

Special Appeal No. 70 of 1868.

1868.

April 21.

HARI SARA'SHIV DIKSHIT.....*Appellant.*
 BA'PU BALVANT.....*Respondent.*

Adjustment of Decree—Compromise—Civ. Proc. Code, Sec. 206.

H. sued B. to recover possession of a certain house.

B. answered that the house was his own; that H. having fraudulently got possession of it, he, B., had filed a suit to recover possession; that a decree was passed in his favour in the lower court, which, however, was reversed on appeal; that, pending a special appeal, a compromise had been entered into between him and H., in pursuance of which he, B., was put in possession of the house.

The terms of this compromise were not certified to the court under Sec. 206 of the Civ. Proc. Code.

Held that this compromise, having been effected after the decree in favour of B. had been reversed, did not come within the meaning of Sec. 206, and was, therefore, a good defence to the suit of H.

THIS was a Special Appeal from the decision of the Honorable G. A. Hobart, District Judge of Khándesh, in Appeal Suit No. 161 of 1866, confirming the decree of the Munsif of Tengorá.

Hari brought this suit against Hemchand, Bápu, and Devji to recover possession of a certain house, alleging that it was his own property; that in March 1859 he had lent it to Hemchand, who fraudulently transferred it to Bápu, and that the latter again transferred it to Devji.

Hemchand and Devji did not appear to defend the suit. Bápu answered that the plaintiff's allegation of his being the proprietor was false; that Hemchand, who was the real owner, had given him the house in payment of a debt; that subsequently the plaintiff, having got possession of it by fraudulent means, he, the defendant Bápu, instituted a suit to get it back again, and obtained a decree in his favour; that this decree being reversed on appeal, he was about to prefer a special appeal, but that, a compromise having been effected, the plaintiff vacated the house and made it over to him.

This compromise was not certified to the court.

The Munsif, holding the compromise proved, rejected the plaintiff's claim.

The Judge also held the compromise proved, and considered that it was a good defence to the suit.

His reasons are thus recorded:—

“Such an assertion as was made in the defence, namely, that the claim awarded had been compromised out of court, could not properly be listened to as an objection raised to an application to execute the decree. That is clear from Sec. 206 of Act VIII. of 1859, but a refusal to listen to an objection so made would not be a bar to a regular suit brought by the judgment-debtor to cancel the operation of the decree, on the ground of the decree-holder's fraud in applying for execution of a decree which had in fact become inoperative, from a new arrangement of the claim having been made, and it follows that such an objection as that made by Bāpu must be listened to, when put forward as an answer to a fraudulent attempt by the plaintiff to eject him from property awarded to the plaintiff by a decree, but which property the plaintiff had transferred to him.”

The appeal was argued before WARDEN and GIBBS, JJ.

Nānābhāi Haridās, for the special appellant:—The decision of the District Judge contravenes the provisions of Sec. 206 of the Code, which enacts that no adjustment or compromise of a decree, in part or in whole, shall be recognised by the court, unless it be made through the court, or be certified to the court by the decree-holder.

[GIBBS, J.:—But this is not a compromise of a *decree* within the meaning of this section. The decree given against you was reversed in appeal. You were only entitled to your costs. You had not a substantial decree in your favour.]

It has been held by a majority of the High Court at Madras, in the case of *Arunāchella v. Appāvu (a)*, that a suit would not lie where the plaintiff owed the defendant a judgment-debt, and the plaintiff paid the debt, but not through the court. The defendant fraudulently applied to the court to execute the decree, and the court, being debarred by Sec. 206 from recognising payments made otherwise than

1868.
HĀ'RI SĀDĀ,
SHIV DĪKSHĪT
v.
BĀ'PU
BALVANT.

1868.
 HARI SADA-
 SHIV DI'KSHIT
 v.
 BA'FU
 BALVANT.

through it, executed the decree by making the plaintiff pay again the sum decreed, and where the plaintiff therefore sued to recover the amount overpaid.

[GIBBS, J.:—That case is distinguishable from the present. In that case the plaintiff owed a judgment-debt. In this that is not the case. If, before the reversal of Bápu's decree, the compromise had been effected, that compromise would have been within the meaning of Sec. 206.]

My second objection is, that the compromise between Bápu and Hari was a *nudum pactum*.

[WARDEN, J.:—We do not think so. We have recently held, in S. A. No. 43 of 1868 (b), that a mutual agreement to avoid litigation was not void for want of consideration. Bápu wanted to prefer a special appeal, and your client prevented him from doing so by inducing him to enter into this arrangement.]

In the present case the threat of litigation was without any foundation. The winning party in the appellate court gave up everything without gaining anything instead.

[GIBBS, J.:—He might have considered his chance in Special Appeal as a very poor one.]

PER CURIAM:—We agree with the Judge below in his view of the law of the case. We think that the compromise, having been effected after the reversal of Bápu's decree, was not an adjustment within the meaning of Sec. 206 of the Code of Civil Procedure. An order to pay costs, by the party whose claim has been rejected, does not bring this case within the ruling of the Madras High Court quoted in the argument. We must confirm the Judge's decree.

Decree affirmed.

(b) *Supra*, p. 75.