

(1905) 08 CAL CK 0029

In the Calcutta High Court

Case No : Appeal from Original Decree No. 85 of 1904

Ram Gopal Mazumdar and others

APPELLANT

Vs

Prasunna Kumar Sanial and Others

RESPONDENT

Date of Decision : 26-08-1905

Acts Referred:

Citation : (1905) 08 CAL CK 0029

Final Decision : Dismissed

Judgement

Maclean, C.J.—The Plaintiffs, Appellants, brought three suits regarding certain homestead lands in the Court of the Munsif of Kushtea. Four appeals arising out of those suits were compromised before the District Judge of Nuddea on the 13th March 1899. The Plaintiffs, however, applied for a review of judgment and, on the 31st July 1899, a second compromise was arrived at between the parties, in consequence of which a decree was drawn up modifying the decree based upon the first compromise. The decree, embodying the terms of the second compromise, is dated the 14th August 1899. The Plaintiffs, however, were dissatisfied with the second decree based upon the second compromise and again asked for a review of judgment, but the application was refused by the District Judge on the 17th February 1900. The Plaintiffs then obtained rules from this Court under sec. 622, C.C.P., but the rules were discharged on the 21st August 1900. The effect of that discharge was to leave the order of the 17th February 1900 of the District Judge undisturbed. It is still a subsisting order and the decree of the District Judge based on the second compromise of the 31st July 1899 is still a subsisting decree. The Plaintiffs subsequently instituted the present suit on the 2nd January 1902 and the object of the suit is to have the compromise of the 31st July 1899 and the decree based upon it set aside and for consequential relief. The Subordinate Judge of Nuddea has dismissed the suit and hence the present appeal by the Plaintiffs.

2. We may say at the outset that, as regards the decree which is sought to be set aside by the present suit, no case of fraud is alleged. The Defendants' case is

extremely short. It is that if the Plaintiffs desired to get rid of the decree which was passed in pursuance of the compromise, two modes of procedure were open to them either to proceed by way of suit or by an application for review of the judgment sought to be set aside, the latter being the more regular mode of procedure and they rely on the case of *Ashootosh Chandra v. Tara Prosanna Roy* ILR 10 Cal. 612 (1884).

3. This case, we may observe, was decided more than 20 years ago and it has not been since dissented from. The Plaintiffs in order to get rid of the decree of the 14th August 1899, elected to proceed by way of review. Their main ground for that application was that their pleader had no authority to compromise the case. The Court below held on the merits that he had, and dismissed the application. That was clearly a decision upon that point given in a proceeding between the same parties as the parties to the present suit. The authority of the pleader was directly and substantially in issue on that application and the decision was given by a Court of jurisdiction competent to try the present suit and which was heard and finally decided by that Court. Upon the question of the competency of the Court to try such a suit as the present we may refer to the observations of this Court in the case of *Koylas Chandra De v. Tarak Nath Mandal* ILR 25 Cal. 571 (1897), those observations being at p. 576, and to the case of *Bhagwanbuttee Chowdhurain v. A.H. Forbes* ILR 28 Cal. 78 (1900). It is urged, however, for the Plaintiffs that a ground is alleged in the present suit for setting aside the decree which was not set up upon the application for review, namely, that the terms of the compromise went outside the subject-matter of the suit. We think the answer to that is that if the Plaintiffs intended to rely upon such a point for setting aside the compromise-decree they ought to have raised it and submitted it for adjudication upon their application for review, and that, not having done so and having elected to proceed by way of review, it is not now open to them to ask this Court in a separate suit to interfere upon that ground. We think they ought to have stated in that application all the grounds upon which they relied for setting aside the decree of the 14th August 1899 and that, not having done so, it is not now competent for them to set it up in a subsequent and independent suit. They are not entitled to pursue their remedy piece-meal. There seems to be very little substance in the present litigation which is rather the result of feeling than of any material injury having been done to the Plaintiffs by the Defendants. For these reasons we think that the appeal must be dismissed with costs, to the principal Respondents. We give one gold mohur costs to the other Respondents who have appeared. We may add that the only point argued before us was as to the effect of the decree of the 14th August 1899 in relation to the right of the Plaintiffs to maintain the present suit.