

Serial No. 01
Supplementary List

HIGH COURT OF MEGHALAYA
AT SHILLONG

CRP No. 30 of 2020

Date of Decision: 03.03.2022

Shri. Delican Shadap & Anr.

Vs.

Smti. Dal Nongtri & Anr.

Coram:

Hon'ble Mr. Justice H. S. Thangkhiew, Judge

Appearance:

For the Petitioner/Appellant(s) : Mr. S.R. Lyngdoh, Adv.

For the Respondent(s) : None.

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| i) | Whether approved for reporting in Law journals etc.: | Yes/No |
| ii) | Whether approved for publication in press: | Yes/No |

JUDGMENT AND ORDER

1. This revision application under Article 227 of the Constitution, has been filed seeking the supervisory jurisdiction of this Court to quash and set aside order dated 18.02.2020, passed by the Court of the Assistant to Deputy Commissioner, Ri Bhoi District in Execution Case No. 1 of 2019. The case of the petitioner is that Title Suit No. 4 of 2016 was instituted by the petitioners as plaintiffs before the Court of the Assistant to Deputy Commissioner, Ri Bhoi District, Nongpoh, which in the course of proceedings resulted in a compromise

between the parties. Thereafter, a compromise petition dated 07.06.2016, was filed before the Court below and the entire suit was disposed of by order dated 04.07.2016.

2. Due to the non-compliance of the terms of compromise by the respondents, the petitioners approached the Learned Lower Court for execution of the compromise deed dated 04.07.2016, vide Execution Case No. 1 of 2019. The Learned Court below vide orders dated 02.07.2019 and 13.08.2019, was pleased to appoint a Bailiff to act as a mediator to conduct local inspection to make proper measurements of the respective lands of the parties and to file report before the Court, which was filed on 19.08.2019. It appears that the respondents through their counsel had filed objection in the said Execution Case and the Learned Court below entertained their objection and disposed of the suit vide the impugned order dated 18.02.2020, by holding that there was no decree drawn up in terms of the compromise agreement dated 04.07.2016, leaving the parties to solve their own disputes and concluding by allowing the objection application of the respondents against the application for execution, which had been made by the petitioners under Order 21 Rule 15 of the CPC. Being aggrieved thereby, the petitioners are before this Court.

3. Before coming to the merits of this revision, it is noted that, inspite of service of notice since 30.10.2020, the respondents No. 1 and 2, have chosen not to appear. This Court thereafter, on several dates that is on 02.12.2020, 16.12.2020 and 17.02.2021 adjourned the matter giving opportunity to the respondents to make appearance, but however, as no appearance was forthcoming on their behalf, by order dated 18.03.2021, it was ordered that the matter proceed ex-parte against the respondents No. 1 and 2, and the records were requisitioned from the Lower Court.

4. Heard Mr. S.R. Lyngdoh, learned counsel for the petitioner, who submits that after the compromise had been arrived at, settling the disputes raised in the Title Suit, the same was reduced to writing, and was jointly presented before the Lower Court on 04.07.2016, praying for judgment decree and order to be passed by the Court based on the mutual settlement. He submits that the Learned Court below heard and examined the parties, and disposed of the suit by allowing and accepting the settlement arrived at vide order dated 04.07.2016, but no formal decree was drawn up. Learned counsel submits that as the respondents were not fulfilling their part of the agreement, the petitioners then filed an application under Order 21 Rule 15 of the CPC for execution of the terms of the compromise agreement on 08.03.2019. The Learned Lower Court thereafter, he submits, by order dated 02.07.2019, appointed one Smti. M. Gatphoh, LDA to carry out local inspection and also to act as a mediator between the parties for fulfillment of the compromise deed and thereafter on the presentation and report by subsequent order, deputed one D. Barka, Bench Assistant to proceed with the execution on 16.08.2019. He further submitted that, the said Bench Assistant filed a report on 19.08.2019, indicating therein the factual position and also the fact that, the respondent No. 2 was not co-operating.

5. Learned counsel submits that, in the meanwhile, to this application, the respondents filed 2(two) objections on 24.09.2019 and 28.11.2019 on the same premise, which the learned Lower Court took up for consideration and disposed of the entire execution case by the impugned order dated 18.02.2020 by holding that there was no decree and that the party were to resolve their own disputes as agreed. Learned counsel submits that, the compromise having been arrived upon by mutual consent and after receiving the seal of the court, the

terms thereof, would amount to a decree which is executable. Learned counsel in this context, has referred to the judgment of **S. Satnam Singh & Ors. vs. Surender Kaur & Anr.** reported in **(2009) 2 SCC 562**, wherein, he submits that it has been held that, to determine the question as to whether, an order passed by the Court is a decree or not, it has to satisfy five tests, which was satisfied in the instant suit in question, inasmuch as, there was such an adjudication in the suit determining the rights of the parties, which was conclusive in nature and that the formal expression was in the form of the petition wherein, the terms of compromise were detailed therein, signed by both the parties and endorsed by the Court. He therefore submits that, the impugned order in accepting the objections of the respondents and holding that there was no decree to be executed, thereby disallowing the prayer of the petitioner, is patently irregular and bad in law.

