

(1925) 01 AHC CK 0033
In the Allahabad High Court

Ram Sunder Misra

APPELLANT

Vs

Jai Karan Singh and Others

RESPONDENT

Date of Decision : 23-01-1925

Acts Referred:

Citation : AIR 1925 All 271 : 87 Ind. Cas. 174

Final Decision : Allowed

Judgement

1. This is an appeal which raises a rather interesting point. One Badal owned a certain property and he left behind him a widow Mt. Taashi. On her death disputes arose as to who was the heir of Badal, and two claimants came forward, one Ram Sunder and the other Bhawani Prasad. In mutation proceedings the Court declared in favour of Ram Sunder, and proceedings were taken with regard to the redemption of a mortgage, and there was an arbitration and an award which as between mortgagee and mortgagor fixed the price of the redemption of this mortgage at Rs. 250-8-0. Bhawani Prasad disregarded the mutation proceedings and the award by which the property could be redeemed on payment of Rs. 250-8-0 and sued for redemption. He included in that action Jai Karan Singh and Ram Sunder. He withdrew the action against Ram Sunder, and came to a compromise with Jai Karan Singh, which compromise was embodied in a decree and provided that he (Bhawani Prasad) might claim redemption. Thereupon Ram Sunder commenced a suit asking that the compromise decree above mentioned was not binding upon him, and he undoubtedly set himself up as having been the legal heir of Badal, and as the property had by virtue of the compromise decree passed into the hands of Bhawani Prasad, Ram Sunder sought possession of that property on payment of Rs. 250-8-0. In that action the principal, and indeed, from looking into the record, the only substantial issue was whether Ram Sunder was the legitimate son of Bhikha. He contended that; he was Bhawani Prasad said he was not, and that he was an illegitimate son. In support of his legitimacy Ram Sunder put one Dukharan Dube into the box. Dukharan Dube was obviously going to support Ram Sunder, and thereupon Bhawani Prasad made, with the permission of the Court, an offer to the plaintiff

through his vakil, which offer was reduced to writing. Bhawani Prasad offered that if Dukharan Dube, a member of the biradri, would eat kachcha food cooked by Mt. Pargashi and served by Ram Sunder, "the plaintiff's suit may be decreed." That offer was accepted by the plaintiff, and the hearing of the suit temporarily suspended. Mt. Pargashi cooked food; it was served by Ram Sunder and eaten by Dukharan Dube, and on the acceptance of that offer and due performance of all the conditions, the Munsif, in our opinion, with perfect propriety decreed the suit. Bhawani Prasad was a man who put forward that offer upon the advice of his vakil, and it was an offer which could have been accepted, and all conditions that he made were complied with, and he having made the offer expressed his willingness that the plaintiff's suit should be decreed if the conditions were complied with. It is surely open to a litigant, be he plaintiff or defendant, at any stage of the proceedings to make an offer to the other side to bring litigation to a close. That is all that Bhawani Prasad did. If the offer made by him had not been accepted, he would have relied on its refusal as a wrong ground for rejecting the evidence of Dukharan Dube and that was the advantage which he sought to gain. That was no doubt the purpose that he sought to get by making the offer. He cannot now be heard to say, everything having been done by the offerer, the person to whom the offer was made, that the promise that he made that the suit should be decreed should not thereafter take effect. The learned single Judge of this Court looking at the matter said, "Apart from authority I should have been disposed to accept the view taken by the Courts below." But he felt himself overborne by a decision in which cases of this kind were supposed to have some relation to "adjustment of suits" within the meaning of Order 23, Rule 3 of the Code of Civil Procedure. In our opinion this type of cases have nothing to do with adjustment of suits at all, but must be regarded in each case as an offer capable of acceptance or rejection by the person to whom it is made. If the offer is accepted in its terms and complied with accurately and fully, the promises made by the offerer must be carried out by him.

2. The result is that this appeal is allowed and the judgment of lower Court restored with costs.