
(1965) 10 SC CK 0024
In the Supreme Court Of India
Case No : C.A. No. 575 of 1963

Ganesh Prasad

APPELLANT

Vs

Lal Umashankar Pratap Narain Singh

RESPONDENT

Date of Decision : 12-10-1965

Acts Referred:

Citation : (1966) JLI 856

Hon'ble Judges : P.B. Gajendragadkar, C.J.;V. Ramaswami, J;M. Hidayatullah, J;K.N. Wanchoo, J

Bench : Full Bench

Advocate : S.N. Andly, for the Appellant; Jain Das, for the Respondent

Final Decision : Allowed

Judgement

P.B. Gajendragadkar, C.J.—This appeal by special leave arises out of a suit brought by the Appellant Seth Ganesh Prasad against the Respondent Lal Umashanker Pratap Narayan Singh, claiming to recover the amount due on a mortgage executed in his favour by the Respondent on October 27, 1948. The learned Additional District and Sessions Judge, Satna, who tried the suit, passed a decree in favour of the Appellant for Rs. 15,480 with proportionate costs.

2. The Respondent then challenged the said decree by preferring an appeal before the Madhya Pradesh High Court. The High Court has allowed the appeal, set aside the decree passed by the trial Court, and dismissed the Appellant's suit with costs. It is this decree which is challenged before us by Mr. Andley on behalf of the Appellant.

3. Before proceeding to argue on the merits (of the judgment under appeal), Mr. Andley invited our attention to the fact that his preliminary grievance was that the High Court should not have dealt with the appeal before it on the merits without enquiring into the question as to whether the dispute between the parties had been amicably settled or not. It appears that the appeal was argued before the High Court on September 29 and 30, 1959, and it was then reserved

for judgment. Before the judgment was pronounced, however, an application made by the Respondent on December 14, 1959, was received by the Registrar of the High Court. In this application, the Respondent had averred that he and the Appellant had arrived at a compromise and that, in consequence, no dispute remained between them. Accordingly, he requested that the High Court should pass an order dismissing his appeal with costs. This application was accompanied by an affidavit purporting to have been made by the Respondent.

4. When the Respondent's said application and the accompanying affidavit were brought to the notice of the High Court, the High Court refused to take any notice of the application on the ground that its presentation was not proper. This order was passed on December 23, 1959 and on the same day, the judgment against which the present appeal has been brought before us, was pronounced.

5. Mr. Andley contends that though the presentation of the application made by the Respondent may not have been proper, it was necessary in the interest of justice that the Court should have consulted the learned Advocates appearing for the parties and enquired from them whether they had received any instructions that the matter had been compromised. Where, as in the present case, an application purporting to have been made by the Respondent had been received by the Registrar of the High Court and it was accompanied by an affidavit, it was, we think, necessary and desirable that the High Court should have ascertained whether the compromise referred to in the application had in fact taken place or not. If the learned Advocates appearing for the parties had no information on this point, the High Court should have issued notices to the parties and considered the question whether the alleged compromise had taken place or not, or it might have sent the matter to the trial Court for holding the necessary enquiry. In any case, we think the High Court should not have been influenced by the irregularity of the presentation of the application to such an extent that it should have ignored the allegation made by the Respondent himself that the matter had been compromised.

6. Mr. Jain for the Respondent was not in a position to dispute the fact that the application in question had been signed by the Respondent; but he wanted to contend that the averments made in the application were not true and had not been made by the Respondent voluntarily and with full knowledge. On the other hand, Mr. Andley mentioned before us that the compromise had in fact taken place and a registered sale-deed had been executed in pursuance of the terms of compromise. We think in the interest of justice, it is necessary that the question about this alleged compromise should first be determined and only if it is shown that the compromise had not taken place as alleged in the Respondent's application to the High Court that the merits of the findings recorded by the High Court should be examined.

7. We accordingly direct that the application signed by Respondent along with the affidavit accompanying it should be sent to the High Court which should forward it to the trial Court to enable the said Court to hold an enquiry into the question

as to whether the alleged compromise has taken place or not. The trial Court should issue notices to the parties in respect of this enquiry and give them opportunity to lead evidence. Thereafter, the trial Court should make its own finding within two months from the date of receipt of this order and forward the same to this Court. Since the present litigation began as early as 1954, the trial Court should hold the enquiry expeditiously and forward its finding as early as possible. After the finding of the trial Court is returned, the present appeal should be set down for hearing. Costs of the enquiry will be costs in the appeal.