6. Having heard the learned counsel for the petitioners and on examination of the records, it appears that the only point for consideration before this Court is with the correctness of the impugned order which had rejected the application for execution filed under Order 21 Rule 15 of the CPC by the petitioner/plaintiff. From the facts as narrated and set above, it is not in dispute that a compromise had been arrived at by the contesting parties in Title Suit No. 4 of 2016 on which basis the Title Suit was disposed of, and it is also on record that the Lower Court had initiated execution proceedings on the application under Order 21 Rule 15 for execution, in furtherance of the compromise deed arrived at by the parties. However, on the objections of the respondents, the application was rejected by the impugned order, on the finding

that there was no decree drawn up in terms of the compromise deed, and the parties were directed to settle the disputes amongst themselves.

7. Order 23 Rule 3 of the CPC reads as follows:

“3. Compromise of suit.-Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.-An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.”

8. This provision contemplates that after the Court records the compromise as was done in the instant case vide order dated 04.07.2016, it shall proceed to pass a decree, which however, in the present case even though the compromise deed was to the satisfaction of the learned Lower Court and the Title Suit disposed of in terms of the said compromise, no formal decree was drawn up. The Hon’ble Supreme Court in the case of ***Sir Sobha Singh and Sons Pvt. Ltd. v. Shashi Mohan Kapur (Deceased)*** reported in ***AIR 2019 SC 5416***, on a similar question has held that an execution application even if filed without a certified copy of the decree would be maintainable, and that it empowered the Executing Court to entertain the execution application and to decide the objections raised on merits. Para-42 which is relevant is quoted hereinbelow:-

“42. This takes us to examine the next question, namely, what is the effect of not filing the copy of the decree along with the execution application filed by the appellant. In our view, even though the appellant did not file the certified copy of the decree along with the execution application for the reason that the same was not passed by the Court, yet the execution application filed by the appellant, in our view, was maintainable. Indeed, so long as the formal decree was not passed, the order dated 01.06.2012 was to be treated as a decree during the interregnum period by virtue of Order 20 Rule 6A (2) of the Code. In other words, notwithstanding the fact that the decree had not been passed, yet by virtue of principle underlined in Order 20 Rule 6A(2) of the Code, the order dated 01.06.2012 had the effect of a decree till the date of actual passing of the decree by the Court for the purposes of execution or for any other purpose. This empowered the Executing Court to entertain the execution application and decide the objections raised by the respondent on merits.”

9. The ratio of this judgment therefore is that as long the formal decree was not passed, the order recording the compromise in this case order dated 04.07.2016, shall be treated and shall have the same effect as a decree. In the same judgment the Hon’ble Supreme Court at Para-48 has held as follows:-

“48. In the case at hand, we find that the Court, which disposed of the suit, did not draw the decree but only passed the order. In such a situation, the decree holder was required to file an application under Section 151 read with Order 20 Rule 6A of the Code to the Court for drawing a decree in accordance with the order dated 01.06.2012. Indeed, we find in the concluding para of the order dated 01.06.2018 that the Court has already directed to ensure compliance of the formalities. It would have been, therefore, proper in such circumstances for the Court to simultaneously draw a decree the same day itself or in any event within 15 days as provided in Order 20 Rule 6A.”

10. These being matters of procedure, in the considered view of this Court, as there was no decree drawn up, the petitioner is required to file an application under Section 151 read with Order 20 Rule 6-A CPC, before the lower Court below for drawing the decree in accordance with the order dated 04.07.2016. Consequently, the impugned order dated 18.02.2020 is set aside and quashed and the execution application on the preparation of the decree and

the filing of the certified copy thereof, shall be taken up by the Executing Court.
No objection shall be entertained by the Court below in the preparation of the decree as it is only a formality that is to be completed in terms of the compromise.

11. The entire process is to be dealt with expeditiously by the Learned Lower Court immediately on receipt of the application under Section 151 read with Order 20 Rule 6-A CPC which shall be filed by the petitioner within a period of 4(four) weeks from today.

12. With the above noted directions, this revision application is allowed and accordingly disposed of.

13. Lower Court Case Records to be transmitted back immediately.



Judge

Meghalaya
03.03.2022
"D.Thabah-PS"