
(1996) 05 RAJ CK 0008

In the Rajasthan High Court

Case No : Civil Second Appeal No. 155 of 1995

Mahaveer Uchchya Prathmik Vidyalaya, Sardar Shahar

APPELLANT

Vs

Babu Lal

RESPONDENT

Date of Decision : 24-05-1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100, 105, 96
Societies Registration Act, 1860 — Section 2, 4

Citation : (1996) 2 RLW 225 : (1996) 3 WLC 65 : (1996) 1 WLN 277

Hon'ble Judges : R.R.Yadav, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.R. Yadav, J.—Facts leading upto this second appeal by the defendant-appellant, briefly stated, are that the plaintiff- landlord filed a suit for ejectment under the Rajasthan Premises" (Control of Rent and Eviction) Act, 1950 (hereinafter referred to Act No. 17 of 1950) against the defendant-tenant on the ground of default in payment of rent as well as on the ground that the premises are required reasonably and bonafidely by him and his family on 26.2.76. The defendant-tenant filed a written statement on 23.9.76 stating in para 2 that Sanwal Ram tenant took the premises on rent from Smt. Hukma Devi in the year 1957. After taking the premises on rent from Smt. Hukma Devi, he opened Mahaveer, Uchchya Vidyalaya which is recognised today upto Middle School and getting Grant-in-aid from the State Government. Rest of the allegations were denied. The plaintiff-landlord and defendant-tenant Sanwal Ram entered into compromise on 11.11.80 and the suit was decreed by the learned trial court on the basis of compromise entered into between the parties.

2. Defendant-appellant Mahaveer who is son of Sanwal Ram filed an appeal against the aforesaid decree dated 11.11.80 which was set aside by the learned lower appellate court on 2.8.85 and case was remanded back to the learned trial court with a direction to consider the validity of compromise after applying his

mind in the light of the mandatorily provisions contemplated u/s 13 of Act No. 17 of 1950. According to the order of remand dated 2.8.85 after examining the validity of the compromise within the meaning of Section 13 of the said Act, the learned trial court was free to pass a decree for ejectment on the basis of compromise or not to pass the same. The learned lower appellate court made it clear that parties are not required to adduce evidence.

3. Learned lower appellate court set aside the compromise decree dated 2.8.85 and remanded the case to the learned trial court after placing reliance on the decisions rendered by the Apex Court on the case of Ferozi Lal Jain Vs. Man Mal and Another, and Kaushalya Devi and Others Vs. Shri K.L. Bansal,

4. After remand, the learned trial court after analytical discussion of the materials available on record arrived at a positive finding that compromise entered into between the plaintiff-landlord and defendant-tenant Sanwal Ram is lawful and valid within the meaning of Section 13 of Act No. 17 of 1950, hence, a decree for ejectment on the basis of compromise was again passed by the learned trial court on 7.2.87.

5. Aggrieved against the decree dated 7.2.87 passed by the learned trial court, the defendant-appellant filed an appeal before the learned lower appellate court. Learned lower appellate court thoroughly re-examined the materials available on record and affirmed the finding recorded by the learned trial court to the effect that premises was let out to Sanwal Ram by late Smt. Hukma Devi in the year 1957 upon which, he established Mahaveer Uchchya Vidyalaya. Learned lower appellate court also examined validity of compromise dated 11.11.80 and came to the conclusion that the grounds for eject enumerated u/s 13 of Act No. 17 of 1950, are satisfied.

6. Aggrieved against the judgment and decree dated 31.5.95, this second appeal has been preferred by one Mahendra Kumar s/o Shri Mahaveer Prasad alleging himself to be Secretary of Mahaveer Uchchya Vidyalaya, Sardar Shahar, District Churu.

7. Thus, according to both the courts-below, Sanwal Ram was tenant of the premises in question who opened Mahaveer Uchchya Vidyalaya in the premises for earning his livelihood. Sanwal Ram being tenant of the premises was competent to enter into compromise with the plaintiff-landlord on 11.11.80. Both the courts-below recorded concurrent findings of fact to the effect that the compromise dated 11.11.80 was lawful and valid within the meaning of Section 13 of Act No. 17 of 1950. Learned lower appellate court, has recorded an additional ground for dismissing the appeal that on the date of agreement of tenancy in the year 1957 between the landlord and tenant, the institution has no juristic personality of its own.

