

1910.

RANCHODIAL
VANDRA-
VANDAS
PATVARI
v.
THE
SECRETARY
OF STATE
FOR INDIA.

We, therefore, dismiss this appeal with costs confirming the decree with this variation that instead of possession being awarded for the usage mentioned in paragraph 2 of the plaint, possession will be awarded subject only to the easements existing over the land in favour of defendants as owners of the northern premises.

Decree varied.

G. B. R.

APPELLATE CIVIL.

Before Mr. Justice Batchelor and Mr. Justice Rao.

1910.

October 5.

KISHANDAS SHIVRAM MARWADI, PLAINTIFF, v. NAMA
RAMA VIR, DEFENDANT.*

*Compromise—Decree in terms of the compromise—Application for decree—
Terms of the compromise opposed to law—Public policy—Instalments—
Default—Payment of whole sum—Dekkhan Agriculturists' Relief Act
(XVII of 1879), section 15B, clause (2).†*

A suit brought against an agriculturist-defendant to recover money by sale of mortgaged property was compromised on the terms that the defendant should pay the amount in equal annual instalments, and that on failure to pay any two

* Civil Reference No. 3 of 1910.

† The Dekkhan Agriculturists' Relief Act (XVII of 1879), section 15B, runs as follows:—

(1) The Court may in its discretion in passing a decree for redemption, foreclosure or sale in any suit of the descriptions mentioned in section 3, clause (y) or clause (z) or in the course of any proceedings under a decree for redemption, foreclosure or sale passed in any such suit, whether before or after this Act comes into force, direct that any amount payable by the mortgagor under that decree shall be payable in such instalments, on such dates and on such terms as to the payment of interest, and where the mortgagee is in possession, as to the appropriation of the profits and accounting, therefore, as it thinks fit.

(2) If a sum payable under any such direction is not paid when due, the Court shall, except for reasons to be recorded by it in writing, instead of making an order for the sale of the entire property mortgaged or for foreclosure, order the sale of such portion only of the property as it may think necessary for the realization of that sum.

instalments the plaintiff should be at liberty to realise the whole of the balance by sale of the entire mortgaged property through the Court. The compromise was brought before the Court with a view to obtain a decree in its terms. The defendant when examined by the Court agreed to be bound by its terms which were explained to him. The Subordinate Judge, however, felt doubt as to the validity of the compromise; and referred for opinion the following two questions to the High Court: (1) whether the compromise was lawful although it provided that in default of the payment of two instalments the plaintiff should realize the whole balance due by sale of the entire mortgaged property, such provision having been opposed to section 15B, clause (2) of the Dekkhan Agriculturists' Relief Act, 1879; and (2) whether the Court was bound to pass a decree on a compromise of this character.

Held, that the term "that in default of payment of two instalments the whole mortgaged property shall be liable to sale" was contrary to public policy as declared in section 15B, clause (2) of the Dekkhan Agriculturists' Relief Act, 1879; and that, therefore, it was not competent to the Court to pass a decree which would be in conflict with the statutory provision.

Held, further, that the mere fact that the defendant though apprised of the terms of the compromise agreed to it, did not invest the Court with jurisdiction to pass a decree to carry out the compromise.

THIS was a civil reference made by T. R. Kotwal, Subordinate Judge of Talegaon and Sasvad.

The plaintiff instituted a suit against the defendant, who was an agriculturist, to recover the money due on a mortgage executed by the latter. During the pendency of the suit, the parties settled their differences and arrived at a compromise, the terms of which were as follows:—

"Defendant should pay Rs. 100 as claimed and costs and the full fees of the pleader, *viz.*, Rs. 10 in the Fālgun of Shake 1831 and yearly Rs. 10 in each future Fālgun and the instalment should be paid till the whole sum was paid off. If defendant makes default in payment of any two instalments, plaintiff should realize the whole sum by sale of the property described in the plaint through the Court."

The above compromise was presented to the Court for a decree to be passed in its terms. The defendant was examined by the Court and the terms of the compromise were explained to him. He then agreed to be bound by those terms. The Subordinate Judge, however, felt doubt as to his competence to pass a decree in terms of the compromise; and referred the following two questions to the High Court for opinion:—

1910.

