

(6) Coming to the merits of the present petition, it has become infructuous. Mr. Ashwani Chopra, learned counsel for the respondents, has stated at the bar that the petition under section 9 of the Act for restitution of conjugal rights filed by the applicant-husband has already been dismissed on 16th November, 1979. The main ground taken in the present application for transfer was that the petition under section 9 filed prior in time by the applicant was pending in the Civil Court at Garhshankar. Since that has been decided, this ground does not survive.

(7) Second ground taken in the petition was that the applicant apprehended danger to his life if he went to Jullundur to defend his case. This plea was not argued in the Court by Mr Jain. No material has been brought on the file to sustain this objection. Consequently, we find no merit in this application and the same is dismissed, but with no order as to costs.

(8) Parties are directed through their respective counsel to appear before the learned District Judge, Jullundur, on 21st May, 1980.

D. S. Tewatia, J.—I agree.

S.C.K.

Before J. V. Gupta J.

ASHWANI KUMAR KAUSHIK and another *Appellants.*

versus

RAM RATTAN and others,—*Respondents.*

Second Appeal from Order No. 5 of 1980.

May 2, 1980.

Code of Civil Procedure (V of 1908)—Order 23 Rule 3—Parties to a suit making statements in court regarding their compromise—Court passing a decree not in accordance with the compromise but adding something more to it—Such decree—Whether appealable,

Held, that no appeal would lie against a consent decree but if it is found that the defendant had made a limited offer but the

Ashwani Kumar Kaushik and another v. Ram Rattan and others
(J. V. Gupta, J.)

plaintiff came out with a counter offer and the court passed a decree not strictly on the basis of the compromise but added something more thereto, such a decree would be appealable as it would not be in accordance with the compromise or strictly there would be no compromise as such between the parties. Apart from that, rule 3 of order 23 of the Code of Civil Procedure 1908 provides that the agreement or compromise should be in writing and signed by the parties. Where the parties only made statements in court regarding their compromise, there cannot be said to be any compromise in writing signed by them and the decree passed by the court would then be appealable. (Paras 5 and 6).

Second Appeal from the Order of the Court of Shri Hari Ram, Additional District Judge, Gurgaon, dated 3rd October, 1972 reversing that of Shri S. N. Chadha, Sub-Judge 1st Class, Ballabgarh, dated 29th November, 1978, sending the case back for re-trial from the stage when the alleged compromise was recorded and for decision of the case in accordance with law and directing the trial court to look into the merits of the application dated 17th November, 1978 made by the respondents and directing the parties through their counsel to appear before the learned trial Court on 16th October, 1979.

A. S. Rupal, Advocate, for the appellant.

O. P. Goyal, Advocate, for the respondent.

JUDGMENT

J. V. Gupta, J.

(1) The plaintiff-appellants have filed this appeal against the order of the learned Additional District Judge, Gurgaon, dated 3rd October, 1979, whereby the decree of the trial Court has been set aside and the case has been sent back for re-trial from the stage when the alleged compromise was recorded and for decision of the case in accordance with law.

(2) The plaintiffs filed a suit for recovery of Rs. 14,600 mortgaged amount and three years interest with future interest, on the allegations that the defendant-respondent Ram Rattan mortgaged one Haveli situated within the municipal limits of Ballabgarh with the father of plaintiff No. 1 and maternal grand father of plaintiff No. 2 for a sum of Rs. 11,000,—*Vide* registered mortgage deed dated

21st April, 1972. The suit was contested by the defendant. It was *inter alia* pleaded that the mortgage was a mortgage with possession and, therefore, the suit for recovery is not maintainable. However, during the pendency of the suit on 29th October, 1978 it appears that the parties entered into some agreement but no written compromise as such was either executed or produced in Court. The defendant himself made the following statement:—

“Stated that he had compromised with the plaintiffs. A decree for recovery of Rs 11,000 be passed in favour of the plaintiffs. The disputed property may be treated as redeemed.”

After this statement was recorded, Ashwani Kumar plaintiff made the following statement:—

“The statement of the defendant has been heard. The same is correct. A decree may be passed in accordance with the same. That he does not want to pursue his application dated 17th November, 1978. He relinquishes his mortgagee rights. He be paid the costs. The amount be paid in cash. He should also be allowed interest.”

After recording these two statements, the trial Court passed the decree the operative part of which is as under:—

“In view of the statement of the parties, the suit of the plaintiff for recovery of Rs. 11,000 is hereby decreed with costs. Plaintiffs shall also be entitled to recover this amount with interest at the rate of 7 per cent per mensem from the date of the suit till the whole decretal amount is recovered. In case, the amount is not paid within a period of three months henceforth, the impugned property shall be put to sale. In case, the payment is made, the impugned property shall stand redeemed.”

Feeling aggrieved against this decree of the trial Court the defendant filed an appeal before the Additional District Judge, Gurgaon. In appeal this decree of the trial Court has been set aside on the ground that the trial Court has passed its judgment and decree on the basis of alleged compromise which in fact was not a complet-

Ashwani Kumar Kaushik and another v. Ram Rattan and others
(J. V. Gupta, J.)

ed contract and as such the decree on such a compromise was, therefore, not sustainable in the eye of law. Feeling aggrieved against this order, the plaintiffs have come up in appeal to this Court.

(3) The appeal was admitted on the question whether an appeal could be filed against the decree passed on the basis of consent.

(4) I have heard the learned counsel for the parties but I do not find any merit in this appeal. Of course no appeal will lie against a consent decree but in the present case it has been found as a fact by the learned Additional District Judge that the defendant had made a limited offer but the plaintiff came out with a counter offer, and then the trial Court passed a decree not strictly on the basis of compromise but added something more thereto. If once it is held that the decree is not in accordance with the compromise or strictly there is no compromise as such between the parties, admittedly such a decree is appealable.

(5) Apart from that, Rule 3 of Order 23, of the Code of Civil Procedure, provides that the agreement or compromise should be in writing and signed by the parties. Admittedly in the present case there was no compromise in writing and signed by the parties. Under these circumstances the question of passing a decree in accordance therewith could not arise. As a matter of fact it appears that the amendment in the Code of Civil Procedure has been made with a purpose so that the parties may come to a definite agreement and the compromise thus arrived at be reduced to writing so that nothing is left vague and in the discretion of the Court. On this ground as well, it cannot be said that there was any compromise between the parties as contemplated under the said provision of the Code of Civil Procedure on the basis of which a decree could be passed.

(6) For the reasons recorded above, this appeal fails and is dismissed with no order as to costs. Parties have been directed to appear in the trial Court on 30th May, 1980.

S. C. K.