8. The instant second appeal came up for admission in presence of learned counsel for the defendant-appellant as well as learned counsel for the plaintiff-respondent on 19.3.96 and in their presence, the following substantial questions

of law were framed by the Court:

1. WHETHER the pleading of the parties can be used as a positive evidence to arrive at a conclusion as has been done in the present case by the learned trial court?

2. WHETHER the order passed by the learned lower appellate court setting aside the decree based on compromise with specific direction attained finality if same was not questioned by the plaintiff-respondent by way of approaching to this higher court, if so its effect?

3. WHETHER the learned trial court was justified to go behind the direction given by the learned lower appellate court remanding the case which tantamount sitting in appeal by the trial court over the judgment of the appellate court?

9. With the consent of learned counsel for the parties, office was directed to list this second appeal for final disposal at admission stage.

10. For deeper understanding of the substantial questions of law formulated by this Court, learned counsel for the defendant was directed to produce Bye-laws and Scheme of Administration of the Institution to ascertain as to how Mahaveer Uchchya Prathmik Vidyalaya, Sardar Shahar, Dist. Churu can sue or can be sued. He was also directed to clarify whether the Institution is being run by the Society registered under the Societies Registration Act or it is being ran by an independent Committee of the Management constituted under the Rajasthan Non-governmental Educational Institutions Act, 1989.

11. In pursuance of the aforesaid order, the defendant- appellant moved an application, under Order 41 Rule 27 CPC and filed some photostat copies of the certificates which indicate that the present institution is being run by Shree Mahaveer Shiksha Samiti registered on 4.2.1958. He also filed a certificate about temporary and permanent recognition of the Institution upto Middle Classes from the Deputy Director Education, Bikaner. A photostat copy of the letter dated 26.5.54 indicates that Divisional Education Inspector, Bikaner informed to the Institution that he should form a Management Committee and collect funds for establishment of the Institution. The aforesaid communication further states that by this letter dated 26.5.54 recognition was granted to the Institution upto Fifth class. Photostat copies of the communication filed by the defendant- appellant have no bearing on the merit of the case and these documents do not speak how the Institution can sue or can be sued.

12. It is further mystery in the present case, why the defendant appellant is deliberately withholding to produce memorandum of association of Shree Mahaveer Shiksha Samiti registered on 4.2.58 as envisaged u/s 2 of the Societies, Registration Act, which clearly provides the names, addresses and occupations of governors, council, directors, committee, or other governing body to whom, by the Rules of the Society, the management of its affairs is entrusted. It is further mystery as to why the defendant-appellant even at the stage of

second appeal is deliberately avoiding to file annual list of managing body as contemplated u/s 4 of the Societies Registration Act, which clearly provides that every society*registered under the said Act is under legal obligation once in every year on or before fourteenth day succeeding the day on. which according to the Rules of the Society, the Annual General Meeting of the Society is held or if the. Rules do not provide for an Annual General meeting in the month of January, a list shall be filed with the Registrar of Joint Stock Companies, of the names, addresses and occupations of the governors, council, directors, committee or other governing body entrusted with the management of the affairs of the Society.

13. Indisputably, in the present case, the compromise had been entered into between the plaintiff-landlord and defendant tenant Sanwal Ram while appeal against the compromise decree dated 11.11.80 was filed by Mahaveer Prasad who is admittedly son of Sanwal Ram tenant alleging himself to be Secretary of the Institution. Learned lower appellate court without ascertaining the fact that who was Secretary of the Society on 11, 11.80 set aside the compromise decree dated 2.8.85 presuming Mahaveer Prasad to be the Secretary of the Institution is per se illegal and without, jurisdiction, [^earned lower appellate court should not have set aside the compromise decree dated 11.11.80 unless it was established before it that on the date of compromise dated 11.11.80 Mahaveer Prasad s/o Sanwal Ram tenant was functioning as Secretary of the Institution.

14. Suffice it to say in this regard that a man can speak lie but circumstance never speak lie. As a matter of fact, Sanwal Ram was tenant of the disputed premises who entered into a valid compromise with the plaintiff-landlord on 11.11.80. and when the learned trial court passed a decree for ejectment on the basis of compromise then he submitted to that compromise decree and instigated his son to file an appeal before the learned lower appellate: court claiming himself to be Secretary of the Institution. Learned lower appellate court without ascertaining about locus standi of the son as Secretary of the Institution, set aside the: compromise: decree and remanded the case to the learned trial court.

