
(1955) 09 BOM CK 0060
In the Bombay High Court
Case No : A.F.O. No. 21 of 1954

Misrilal Jalamchand and Another

APPELLANT

Vs

Sobhachand Jalamchand and Others

RESPONDENT

Date of Decision : 15-09-1955

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 43 Rule 1, Order 6 Rule 4, 2(2), 96

Contract Act, 1872 — Section 16, 19A

Citation : AIR 1956 Bom 569

Hon'ble Judges : Shah, J

Bench : Single Bench

Advocate : V.M. Tarkunde, for the Appellant; R.B. Garge, J.B. Patil and H.R. Gokhale, for the Respondent

Final Decision : Dismissed

Judgement

1. The plaintiffs who are husband and wife, respectively, filed Special Suit No. 6 of 1952 in the Court of the Civil Judge, Senior Division at Nasik, for a decree for partition and separate possession of their one half share in certain properties. During the pendency of the suit it appears the parties arrived at a compromise and the terms of the compromise were reduced to writing.

Defendant 3 who was a minor was represented by defendant 1 his father; and the Court authorised defendant 1 to enter upon and sign the compromise terms on behalf of defendant 3. It appears that the pleader who appeared on behalf of the plaintiffs regarded the terms of the compromise as unfavourable to the plaintiff and he filed purshis Ex. 60 stating that no compromise terms were arrived at between the parties.

It may be mentioned that the compromise terms were settled on 15-7-1953. After the purshis Ex. 60 was filed by the pleader for the plaintiffs the suit stood adjourned for hearing to 22-7-1953. On 16-7-1953, plaintiff 1 and defendant 1 appeared before the Court and filed in Court a writing incorporating the terms of

compromise. It was recorded at Ex. 64.

Exhibit 64 was signed by defendant 1, plaintiff 1 and defendant 1 acting for and on behalf of the minor defendant 3. The pleader for the plaintiffs did not sign the compromise terms Ex. 64. The learned Judge thereupon asked plaintiff 1, who was present in Court before him, whether in spite of the objection of his pleader he was willing to abide by the terms of the compromise and it appears plaintiff 1 replied in the affirmative.

The learned Judge then gave time to the parties to think over the matter. He then again called the parties before him after about two hours and the terms of the compromise were read out and explained to the parties. The learned Judge again asked plaintiff 1 whether he still accepted the terms of compromise, plaintiff 1 told the learned Judge that he had voluntarily entered into the compromise.

Thereupon the learned Judge ordered the compromise to be recorded so far as plaintiff 1 was concerned, and directed plaintiff 1 and defendant 1 to bring their respective wives before the Court to sign the terms of compromise. On 18-7-1953, defendant 2 appeared before the Court. The compromise was read over to her and explained to her, and thereafter she put her thumb impression 911 the compromise terms in the presence of the learned Judge.

On 20-7-1953, plaintiff 1 submitted Exhibit to the Court stating that the Court had not passed final orders on the consent terms which were submitted on 16-7-1953, that his signature was obtained on the compromise terms by deceiving him and by bringing undue pressure upon him and that seeing that he was ailing defendant 1 and persons with him had taken advantage of his ignorance.

Plaintiff 1 also stated that he did not admit the compromise terms and that he had not benefited in any way under the compromise. He prayed that the Court should not sanction the aforesaid compromise, and that the suit should be fixed for hearing. Plaintiff 2 also submitted an application Ex. 65 requesting the Court not to sanction the compromise.

The learned Judge heard the parties on both the applications Exs. 65 and 66. He held that it was not open to plaintiff 1 to resile from the compromise which he had entered into with defendant 1. In his view the compromise effected by plaintiff 1 was voluntarily entered into by him and after understanding what the terms of the compromise were. The learned Judge set out the history of the case in para. 3 of his order and observed that the compromise was effected voluntarily after he had understood all the terms thereof.

On the application filed by plaintiff 2, the learned Judge observed that it was not clear why plaintiff 2 was added as a party to the suit, but presumably she was so added because she had claimed certain ornaments on her person. He then observed that by compromise Ex. 64, it was agreed that the ornaments on the

person of plaintiff 2 did not form part of the Joint family property.

