In *Manepalli Magamma* v. *Manipalli Sathiraju* (1), a Division Bench of the Madras High Court held that the assignment of a promissory note by the payee is a part of the " cause of action " within the meaning of section 20(c) of the Code of Civil Procedure and the assignee can sue on it in the Court having jurisdiction where the assignment took place. A similar view has been taken in *Official Receiver of the Estate of Mohandas Chatandas* v. *Naraindas Lotaram and others* (2), and *Harnathrai Brijraj* v. *Churamoni Shah and others* (3).

I find myself in respectful agreement with the view expressed in *Dilbagh Rai* v. *Walu Ram and another* (4), *Manepalli Magamma* v. *Manepalli Sathiraju* (1), and other similar decisions.

As the plaintiff in the present case is an assignee of the rights of Mr. Kohli and as the assignment took place in Delhi, I am of the opinion that the Courts of Delhi have jurisdiction to deal with this case. The order of the trial Court must, therefore, be upheld and the petition dismissed with costs.

APPELLATE CIVIL

Before Khosla and Falshaw, JJ.

AMAR NATH AND OTHERS,—*Appellants*

versus

SHRIMATI MALAN, widow of L. RAM CHAND,—*Respondent*

Letters Patent Appeal No. 104 of 1953.

1954

August, 12th

Code of Civil Procedure (V of 1908), Order 43, Rule 1(m)—Order recording a compromise—No contest between the parties regarding the recording of the compromise—Order whether appealable.

(1) A.I.R. 1917 Mad. 221
(2) A.I.R. 1926 Sind 31
(3) A.I.R. 1934 Cal. 175
(4) A.I.R. 1933 Lah. 940

Held, that it is clearly implied by the provisions of Order XLIII rule 1(m), which gives the right of appeal against an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction, that an appealable order under Order XXIII, rule 3, must be one in which there has been a contest between the parties in the trial court regarding whether the parties had settled their differences, and if a compromise has been recorded without any such contest the proper remedy of the aggrieved party is to approach the Court and if the Court then refuses to take any action and maintains its order recording the compromise the only remedy to the party concerned is to challenge the compromise by means of a separate suit.

Onkar Bhagwan v. *Gamna Lakhaji and Co.* (1), followed and *Seethamraju Ramanarayana Rao* v. *Seethamraju Ramkrishna Rao* (2), not followed.

Letters Patent Appeal under clause 10 of the Letters Patent of the Punjab High Court, Simla, against the Judgment of Mr. Justice J. L. Kapur, dated the 1st December, 1953, passed in F.A.O. No. 63 of 1953, reversing that of *Shri Kartar Singh, Ghambir, Sub-Judge 1st Class, Amritsar, dated the 23rd February, 1953, and directing that the suit should be tried on merits.*

A. N. GROVER, for Appellant.

K. L. GOSAIN and SIKANDAR LAL, for Respondent.

JUDGMENT

Falshaw, J.

FALSHAW, J. The respondent in this Letters Patent Appeal, Mst. Malan, instituted a suit at Amritsar in August, 1952, against seven defendants for possession by partition of one-third of certain property and for rendition of accounts regarding the property for the two years preceding the suit. She claimed that the property in suit was joint family property which after the death of her husband, Ram Chand, had been partitioned among themselves by his two sons, who were her step-sons. It is not clear from the plaint when Ram Cahnd died or when

(1) I.L.R. 57 Bom. 206
(2) A.I.R. 1936 Mad. 385.

his sons died but evidently these events took place some years ago, and the defendants were the heirs of the two sons, and the plaintiff claimed that she was entitled to one-third of the property. The suit was contested by the defendants and after issues had been framed in November, 1952, the 23rd of February, 1953, was fixed for evidence. On that date two counsel representing all the defendants made a statement which reads—

> "We have compromised with the plaintiff in the following manner, viz., we will pay Rs. 42 per month as maintenance to her with effect from the 8th of August, 1952, for the duration of her lifetime. If we fail to pay the aforesaid amount of maintenance it will form a charge on house No. 603/8 situate in Chowk Nimak Mandi. The aforesaid maintenance also includes compensation in respect of the right of residence. Defendants 1 to 4 should be jointly and severally liable for the payment of maintenance. In execution of this decree the plaintiff shall be entitled to recover her maintenance."

In the presence of the plaintiff herself her counsel made the statement—

> "I am in agreement with the statements of Shri Hans Raj and Shri Kishan Chand. Orders may be passed accordingly and costs awarded."

The plaintiff's thumb-impression as well as the signature of her counsel were obtained on the statement, and as one of the defendants was a minor the sanction of the Court was also obtained to the compromise as being in the interests of the minor defendant and the Court finally

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passed an order giving effect to the compromise based on the statements of the parties except that they were left to bear their own costs.

The plaintiff filed an appeal in this Court supported by an affidavit of the plaintiff in which she practically alleged that she had been tricked into the compromise, the terms of which had not been explained to her, and to which she would never have agreed if she had understood them in view of the value of the property claimed by her, of which she alleged that her share amounted to Rs. 40,000. The legal point, however, was also raised in the appeal that the compromise did not relate to the subject-matter of the suit.