15. It is pertinent, to mention here that Mahaveer was not a party before the learned trial court, therefore, he has no locus standi to file appeal before the learned lower appellate court against the compromise decree dated 11.11.80 within the meaning of Section 96, CPC.

16. There is yet another reason to come to the aforesaid conclusion that if Mahaveer Prasad was elected as Secretary and he was functioning as Secretary on the date of compromise dated 11.11.80 then after his election as a Secretary, he ought to have moved an application for substitution of his name before the learned trial court in place of his father Sanwal Ram instead of doing that, he straightway filed an appeal against the compromise decree dated 11.11.80 and the compromise decree was set aside at his instance who has no locus standi to file, an appeal without proving himself to be elected Secretary of the Institution

under the Rules of the Society.

17. It is amusing to note that the present second appeal has not been filed by Mahaveer but it has been filed by Mahendra Kumar s/o Mahaveer Prasad now claiming himself to be the Secretary of the Institution without any proof when and how he was elected as Secretary of the Institution under the Rules or Bye-laws of the Society.

18. From the facts stated above, I am fully satisfied that to mimic in ridicule the lawful compromise decree passed in favour of the plaintiff-landlord by the learned trial court on 11.11.80 Mahaveer s/o Sanwal Ram contumaciously filed an appeal which was illegally set aside by the learned lower appellate court on 2.8.85.

19. This time, the present second appeal is not filed by Mahaveer s/o Sanwal Ram but it has been filed by Grand-son of Sanwal Ram namely Mahendra Kumar to hoodwink the. lawful decree for ejectment passed by both the courts-below on the basis of compromise, dated 11.11.80 which is not permissible under law. , In. fact, grand-son of Sanwal Ram has no locus standi to file the present appeal within the meaning of Section 100 CPC without, proving himself to be elected Secretary of the Institution under the Bye- laws or Rules of the Society.

20. The instant second appeal is concluded by concurrent finding of fact, therefore, it deserves to be dismissed on this ground alone. In my humble opinion, the concurrent findings of fact recorded by both the courts-below which are based on evidence cannot be interfered in the Second appeal. This Court cannot afford to allow Mahaveer s/o Sanwal Ram to file an appeal against the lawful compromise decree dated 11.11.80 and when he was non-suited by both the courts-below after giving Cogent and convincing reasons then Mahendra Kumar s/o Mahaveer cannot be allowed to file the present second appeal without proof when and how he was elected Secretary of the Institution. For the reasons stated above, the application moved by the present appellant under Order 41 Rule 27 CPC is hereby rejected.

21. Although, from the facts and circumstances stated above, the present second appeal is concluded by concurrent, findings of fact and as such is liable to be dismissed yet in my opinion, justice should not be done but it must appears to others .that it is being done, therefore, now I propose to decide the substantial question of law framed by this Court in seriatim:

SUBSTANTIAL QUESTION NO. I:

22. It is pertinent to note that Sub-section (1) of Section 13 of Act No. 17 of 1950 clearly provides that notwithstanding anything contained in any law or contract, no Court shall pass any decree or make any order in favour of a landlord whether in execution of a decree or otherwise evicting the tenant so long as he is ready and willing to pay rent to the full extent allowable by this Act unless it is satisfied on any of the ground enumerated therein. Section 13(1)(a)

of the aforesaid Act provides that if the tenant has neither paid nor tendered the amount of rent due from him from six months such tenant shall be liable for ejectment under the said Act. Similarly, Section 13(l)(h) of the aforesaid Act provides that ejectment decree against a tenant can be passed if the premises are required reasonably and bona fide by the landlord for the use or occupation of himself or his family. There are other grounds for ejectment which are not relevant for just decision of the case, therefore, hereby omitted.

23. It is true that Section 13 of Act No. 17 of 1950 is non- obstinate Section, which prohibits a court of law to pass a decree for eviction against a tenant from any accommodation unless one or more grounds enumerated under the said section are satisfied. Thus, in order to get a decree or order against a tenant whose tenancy is governed by Act No. 17 of 1950 the suit or must make out a case for eviction in accordance with the provisions of the Act. When the suit is contested, the issue goes to trial and a court of law passed a decree for eviction only if it is satisfied on evidence that grounds for passing such a decree in accordance with the requirements of the aforesaid Section have been established. Even if when the trial proceeds ex parte the court of law is under legal obligation to satisfy itself about existence of the grounds enumerated u/s 13 of the said Act for passing a decree for ejectment.