KISHANDAS
SHIVRAM
MAHWADI
vs
NAMA
RAMA VIR.

1910.

KISHANDAS
SHIVRAM
MARWADI
v.
NAMA
RAMA VJR.

1. Is the above agreement or compromise lawful which provides that in default of two instalments the plaintiff should realize the whole balance due by sale of the property it being contrary to the provisions of section 15B (2) of the Dekkhan Agriculturists' Relief Act, as construed in *Pandharinath v. Shankar*, 8 Bombay L. R. page 488 ?

2. Is the above case to be applied only to decrees passed by the Court or also to compromises or consent decrees based on compromises or to agreements filed under section 44 of the Dekkhan Agriculturists' Relief Act ?

On the questions referred the opinion of the Subordinate Judge was in the negative. His reasons for the opinion were expressed as follows : --

"The judgment of FARRAN, C. J., in I. L. R. 22 Bombay 238 shows that when a compromise is brought within the provisions of the Dekkhan Agriculturists' Relief Act it would be governed by that Act. The particular case did not fall under the Act. The case in I. L. R. 26 Mad. 31 shows that in spite of the compromise as recorded by exhibit 15 the Court will disregard the terms so far as they are contrary to the Dekkhan Agriculturists' Relief Act as construed by the Bombay High Court. So far as a decree embodies unlawful terms of a compromise it is inoperative and will not be enforced. A Court would have no jurisdiction to pass a decree on a compromise unless it is lawful : O. XXIII, r. 3. A Judge disregarding the ruling of the High Court to which he is subordinate would be acting contrary to law and his decision of a case would be open to revision by the High Court under section 115 (c) : I. L. R. 25 All. 509 at 523, 524, I. L. R. 17 Mad. 410. If the above argument is correct the compromise becomes unlawful being opposed to the construction of section 15B (2) of the Dekkhan Agriculturists' Relief Act and the Court should not pass a decree on it : *Rama v. Ramchand*, Printed Judgments, 1894, page 456. As an argument in favour of supporting the compromise above set out the maxim *quilibet potest renunciare juri pro se introducto* may be relied on, i.e. anyone may, at his pleasure, renounce the benefit of a stipulation or other right introduced entirely in his own favour. Broom's Legal Maxims 7 Ed., pp. 531 to 537, I. L. R. 27 Bombay, page 10. The only doubt is whether the agriculturists' case would come under the proviso to the rule set out on page 537. The maxim is inapplicable if an agriculturist enters into an agreement as the one noted above by which he is deprived of that protection to which by the Dekkhan Agriculturists' Relief Act he is absolutely entitled. In I. L. R. 26 Bombay 252, F. B., at 258, 259 it is remarked that 'looking at the policy of the Act and its avowed intention to afford relief to indebted agriculturists, we think that no obstacle should be placed in the way of making its remedies as wide reaching as possible.'

Another argument advanced in favour of the compromise is one arising from the great hardship and inconvenience as a result of the ruling in

8 *Bombay Law Reporter*. Broom's Legal Maxims pp. 146-148. It is asked how many times is the decree to be made absolute, if it is to be done at each time the instalment falls due? How are the difficulties of effecting a sale to realize an instalment to be got over?

The suit falls under sections 3, 4 and 10 of the Dekkhan Agriculturists' Relief Act and no appeal lies from my decree. If I pass a decree under Order XXIII, r. 3 in terms of the compromise there will be no appeal, section 95 (3), Civil Procedure Code."

The reference was heard by Batchelor and Rao, JJ.

B. V. Vidwans (amicus curiae) :—

The rule of law contained in section 15B, clause (2) of the Dekkhan Agriculturists' Relief Act, 1879, applies only when the Court passes a decree after an investigation of the claim. It does not apply to compromise which is an act of the parties. The whole policy of the Act is to encourage compromise by the parties, and to this end is directed the provisions about conciliation in the Act. See *Piraji v. Ganapati*⁽¹⁾.

L. G. Gole (amicus curiae) for the defendant :—

The terms of the compromise in question are in direct conflict with the provisions of section 15B, clause (2). The Court should not turn a compromise into a decree, if it contains any terms opposed to the provisions of any statute. See also *Pandharinath v. Shankar*⁽²⁾; *Rama v. Ramchandra*⁽³⁾; and *Lakshmanswami Naidu v. Rangamma*⁽⁴⁾.

