

IN THE HIGH COURT OF SIKKIM

Civil Revision (P) No.15/2000

1. Devi Kumari Pradhan,
W/o Shri Kulman Pradhan,
R/o Mangan Bazar,
P.O & P.S. Mangan,
North Sikkim
2. Nehru Pradhan,
S/o Shri Kulman Pradhan,
R/o Development Area,
P.O. & P.S. Gangtok,
East Sikkim. Petitioners

Versus

1. M/S Jagat Singh Amar Singh,
Mangan Bazar,
P.O. Mangan Bazar,
North Sikkim.
2. Jagat Singh,
S/o Late Manmull Singhi,
R/o Mangan Bazar,
North Sikkim.
3. Amar Singh,
S/o Late Manmull Singhi,
R/o Mangan Bazar,
North Sikkim. Respondents.

Coram :

The Hon'ble Mr. Justice R. Dayal, Chief Justice.

The Hon'ble Mr. Justice Anup Deb, Judge.

Present : Mr. N. B. Kharga, Advocate for the petitioners.

Mr. J. K. Chandak, Advocate for respondent Nos. 1 & 2.

None for respondent No.3.

Date of Decision : 23rd May, 2001.

JUDGMENT

Dayal C.J.

This Civil Revision is directed against the order dated 24.10.2000 by the Learned Civil Judge, East Sikkim at Gangtok holding that she does not have the jurisdiction over the suit brought by the petitioners.



2. Petitioner No.1 was the landlady and the respondents were the tenants under her in respect of certain premises. Earlier, petitioner No.1 brought a suit for eviction and arrears of rent. That suit was compromised while the matter was before the High Court in CFA No.15 of 1999 on 17.3.2000. By that compromise, the respondents agreed to vacate the premises within the period specified in paragraph 2 of the compromise petition. Paragraph 3, which is material, reads as under :-

"3. That the Respondent shall pay up the entire arrear rents from 1st April 1998 against proper receipts within one month and thereafter pay up the future rents every month against proper receipts."

Subsequently, the petitioner filed Civil Suit No.42 of 2000 from which the instant appeal has arisen, for rectification of the compromise petition, alleging that it had been agreed that rent would be paid from the year 1988 and the figure 1998 was wrongly typed instead of the figure 1988. On a preliminary objection raised on behalf of respondent Nos. 1 and 2, the learned Civil Judge held that since the compromise decree had been passed on the basis of the deed of compromise, by the High Court, a subordinate court could not rectify the decree, and, so, her court does not have the jurisdiction over the matter.

3. We have heard Shri N. B. Kharga, learned Counsel for the petitioners and Shri J. K. Chandak, learned Counsel for the respondent Nos. 1 and 2. Learned Counsel for the petitioners submitted that the compromise petition is a document within the meaning of Section 26 of the Specific Relief Act 1963 and since the compromise petition contained an error inasmuch as instead of the year 1998, the year 1988 was wrongly typed therein, suit for rectification lies under that provision. On the other hand, it is submitted on behalf of respondents 1 and 2 that since the Court passed the decree on the basis of the compromise after the parties had understood the terms of compromise, the suit does not lie. It is also submitted on behalf of respondents 1 and 2 that the suit also does not lie in view of the proviso to Rule 3 and Rule 3A of Order XXIII of the Code of Civil Procedure.

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4. The question for decision is whether suit lies for rectification of compromise after the decree has been passed on the basis of the compromise which allegedly contains an error which error is said by the plaintiff to be mutual. The question whether the imputation about the inaccuracy is factually right or wrong is not relevant to the question of maintainability of such a suit. The correctness or otherwise of the allegation is to be decided on merit, if the suit is held maintainable. We see no merit in the submission that a compromise which is an instrument under Section 26 of the Specific Relief Act, 1963 ceases to be an instrument, after a decree has been passed on the basis of the compromise. It was held in *Villiakkal and Another versus Karuppa Goundan* AIR 1926 Madras 1146 that a decree is an instrument in writing and, therefore, when a mistake has been committed in drawing up a compromise petition and that mistake finds place in the decree embodying the terms of the compromise, it is open to the Court to have that rectified in a subsequent suit. In *Karimunnisa versus Mir Jamaluddin* AIR 1937 Bombay 457 the Bombay High Court held that a consent order is a form of contract. A mistake in a contract, common to both parties - and a clerical or mathematical error can hardly fail to be that - can be rectified by an order of the Court; the method of obtaining such an order is a matter of procedure; normally a suit is necessary, but when the contract is embodied in an order, there is no reason why the parties should not avail themselves of the simple method of correcting such mistakes in an order provided by S.152. According to this decision, a suit lies for correction of a mistake in a compromise deed. In *Sankaran versus Raman* AIR 1961 Kerala 13, it was held that a clerical error in the agreement of compromise could not be rectified under sections 151, 152 and 153 of the Code and a separate suit for rectification on the ground of mutual mistake would be the proper remedy. After considering the cited authorities, we are of the view that a suit lies for rectification of an alleged typographical error, in a compromise agreement, even when decree has been passed on the basis of that compromise by the superior court.

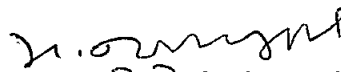
M. Ramani

5. As to the submission concerning the proviso to Rule 3 of Order XXIII CPC, the proviso is not applicable to the facts of the present case. A bare perusal of the proviso would show that it applies where one party alleges and the other party denies that an adjustment or satisfaction has been arrived at. In such a case, the Court has to decide that question. Naturally, the Court is the one where the allegation is made that compromise has been made. The proviso deals with a situation where the dispute arises before the decree is passed on the basis of the alleged compromise. It does not deal with the situation where compromise has been filed and a decree has also been passed on the basis of that compromise and subsequently it is alleged that the compromise contained an error of fact.

6. As regards the other submission, Rule 3A of Order XXIII CPC says that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. It is nobody's case that the suit from which the revision has arisen was not lawful. It is a common case of the parties that compromise was lawful. The suit is thus not barred by Rule 3A.

7. In the result, the revision is allowed, the impugned order of the learned trial Court is set aside and it is directed that the learned trial Court shall proceed with the suit according to law. In the circumstances, there shall be no order as to costs.


 (Anup Deb)
 Judge
 23.5.2001


 23.5.2001
 (R. Dayal)
 Chief Justice
 23.5.2001

at/