24. However, if the plaintiff and defendant choose to enter into a compromise due to some reasons best know to them, it is open to them to do so. In such a situation, only thing to be seen is that whether compromise is in violation of the requirement of the law contemplated u/s 13 of the said Act. The compromise must, indicate either on its face or in the back-ground of other materials in the case that the tenant expressly or impliedly is agreeing to suffer a decree for eviction because the landlord in the circumstances is entitled to have such a decree under the law. In such cases of compromise, the provisions of Order 23 Rule 3 CPC apply to eviction suits governed by Act No. 17 of 1950. If the compromise for the eviction of the tenant is found in the facts of a particular case to be in violation of Section 13 of the said Act, the Court would refuse to record the compromise as it will not be a lawful compromise. If on the other hand a court is satisfied on consideration of the terms of the compromise and if necessary by considering them in the context of the pleadings of the parties and other materials in the case to the effect that agreement is lawful then in such a situation, the court of law has no option except to pass a decree for eviction on the basis of compromise entered into between the landlord and tenant.

25. In the present case on hand, both the courts-below had looked into the contents of the compromise entered into between the plaintiff-landlord and defendant-tenant dated 11.11.80 which clearly indicates about the ground of eviction against the tenant as contemplated u/s 13(1)(a) as well as u/s 13(1)(h) of Act No. 17 of 1950. Both the courts-below have also looked into on the admission made by the defendant-tenant himself in his written statement. In my humble opinion, the facts admitted need not be proved and admission in the

present case of the tenant in his written statement is substantive piece of evidence and both the courts-below have committed no error in relying on the admission made by Sanwal Ram defendant-tenant in his written statement. Ordinarily, a court has to try the Us between the parties, at which, they are in variance and not on those points which they have admitted. Substantial question No. 1 is answered accordingly.

SUBSTANTIAL QUESTIONS NO. 2 AND 3 :

26. Both the questions No. 2 and 3 are inter-linked, therefore, they are dealt with together.

27. Learned counsel for the appellant vehemently argued before me that the order of remand passed by the learned lower court on 2.8.85 has attained finality between the parties since the plaintiff-landlord did not approach to the higher court. I am of the opinion, that in the present case, it is too late in the day to contend that the order of remand dated 2.8.85 in the present case has attained finality. Suffice it to observe at the risk of repetition that learned lower appellate court while setting aside the compromise decree dated 11.1.1.80 passed by the learned trial court vide judgment dated 2.8.85 has no jurisdiction to set aside the aforesaid decree at the instance of Mahaveer who was neither imp leaded as party before the learned trial court nor from any evidence on record, it was proved before the learned lower appellate court that he was elected Secretary of the Institution. Appeal u/s 96 CPC can be filed only by a person who was imp leaded as a party and not by stranger that too without satisfying the court that he was elected Secretary of the Institution. Since, learned lower appellate court while setting aside the compromise decree dated 2.8.85 lack inherent jurisdiction to entertain the appeal at the instance of Mahaveer, therefore, the remand order was per se illegal and without jurisdiction. In my considered opinion, the order passed by a Court which has no jurisdiction to pass such order is nullity and its validity can be questioned whenever and wherever it is sought to be enforced.

28. For the reasons stated above, I am of the opinion that the remand order dated 2.8.85 passed by the learned lower appellate court had not attained finality and the plaintiff-landlord cannot be precluded from disputing the Correctness of remand order dated 2.8.85 as argued by the learned counsel for the defendant- appellant within the meaning of Sub-section (2) of Section 105, CPC.

29. I am also of the opinion, that Sub-section (2) of Section 105.CPC, deals with the remand order, which the courts have jurisdiction to pass but where there is inherent lack of jurisdiction to pass such remand order then such remand order would fall out-side the scope of Sub-section (2) of Section 105, C.P.C.