BATCHELOR, J. :—We are obliged to the learned pleaders who have assisted the Court with their arguments.

This is a reference by the Subordinate Judge of Talegaon and arises in a suit brought by the assignee of a mortgage for the recovery of the mortgage-money due on a simple bond, dated the 18th June 1897.

The defendant admitted the mortgage-bond and the receipt of the consideration.

The plaintiff and the defendant entered into a compromise which is exhibit 15, and which provides that the defendant

(1) (1910) 34 Bom. 502.

(3) (1894) P. J. 455.

(2) (1903) 8 Bom. L. R. 488.

(4) (1902) 26 Mad. 31.

1910.

KISHANDAS
SHIVRAM
MARWADI
v.
NAMA
RAMA VIR.

should pay Rs. 100 as claimed and costs, namely, Rs. 10 in Fālgun of Shake 1831 and yearly Rs. 10 in each future Fālgun and so on until the whole sum was paid off; if defendant should make default in payment of any two instalments, then it was provided that the plaintiff should realize the whole sum by sale of the entire mortgaged property through the Court.

The defendant admitted the assignment-deed produced by the plaintiff. The parties prayed for a decree to be passed in terms of this compromise, and the defendant, on being examined by the Court and on the terms of the compromise being explained to him, agreed to be bound by it.

Thereupon the learned Subordinate Judge refers to us two questions, (1) whether the aforesaid compromise is lawful although it provides that in default of the payment of two instalments the plaintiff should realize the whole balance due by sale of the entire mortgaged property, such provision being opposed to section 15B, clause (2) of the Dekkhan Agriculturists' Relief Act; and (2) whether the Court was bound to pass a decree on a compromise of this character.

The Subordinate Judge thought that both questions should be answered in the negative, and we are of the same opinion.

A compromise is merely an agreement between the parties to settle an existing dispute, and if it is to be enforceable in law it must not contain a term opposed to public policy, see *Lakshmanaswami Naidu v. Rangamma*⁽¹⁾. Here the term "that in default of payment of two instalments the whole mortgaged property shall be liable to sale" is contrary to public policy, for the public policy upon this point is declared in section 15B (2) of the Act which enacts that in such circumstances not the whole mortgaged property but only such part of it as may be necessary for the realization of the overdue instalments shall be liable to sale.

We think, therefore, that it is not competent to the Court to pass a decree which would be in conflict with a clear provision of the Statute; and we are supported in this view by the decision in *Rāma valād Rama. Dhēre v. Ramchand valād Fulchand*⁽²⁾.

(1) (1902) 26 Mad. 31.

(2) (1894) P. J. 456.

We are of opinion, moreover, that the mere fact, that the defendant though apprised of the terms of the compromise agreed to it, does not invest the Court with jurisdiction to pass a decree to carry out such a compromise. It must be observed that the only knowledge which appears to have been brought home to the defendant is a knowledge of the terms of the compromise, not a knowledge of his legal position under the specially favourable Dekkhan Agriculturists' Relief Act. That is important in connection with section 12 of the Act which deals with admissions by the debtor; and requires the Court to be satisfied, before giving effect to such admissions, that they were made with the full knowledge of the debtor's legal rights as against the creditor. This section and section 13 seem to us to indicate that the object of the Act was to place the defendant-agriculturists' interests rather in the hands of the Court for protection than to trust them to the hands of the defendant himself.

And section 44 may be referred to for guidance as to the manner in which the Court receiving an agreement should scrutinize it. The section declares that before accepting such an agreement the Court must be of opinion that it is a legal and equitable agreement, a description which we think cannot be applied to compromise which is in direct variance with the provisions of section 15B (2) of the Act.

The case of *Piraji v. Ganapati*⁽¹⁾ is not in point, for the compromise which was there allowed was not alleged to contain any term in conflict with the Statute.

For these reasons therefore we answer in the negative both the questions which have been referred to us.

Order accordingly.

R. R.

(1) (1910) 34 Bom. 502.

1910.

KISHANDAS
SHIVRAM
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