Present: Jayewardene A.J. 1924.

SUPPIAH *v.* ABDULLA.

123—C.R. Colombo, 13,882

Case settled out of Court—Right of parties to have settlement entered of record, though one party repudiated it—Civil Procedure Code, s. 408.

The plaintiff sued the defendant for rent and for money advanced. While this action was pending, the defendant prosecuted the plaintiff for criminal trespass in the Police Court. The criminal case was settled, and it was recorded that if the complainant paid the rent due, accused was to withdraw the civil case. On March 6, the case came before the Commissioner, and was fixed for April 7 for settlement or judgment. The plaintiff denied that the case was settled, and defendant asked for an inquiry into the matter. The Commissioner refused to hold an inquiry, on the ground that if one of the parties repudiated the settlement before it was recorded by the Court, the Court could not give effect to it.

Held, that the settlement was binding on the parties.

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THE facts are set out in the judgment.

Obeyesekere (with him *Mervyn Fonseka*), for defendant, appellant.

H. V. Perera, for plaintiff, respondent.

July 3, 1924. JAYEWARDENE A.J.—

This is an action between a landlord and his tenant. The landlord sued the tenant to recover arrears of rent and also a certain sum of money advanced to the tenant by the landlord, which formed the second cause of action. While the action was pending, but before answer was filed, the tenant, on February 25, 1924, criminally prosecuted the landlord for criminal trespass, criminal intimidation, and abuse. The case was adjourned from time to time, and on March 4 the following settlement was arrived at: "Now settled, complainant withdraws case. Accused to allow complainant to remain in the house till 5th proximo (that is, April 5), on payment of arrears of rent. If the complainant pays the rent due, accused will withdraw the case without costs." Answer in the case had to be filed on March 6, and on that day there was an entry made to the following effect: "For settlement or judgment till April 7." On April 7 there is this entry: " For settlement or judgment. Defendant present. Mr. Jayasekera files proxy of defendant. Mr. Fonseka says that the case has been settled. Mr. Swan says it has not been settled." Mr. Fonseka appeared for the defendant, and Mr. Swan for the plaintiff. The Court then fixed the matter for inquiry for April 15. The proceedings of April 15 are thus recorded: "Inquiry. Mr. Fonseka says that that he has filed papers to show that there was a settlement. He also tenders a Kachcheri receipt for the amount of arrears due. Mr. Fonseka moves that the Court either inquire into the alleged settlement or set the case down for trial." And he tendered a certified copy of the Police Court proceedings and certain other documents, D 2 and D 3. The Commissioner, I understand, refused to hold an inquiry into the alleged settlement, he said: "The case has apparently not been settled now. The settlement contemplated by section 408 is one that the parties have arrived at and which they placed before the Court. If the parties at one time came to a settlement, and subsequently one of the parties repudiates it before such settlement is recorded by the Court, the Court cannot give effect to the settlement. In this case so long as there is no settlement now, the Court has to enter judgment in terms of the order of March 6. Let judgment be entered for plaintiff as prayed for, with costs." The defendant appeals, and contends that the Court ought to have held an inquiry into the question whether there had been a settlement between the parties. It is to be noted that the settlement arrived at in the Police Court for the withdrawal of the present case on payment of arrears of rent does not say what the amount of the arrears

is, or on what basis of monthly rental the arrears were to be calculated. This will have to be proved by oral evidence, if necessary, because the plaintiff contends that the arrears were to be at the rate of Rs. 45 a month, and the defendant contends the arrears were to be calculated at the rate of Rs. 35 a month. But the main question to be decided is whether the defendant is entitled to call upon the Court to hold an inquiry into this settlement. In this case the settlement does no rest upon any verbal agreement, but its existence is placed beyond all doubt by the entry in the Police Court case, and I think it would be encouraging knavery and breaches of faith on the part of litigants if they were to be allowed to get over a settlement arrived at in one Court, before another Court, by merely denying the existence of the agreement. In this case the complainant got over the trouble created by his prosecution in the Police Court by agreeing to withdraw the civil case on certain terms, and now that he has had the benefit of that settlement he comes into the civil Court and entirely repudiates the agreement entered into in the Police Court. I do not think it is possible for a Court of law to tolerate a breach of faith of that kind, and if the law empowers it, I think it is the duty of the Court to see that the parties are kept to their agreement.

The decision of the main question depends upon the construction to be placed upon section 408 of Civil Procedure Code. It is almost identical with section 375 of the old Indian Code. But in my opinion the language of our Code where it differs from the Indian Code is very much stronger in favour of a party applying to have a settlement recorded than the language in section 375 of the Indian Code. Mr. Perera, for the plaintiff, contends that the Judge is right in saying that a Court can only record a settlement, if, when the settlement is notified to the Court and brought before the Court, the parties are still at one regarding it, but that, after one of the parties repudiates the settlement, the Court is powerless to recognize the compromise and to pass a decree thereon. There are several local decisions on this section, and they are not all reconcilable. I will refer to the decisions. I think the first under the section is the case of *Silva v. Hadjiar*.[1] There the parties had come to a settlement, and the terms of settlement were drafted by the defendant's counsel and accepted by the plaintiff's counsel. A paper containing this draft was read in open Court and assented to by counsel on both sides, and the Judge made an order in the following terms: "Let order be entered in accordance with the terms of the joint motion when filed." The motion paper was not filed then and there, and the plaintiff obtained time for making a fair copy of it, and the case was to be mentioned for that purpose on the following day. When the case was called on the following day it was adjourned for another date for a joint motion to be submitted, and when the