30. A close scrutiny of the remand order dated 2.8.85 further reveals that the learned lower appellate court has passed remand order placing reliance on the decisions rendered by the Supreme Court in the cases of Ferozi Lal Jain (supra) as weir as Kaushalya Devi (supra) but the decisions rendered by the Apex Court

in the cases of Nagindas Ramdas Vs. Dalpatram Ichharam alias Brijram and Others, Roshan Lal and Another Vs. Madan Lal and Others, and Suleman Noor Mohammed etc. Umrao Bhai Janu Bhai reported in Suleman Noormohamed and Others Vs. Umarbhai Janubhai, have not been brought to its notice which has resulted into miscarriage of justice in passing the remand order. This is not only mistake done by the learned lower appellate court in its order dated 2.8.85 but such mistakes are being repeated by other sub-ordinate courts also, therefore, I propose to deal with this question in detail here in below.

31. The decisions of the Apex Court rendered in the cases of Ferozi Lal Jain (supra) and Smt. Kaushalya Devi (supra), on the basis of which, learned lower appellate court passed the remand order on 2.8.85 came up for consideration before a co-ordinate Bench of the Supreme Court in case of K.K. Chari (supra) where their Lordships? ruled that an order of eviction based on compromise is not necessarily void if the existence of one or more of the conditions mentioned in a particular Rent Control Act were shown to have been existed when the court made the order. Satisfaction of the court, which is no doubt condition precedent for the order of eviction based on compromise need not be by the manifestation borne out by a judicial finding. It is ruled by the Apex Court in the aforesaid judgment that in such a situation, if is possible to presume that the court was satisfied about the grounds on which the order of eviction based on compromise was passed.

32. The aforesaid question again came up for consideration before another co-ordinate Bench of Supreme Court in case of Nagindas Ramdas (supra) where the Apex Court ruled that the Court's satisfaction about existence of statutorily ground for eviction can be presumed from the compromise. According to the said decision, if there was a clear admission in the compromise, incorporated in the decree or fundamental facts which constitute a ground for eviction in a particular Rent Control Act is apparent on record, it may be presumed that the court was satisfied about the existence of such statutory ground and the decree for eviction passed on the basis of such compromise, would be valid. It is true that in the cases of Nagindas Ramdas (supra), Ferozi Lal Jian (supra) and Smt. Kaushalya Devi (supra) were not brought to the notice of their Lordships but these decisions were based on the decision rendered in the case of K.K. Chari (supra).

33. The aforesaid question again came up for consideration in a co-ordinate Bench of the Apex Court in case of Roshan Lal (supra), where their Lordships had taken into account the decisions rendered in the cases of Ferozi Lai Jain (supra), Smt. Kaushalya Devi (supra), K.K. Chari (supra), Nagindas Ramdas (supra) and came to the conclusion that the Rent Control Acts are passed for the protection of tenant based upon public policy, therefore, under a Rent Control Act, no decree for eviction of a tenant .from any accommodation can be passed except on one or more of the grounds mentioned in the Rent Control Act for eviction of a tenant. After dealing with the principle of law of passing a decree for eviction on the basis of compromise under the Rent Control Act, their Lordships themselves,

examined the contents of the compromise decree and found on the facts and circumstances, of that, particular case that the compromise? decree was clearly valid and executable.

34 The aforesaid" question once again came up for consideration before the Apex Court in the case of Suleman Noor Mohammed (supra), where their Lordships after taking into account the ratio decidende of the decisions rendered in the cases of Nagindas Ramdas (supra) and Roshal Lal (supra) specifically ruled that while recording the compromise under Order 23 Rule 3 CPC it is not necessary for the court to say in express terms in the order that it was satisfied that the compromise was a lawful one. According-to their Lordships, it will, be presumed to have done so unless contrarily is shown. As regards the principle of eviction of a tenant under Rent Control Act on the basis of compromise decree, it was ruled that if a tenant either expressly or impliedly suffered a decree for eviction as being liable to be evictee! in accordance with the Rent Control Act and there is abundant intrinsic material in the compromise itself to indicate that the decree passed upon its basis was not in violation of the Act but was in accordance with it, the compromise decree is not nullity. It is pertinent to mention that case of Suleman Noor Mohammed (supra) was rendered by Hon?ble two Judges of the Supreme Court and in this case also, their Lordships themselves in Paragraph 8 of the judgment examined the contents of paragraph 3 of the compromise. The compromise decree was found to be lawful by their Lordships and in this case, the judgment of the High Court was set aside.

