

(1956) 09 AHC CK 0030
In the Allahabad High Court
Case No : Civ. Rev. No. 2 of 1950

Shri Thakur Behariji Maharaj

APPELLANT

Vs

Shri Thakur Dauji Maharaj

RESPONDENT

Date of Decision : 24-09-1956

Acts Referred:

Evidence Act, 1872 — Section 20

Citation : (1956) 26 AWR 817

Hon'ble Judges : Beg, J;Agarwala, J

Bench : Division Bench

Advocate : B.L. Gupta, for the Appellant; Satya Narain Agarwala, for the Respondent

Final Decision : Dismissed

Judgement

Agarwala, J.—This is a Defendant's application in revision arising out of a suit for removal of an encroachment. The parties are two idols which are installed in two adjacent temples,. The Plaintiff's temple is in the south-west corner of the Defendant's temple. The southern and western walls of the Defendant's temple were reconstructed or repaired and the Plaintiff-opposite party's case was that in the process of reconstruction or repair encroachment of I foot in the width and 14 feet in length had been made into the land belonging to the Plaintiffs temple. This would be at the south west-corner of the Defendant's temple. The defence was that there has been no encroachment.

2. The decision depended mostly upon measurement. The parties made a statement in court. The statement was that if the Defendant's southern wall was 25 feet or less in length from the Government Takia the Plaintiff's suit will stand dismissed, but if the wall were longer the Plaintiff's suit will be decreed. This statement was made with reference to a map No. 27A. In the map the southern wall of the Defendant's temple was shown as 26 feet in length. In accordance with the statement of the parties an amin was deputed who found that the length of the Defendant's temple wall was more than 25 feet. On receipt of this report

the Defendant presented an application to the court that a decree be not passed in terms of the earlier statement of the parties because it was vitiated by reason of a mutual mistake. The mistake alleged to have been made was that both the parties thought that in the map the southern wall of the Defendant's temple was shown as 25 feet only whereas in fact it was shown to be 26 feet.

3. The Plaintiff did not agree that there was any mistake. The trial court held that there was a mutual mistake and set aside the statement of the parties and the measurement made by the amin in pursuance of the statement, and ordered the case to proceed on the merits.

4. Against the order setting aside the amin's measurement and the statement of the parties the Plaintiff appealed to the lower appellate court. In the appeal the lower appellate Court was of opinion that there was no mutual mistake and that it was not open to the Defendant to go back upon his statement when it had been acted upon. The appeal was allowed and the order of the trial court was set aside and the suit was remanded to the lower court with the direction that it should be restored to its original number and disposed of according to the report of the amin made in pursuance of the agreement of the parties.

5. Against this order of the lower appellate court the Defendant has come up in revision to this Court and his contention is that no appeal lay to the court below as the statement of the parties did not amount to an adjustment of the case within the meaning of Rule 3 of Order 23, Code of Civil Procedure. In our opinion the position of law in matters like the present is that when parties make a statement which by itself does not dispose of the case it is" merely an agreement and not an adjustment Under Order 23, Rule 3. The agreement can be enforced because it has taken place in the presence of the court. It is enforced under the inherent jurisdiction of the court as held in *Sahab Ram v. Ram Nawaz* 1952 AWR (H.C.) 431. See the observations of Agarwala, J.--

The true basis of the power of the court to decide a case in accordance with the agreement between the parties is neither Section 20 of the Evidence Act, nor Order 23, Rule 3 of the CPC nor the Arbitration Act but the agreement of the parties themselves. If the agreement is valid, the court has a power under its inherent jurisdiction to give effect to it.

6. This was observed in a case in which the agreement of the parties had not been acted upon. When in pursuance of the agreement of the parties everything has been done which was required to be done and the only thing that remains to be done is the order of the court disposing of the case in accordance with the agreement then the findings taken along with the agreement itself amount to an adjustment of the case and Order 23, Rule 3 applies to the new situation. This was held in *Akbari Begam v. Rahmat Husain* 1933 AWR (H.C.) 681. Sir Shah Sulaiman, C.J., observed at p. 709-710:

Where the parties agree to abide by the statement of a third person their agreement is still in the nature of a contract, and it may well be said that so long

as that third party has not made his statement, and the contract has not been carried out, there is yet no adjustment of the suit.... But as soon as the agreement has been fully carried out by the court and the referee has made his statement in favour of one party or the other, it is too late for either party to go back upon the agreement; and at this stage the agreement must be deemed to have eventuated into an adjustment of the claim in accordance with the statement already made. A party cannot be allowed to retract his solemn promise for consideration made before the court after he has come to know the nature of the statement by which he had agreed to abide. It is no longer a question of the carrying out of a promise or the specified performance of a contract. The compromise must be deemed to have been carried out and accordingly the claim already adjusted.

7. As in the present case in pursuance of the agreement the amin measured the will and sent his report to the court, the agreement had "eventuated into an adjustment of the claim in accordance with the statement already made" and Order 23, Rule 3 of the CPC became fully applicable. The order of the trial Court rejecting the agreement as well as the report of the amin amounted to a refusal to record the adjustment that had been reached between the parties and as such an appeal (sic) to the lower appellate Court.

8. Learned Counsel urged that there was mutual mistake. The lower appellate court has held that there was no such mistake and this is a finding of fact with which we are unable to interfere. Besides, we have ourselves examined the matter and we have found that this is not a case in which it can be said that there was a mutual mistake of the parties.

9. The result therefore is that the application fails and is dismissed with costs.