[1] *(1914) Bal. Notes of Cases 7.*

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case was called on the adjourned date, the defendant's counsel stated that he was unable to sign a joint motion, as the land had been transferred by his client to his son-in-law. Thereupon the plaintiff's proctor moved for judgment in terms of the agreement read in Court originally, and judgment was accordingly entered. The defendant appealed, and it was contended for him that there was no valid compromise within the terms of section 408 of the Civil Procedure Code. But the Court held that the parties were agreed on the terms of settlement which were reduced to writing and which had been notified to the Court and formally accepted by the parties, and that the joint motion which was to be filed referred to the fair copy of the draft motion which had been read in Court and the filing of which was a purely ministrial act. De Sampayo J. in that case held that the Court was entitled to enter up decree in terms of the settlement under section 408 of the Civil Procedure Code, and he said this : " In my opinion section 408 of the Civil Procedure Code was intended to provide an easy and inexpensive means of giving effect to parties' agreements, instead of driving them to separate actions for specific performance, and, therefore, when a definite agreement is arrived at by them in reference to matters involved in the action, one of them is entitled to apply to the Court under the provisions of the section to enforce the agreement even when the other objects to it. Unless this were so, the section would be deprived of its full scope and meaning. The current of authority on the corresponding section of the Indian Procedure Code entirely supports this view. The opinion expressed in *debi Kumar Dukhinessur Malia*[1] was relied on to the effect that it was a decree when entered that would be final and binding, and that the section did not apply to cases where the agreement was sought to be enforced against an unwilling party. But the opinion was reconsidered and dissented from by the Full Bench in *Sinha v. Ghose*,[2] in which it was held that the Court could record an agreement and make a decree in accordance therewith even if one of the parties to the agreement subsequently objected. There are also various decisions of the High Courts, Bombay and Madras, to the same effect." At this stage I may note the difference between the Indian section and our section. The Indian section says: " If a suit be adjusted wholly or in part, such agreement, compromise, or satisfaction shall be recorded, and the Court shall pass a decree in accordance therewith," but our sections says: " If an action be adjusted wholly or in part, such agreement, compromise, or satisfaction shall be notified to the Court by motion made in presence of, or on notice to, all the parties concerned, and the Court shall pass a decree in accordance therewith." Under our section it is necessary that the Court should be notified of the agreement or compromise by motion, and that it should be made either in the presence of all

[1] *(1885) 11 Cal. 255.*

[2] *(1897) 24 Cal. 908.*

the parties or on notice to the parties. This requirement, in my opinion, shows that the parties so noticed are entitled to be heard upon the question of the compromise or settlement. These words are absent in the Indian Code, but still the Full Bench referred to in 24 *Cal.* 908 held that any objection to the compromise should be inquired into, and the Court should decide if the compromise had been entered into or not. The next case is the case of *de Silva v. Podi Singho* [1]. There, too, the agreement had been entered into in the presence of the Court, but subsequently one of the parties attempted to avoid the agreement. But the Court held that the defendant who was the party who desired to withdraw from the agreement was not entitled to withdraw from it after he had once agreed to the compromise. The other local case is the case of *Rayanpulle v. Mohideen* [2]. In that case the facts were somewhat peculiar. The parties during the course of the trial moved to have the case laid over for settlement. If no settlement was arrived at, judgment was to be entered for plaintiff as prayed for. It would seem that thereafter a third party took upon himself to effect a settlement between the plaintiff and the defendant, and a document was produced which contained the terms of the settlement. It is not necessary to go into the details of the settlement, but De Sampayo J., who delivered the judgment of the Court, said : "The plaintiff was wholly ignored, and nothing was said as to what was to happen to the case. This certainly cannot be regarded as a settlement of the case. The Court can only recognize a settlement between the parties to the action." So there the Court held that there was no settlement, and that the so-called settlement did not refer to the action pending before the Court, and that the settlement was not arrived at by the parties, but by a third party who evidently interested himself on behalf of both parties. But the learned Judge in referring to section 408 of the Civil Procedure Code gave expression to certain observations which, in my opinion, are in conflict with the opinions expressed by him in the case of *Silva v. Hadjiar* (*supra*). The case seems to have been argued without reference to authority, and neither the Indian cases which the learned Judge relied on in the earlier case, nor the earlier case itself appears to have been cited in the argument, and I do not think that the comments on section 408 contained in *Ramayahpulle v. Mohideen* [2] were necessary for the decision of that case, and may be regarded as obiter. I have read the Indian case reported in 24 *Cal.* 908, and I entirely agree with the observations of De Sampayo J. with regard to the scope and effect of section 408. The leading judgment in that case was delivered by Sir Francis Maclean C.J., afterwards a Member of the Judicial Committee of the Privy Council. and although two other Judges disagreed, we must take the judgment of the majority as the judgment of the Full Bench.

[1] (*1916*) 2 *C. W. R. 175.*

[2] (*1924*) 5 *Law. Rec. Rep. 204.*

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In view of these authorities, I come to the conclusion that the learned Judge was in error in saying that he could only record a settlement which the parties had consented to, and to which they continued to consent till the moment when the Court placed that agreement on record and passed a decree thereon. In the present case the agreement can be established beyond all doubt, and as I said it would be encouraging a gross breach of faith on the part of the plaintiff to allow him to get over the settlement arrived at during the Police Court proceedings. I would allow the appeal and send the case back for the Court to inquire into the settlement, which is the settlement recorded in the Police Court proceedings, and to take the further steps required under section 408. The appellant is entitled to his costs in both Courts.

Appeal allowed.