35. From the detail discussions made in the preceding paragraphs, it is evident that decree for eviction passed on the basis of compromise between the parties, are leading the risk of protracted litigation and unnecessary expenses to the litigant public not only in the present ease but in other cases also, therefore, I consider it just and proper to evolve the following principles which would be helpful wherever and whenever decrees for eviction passed by the learned trial courts on the basis of compromise are questioned before higher courts:

(a) If a compromise indicates either on its face or on the back-ground of record to the effect that one or more than one grounds enumerated u/s 13 of Act No. 17 of 1950 for ejectment of a tenant did exist in such a situation a decree for eviction on the basis of compromise can be passed.

(b) If the compromise for eviction of a tenant is found in the facts of a particular case to be in violation of Section 13 of Act No. 17 of 1950, the Court should refuse to record such compromise as it will not be a lawful compromise.

(c) While recording the compromise under Order 23 Rule 3, CPC for passing a decree on the basis of compromise under Act: No. 17 of 1950 it is not necessary for the court to say in express terms in the order itself that it was satisfied that the compromise was a lawful one but whenever or wherever validity of the decree for eviction based on compromise is challenged before a higher court, it shall always be presumed that the compromise decree is lawful unless contrary,

is shown by the party challenging such decree based on compromise.

(d) When validity of decree for eviction based on compromise under Act No. 17 of 1950 is challenged and it is demonstrated before the higher court that its validity is doubtful then instead of remanding the case the higher court itself is to examine the validity of such compromise decree with the help of contents of the compromise, pleadings of the parties and other materials on record. The exercise of examining the validity of compromise decree is to be undertaken by the higher court itself instead of setting aside the compromise decree and remanding the case to the learned trial court for recording his satisfaction about the existence of the grounds for eviction enumerated under Act No. 17 of 1950.

36. In the present, case, learned lower appellate court while setting aside the compromise decree and remanding the case has not taken into account the decisions rendered in the cases of Roshah Lal (supra) and Suleman Noor Mohammed (supra) where the Apex Court itself has examined the contents of the compromise and other intrinsic materials available on record and came to the conclusion that the compromise decree is valid. The procedure adopted by the Apex Court ought to have been followed by the learned lower appellate court before setting aside the compromise decree on 2.8.85 and the order contrary to it passed by the learned trial court on 2.8.85 remanding the case is per se illegal and without jurisdiction, therefore, the plaintiff- landlord is not precluded to question its correctness. The decision cited lay the learned counsel for the appellant rendered in the case of Nain Singh Vs. Koonwarjee and Others, and Sita Ram Goel Vs. Sukhnandi Dayal and Another, are not applicable: to the facts and circumstances of the present case.

37. Be that as it may, after remand on. 2.8.85 by the learned lower appellate court, the learned trial court after analytical discussion of the contents of compromise as well as admission made by Sanwal Ram tenant in his written statement filed on 23.9.76 again upheld the validity of the compromise decree by his judgment and decree dated 7.2.87 and learned lower appellate" court also vide its judgment and decree dated 31.5.95 after re-valuating the testimonial value of the contents of compromise and admission made in paragraph 2 of the written statement coupled with other materials available on record have rightly arrived at the conclusion that the compromise entered into between the parties on 11.11.80 was a valid and lawful compromise and the grounds enumerated u/s 13(1)(a) as well as u/s 13(1)(h) of Act No. 17 of 1950 did exist. For the reasons given in the preceding paragraphs, the substantial questions No. 2 and 3 are answered in negative.

38. In my humble opinion, the compromise between the parties is a question of fact and if such question of fact is concluded by concurrent findings of fact recorded by both the courts-below then such concurrent findings of fact cannot be allowed to be assailed in Second Appeal.

39. In the present case, I myself have perused the contents of the compromise

dated 11.11.80 including the admission made by the defendant-tenant Sanwal Ram in paragraph 2 of his written statement from which I am fully satisfied that in the compromise dated 11.11.80 ground for ejectment as envisaged u/s 13(1) (a) as well as u/s 13(1)(h) of Act No. 17 of 1950 did exist and both the courts-below have committed no error in passing the decree for ejectment against the defendant-tenant on the basis of said compromise.

40. For the foregoing reasons, the present Second Appeal fails and it is hereby dismissed with costs throughout.