The learned Single Judge before whom the appeal came, without indicating whether he believed the allegations contained in the plaintiff's affidavit or not, accepted the appeal and ordered that the suit should be decided on the merits on the ground that the compromise did not amount to a lawful adjustment of the parties' rights in the suit. In doing so he overruled two objections raised on behalf of the respondents, firstly that the appeal had not been properly filed and secondly that no appeal lay against the order of lower Court.

Before dealing with the points discussed in the judgment of the learned Single Judge, I shall start by saying that I do not for a moment believe the allegations made by the plaintiff in her affidavit filed in this Court along with the appeal. The statements of both the counsel for the defendants setting out the terms of the settlement and the plaintiff's own counsel accepting these terms were recorded in Urdu, and I cannot believe for a moment that the learned Subordinate Judge and

the counsel for both parties including the plaintiff's own counsel, who is stated to be a prominent member of the Amritsar Bar, could possibly have combined to deceive the plaintiff and mislead her into accepting the terms of a compromise which she did not understand. In fact the terms of the proposed compromise are rarely, if ever, set forth for the first time inside the Court room, and obviously the matter must have been discussed outside before any statements were made before the Court. There can in fact be little doubt that at the time the terms of the compromise were arranged the plaintiff understood and accepted them, and that the appeal was filed because she subsequently repented and thought she had settled the matter for too little recompense.

The first objection raised to the appeal by the respondents was that it was not properly filed because the only copies which accompanied the memorandum of appeal were those of the statements of the counsel for both parties and the statements made and the order of the Court in connection with the sanction of the compromise on behalf of the minor. No copy was filed of the order by which the Court directed that a decree should be passed in accordance with the terms of the compromise and that the parties should bear their own costs. In my opinion the learned Single Judge erred in holding that there was no force in this objection since it seems to me that the final order of the learned Subordinate Judge was the order recording the compromise within the meaning of Order XLIII, rule 1(m), Civil Procedure Code, and that the mere statements of the counsel for both parties do not amount to such an order. It will in fact be seen in the present case that the order of the Court recording the compromise differed somewhat from the

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statement of the learned counsel for the plaintiff accepting the terms proposed by the other side, since he had claimed costs in the suit, and costs were disallowed in the order of the Court. I am therefore, of the opinion that the appeal was not properly filed on this technical ground and might have been dismissed on this account.

The second objection raised on behalf of the respondents which was overruled by the learned Single Judge also appears to me to have some force. This objection was based on the decision in *Onkar Bhagwan* v. *Gamna Lakhaji & Co.* (1), in which Murphy and Nanavati, JJ., held that no appeal lay against an order recording a compromise where there was no contest at the time between the parties regarding the recording of the compromise, the proper remedy of the aggrieved party being either to appeal against the decree passed on the compromise or to reopen the matter in the trial Court either by way of review or otherwise. In overruling this objection the learned Single Judge preferred to place reliance on the decision of a Single Judge, Wadsworth, J., in *Seethamraju Ramanarayana* v. *Seethamraju Ramkrishna Rao* (2). Apart from any authorities it seems to me to be clearly implied by the provisions of Order XLIII, rule 1(m), which gives the right of appeal against an order under rule 3 of Order XXIII recording or refusing to record an agreement, compromise or satisfaction, that an appealable order under Order XXIII, rule 3, must be one in which there has been a contest between the parties in the trial Court regarding whether the parties had settled their differences, and if a compromise has been recorded without any such contest the proper remedy of the aggrieved party is to approach the Court and allege, as for instance

(1) I.L.R. 57 Bom. 206
(2) A. I. R. 1936 Mad. 385.

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in the present case, that the compromise was consented to because its terms had not been properly explained or understood, and if the Court then refuses to take any action and maintains its order recording the compromise it seems to me that the only remedy to the party concerned is to challenge the compromise by means of a separate suit. In any case I prefer the reasoning of Murphy and Nanavati, JJ., who wrote separate concurrent judgments, to that of the learned Single Judge of the Madras High Court whose decision has been followed in this case. I am, therefore, of the opinion that the appeal ought also to have been dismissed on this ground.

Finally there is the ground on which the learned Single Judge accepted the plaintiff's appeal, namely that although the plaintiff's claim to partition of the property might be said to have been adjusted by payment of monthly maintenance, it cannot be said that her claim to rendition of accounts was so lawfully adjusted. Here again I regret that I cannot agree with the view expressed by the learned Single Judge. Obviously the claim for rendition of accounts for two years preceding the institution of the suit was only a minor appendage to the major claim for possession by partition of one-third of the property in suit, and if the major claim could be lawfully adjusted by a payment of maintenance, as in my opinion it undoubtedly could, I cannot see any reason why the minor claim of rendition of accounts brought after so many years could not also be said to be covered by the terms of the compromise. I would accordingly accept the appeal and set aside the order of the learned Single Judge directing that the suit be reopened in the trial Court and tried on the merits, but in the circumstances leave the parties to bear their own costs.

Khosla, J.

KHOSLA, J. I agree.