja Govinda Maikap and Another	Vs	APPELLANT
Janaki Dei and Others		RESPONDENT

Date of Decision : 03-01-1979

Acts Referred:

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

Citation : AIR 1980 Ori 108 : (1979) 47 CLT 290

Hon'ble Judges : S. Acharya, J

Bench : Single Bench

Advocate : S. Misra, No. 1, for the Appellant; R.C. Patnaik, Amicus Curiae, for the Respondent

Final Decision : Allowed

Judgement

S. Acharya, J.—This Civil Revision is directed against the order dated 19-1-78 passed by the Subordinate Judge, Anandapur in Title Suit No. 8 of 1977 rejecting the compromise petition which had been filed in that court.

2. From the order dated 4-1-78. just preceding the impugned order dated 19-1-1978, it appears that as some properties which were not the subject matter of the suit were included in the compromise petition the court observed that the said compromise petition could not be entertained unless the properties beyond the subject-matter of the suit were deleted therefrom or the plaint was suitably amended to include these properties. On making the said observation the suit was adjourned to 19-1-78. On 19-1-1978, apart from other things, the court rejected the compromise petition as the plaintiffs by then had not amended either the compromise petition or the plaint in accordance with the court's above-mentioned previous observation dated 4-1-78. This revision has been filed against the said decision of the court below.

3. As the suit was filed on 31-1-77, the amended provisions of Rule 3 of Order 23, C. P. C. do not apply to this case. So this matter shall be governed by the

rule as it existed before the amendment of that rule by Central Act 104 of 1976 which came into force on and from 1-2-77.

4. The court below should not have rejected the compromise petition merely because the compromise petition included matters which did not relate to the suit. In such a case, the proper course for the court was to recite the compromise as a whole in the decree or in the form of a schedule to the decree for the purposes of reference, but to restrict the operative portion of the decree to the subject-matter which relates to the suit. This view gets support from the decisions reported in *Bimal Kumar Gayen and Others Vs. Amiya Gopal Mondal and Others*, ; *Vishnu Sitaram Auchat Vs. Ramchandra Govind Joshi*, and *Chandrasekhar Patel Vs. Ukiabati Patel and Others*, . In the Calcutta decision it has been observed :--

"..... the suit can be adjusted by lawful agreement or compromise only in respect of matters connected with or embraced within such proceeding and not of matters extraneous to it. The decree to be passed is to be in accordance with such compromise or agreement in so far as it relates to the suit. If however a compromise or agreement is entered into on matters relating to the suit as also on matters beyond the scope and ambit of the suit forming the consideration of the compromise, the court may pass a decree recording such compromise or agreement, but the decree will in effect be in so far as it relates to the suit and will be operative and executable to that extent. In respect of matters extraneous to the suit, the provisions of the decree will be and amount to an agreement between the parties binding and conclusive on them, to be enforced in a separate suit or proceeding, if considered necessary by any of the parties."

That being the law on the point, the court below should not have rejected the compromise petition, in its entirety, but should have acted as stated above. Accordingly, the impugned order dated 19-1-78 is set aside, and the court below is directed to deal with the compromise petition in the manner as stated above, and to dispose of the suit in accordance with law.

5. The Civil Revision is allowed. There will be no order as to costs.

6. The L. C. R. be sent back immediately.

7. As no body appeared for the opposite parties, Mr. R.C. Patnaik, Advocate, was requested to assist the court in this matter, and he rendered valuable assistance at the hearing of this Civil Revision.