In the view of the learned Judge plaintiff 2 was not affected adversely by the compromise and that she had no separate existence apart from her husband and she was therefore not entitled to challenge the compromise and therefore the application filed by her was liable to fail.

Accordingly he rejected the application filed by the two plaintiffs challenging the compromise. The learned Judge then passed an order deleting the names of defendants 4 to 21 from the array of defendants and directing that the compromise as arrived at between the plaintiffs and defendants 1, 2 and 3 be recorded and a decree in terms of the compromise be drawn up. Against the orders rejecting the applications Exs. 65 and 66 filed by plaintiffs 1 and 2 this appeal has been preferred.

2. (15-9-1955) Mr. Tarkunde who appears on behalf of the plaintiffs has contended that as the compromise terms were not signed by the two plaintiffs and that only plaintiff 1 signed the compromise terms and that when plaintiff 1 signed the terms defendant 2 had not signed those terms, there was no concluded compromise.

Mr. Tarkunde submitted that the agreement in which were recorded the terms of compromise could not be regarded as concluded so long as defendant 2 had not signed those terms, and it was open to plaintiff 1 to resile from those terms. In substance Mr. Tarkunde argued that until defendant 2 assented to the terms by subscribing her signature there were mere negotiations and there was no concluded agreement. It is difficult to agree with that contention.

It is true that plaintiff 2 has not signed the consent terms. But I agree with the view of the learned Judge that plaintiff 2 had no present interest in the suit property after her claim in the ornaments on her person was accepted by Ex. 41 in this particular suit. Evidently she could not file a suit for partition of the properties of the joint family of plaintiff 1 and defendant 1.

It is true that the ornaments which were on the person of plaintiff 2 were the subject-matter of the suit; but by the agreement of compromise those ornaments were accepted as belonging to plaintiff 2 and thereafter there was no further interest of plaintiff 2 remaining in the suit which enabled her by refusing to consent and subscribing her signature to the terms to affect the finality of the agreement, if it is otherwise proved to have been arrived at between plaintiff 1 and the contesting defendants.

Defendant 2 has signed the terms of compromise on 18-7-1953. But it cannot from that circumstance be inferred that till 18-7-1953 there was no concluded agreement till that date. What was signed by defendant 2 on 18-7-1953 was merely a record of the terms of compromise which was already concluded.

The mere fact that defendant 2 signed the terms of compromise on 18-7-1953 would not justify the Court in holding that till that date (18-7-1953) there was no

concluded agreement. Even if defendant 2 had not signed the terms of compromise, a consent decree according to those terms could have been passed.

3. Mr. Tarkunde then urged that the consent of plaintiff 1 to the terms of compromise was procured by deception and undue influence. In Ex. 66 plaintiff 1 has stated that his signature had been obtained on the compromise by deceiving him and by bringing undue pressure on him. What the deception was has, however, not been set out in the application, nor has the nature of undue influence been set out in the application.

No particulars of the alleged deception have been furnished nor is it stated as to how plaintiff 1 was induced by exercise of undue influence to assent to or to subscribe his signature to the terms of compromise recorded in Ex. 64. Mr. Tarkunde urged that defendant 1 was the elder brother of plaintiff I, and plaintiff 1 was only 26 years of age at the date of the agreement, and that plaintiff 1 was a man of weak intellect.

It is submitted that having regard to these circumstances and having regard to the terms of Ex. 64 the Court should have held that the signature of the first plaintiff on Ex. 84 must have been procured by undue influence.

There is no allegation in Ex. 66 that defendant 1 was in a position to dominate the will of plaintiff 1 and that he obtained any benefit by availing of that position. The circumstance that plaintiff 1 was a young man of about 26 years of age and defendant 1 was his elder brother does not justify the Court in assuming that undue influence must have been exercised over plaintiff 1 by defendant 1. It cannot be said that qua plaintiff 1, defendant 1 was in a position of loco parentis.

In the absence of any particulars of fraud and undue influence and any evidence in support of the plea of exercise of undue influence, the lower Court was in my judgment right in recording the terms of compromise.

4. It has to be noted that when the terms of compromise were presented in Court by plaintiff 1, the learned Judge enquired of plaintiff 1 whether he was willing to abide by these terms, notwithstanding his pleaders' refusal to sign the consent terms. Plaintiff 1 stated before the Court that he was willing to sign the terms.

Even thereafter the learned Judge gave him two hours to consider his position and the terms, and even thereafter plaintiff 1 expressed his willingness to abide by those terms. Mr. Tarkunda says that plaintiff 1 had no opportunity of obtaining any independent advice.

But evidently plaintiff 1 had engaged a lawyer and his lawyer declined to sign the consent terms. There was ample opportunity for plaintiff 1 to accept the advice of his lawyer; and if he did not choose to do so it cannot be said that he had not opportunity of obtaining independent advice.

Plaintiff 1 had an opportunity of obtaining independent advice and he refused to

listen to that advice; it is not open to plaintiff 1 to turn round and contend that the agreement which has been entered into should be set aside on the ground that because he had in fact no independent advice, it was procured from him by the exercise of undue influence.

5. Mr. Tarkunde contended that the learned trial Judge should not have recorded any finding on the question whether there was or was not any undue pressure or undue influence as set up by plaintiff 1 in his application, under Order 23, Rule 3. Civil P. C., a Court is required to order that an agreement or a compromise be recorded, if 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.

The Court has to record the compromise only if it is satisfied that there has been adjustment of the suit by a lawful agreement. The Court has in recording a compromise to consider two questions (i) whether there has been an agreement adjusting the dispute in suit and (ii) whether the agreement is lawful agreement.

For coming to a conclusion," whether there is an agreement, the Court has not merely to consider the question whether the parties in fact have arrived at an agreement, but the Court must also consider the question whether the agreement is a lawful agreement as observed by Sir Dinshah Mulla in his commentary on Order 23, Rule 3, Civil P. C. under the heading "Where a compromise set up by one party is denied by the other" at page 982 Edn. 12,

"The words "where it is proved to the satisfaction of the Court that the suit has been adjusted wholly or in part" clearly show that the Court has power under this rule, where an agreement or compromise is denied, to decide whether as a fact, the alleged agreement or compromise was made, and if it is satisfied that it was made to record it. The Privy Council have said that an agreement to compromise a suit must be established by general principles which govern the formation of contracts, although there are special rules governing its enforcement which arise out of its intrinsic nature."

The learned author has referred to AIR 1930 158 (Privy Council) . It is clear that when the Court is required to satisfy itself as to the existence of an agreement and is further required to satisfy itself that there is a lawful agreement adjusting the suit the Court must on an application to record compromise consider, especially where a plea of undue influence is raised, whether the agreement is not vitiated on any ground such as illegality fraud, misrepresentation etc.

6. Mr. Tarkunde contended that in any event the learned trial Judge was in error in directing the names of defendants 3 to 21 to be deleted.

Mr. Tarkunde contended that even if there was an adjustment of the suit between the plaintiffs and defendants 1 to 3, the plaintiffs were entitled to proceed with the suit against those defendants. But the order passed by the learned Judge directing that the names of defendants 4 to 21 be deleted from the record of the suit must amount to a decree within the meaning of Section 2, Sub-section (2),

Civil P. C.; and if the plaintiffs are aggrieved by the passing of such a decree their remedy is to appeal against that decree. They cannot make that grievance a ground in the present appeal which must be limited to the challenge which was made against the order recording the compromise arrived at between the plaintiffs and defendants 1, 2 and 3.

Whether such an appeal, if filed, may be affected by the terms of compromise entered into between the parties and defendants 1, 2 and 3 is a matter on which I need express no opinion in this case, because before me there is no competent appeal filed against defendants 4 to 21.

7. The appeal therefore fails and is dismissed with costs.

8. Appeal dismissed.