

1924.

*Present: De Sampayo and Porter J.J.*RAMAYAH v. MEERA LEBBE *et al.*

350—D. C. Colombo, 4,165.

*Motion on date of trial that case stand over for settlement—Settlement embodied in a document—Denial of one party that there was any settlement—Inquiry by Court whether there was a settlement—Power of Court to hold the inquiry—Court cannot act on settlement unless all parties agree—Civil Procedure Code, s. 408—Jurisdiction.*

On the date fixed for trial a motion was made "that the case should stand over till December 4 for settlement; and that if no settlement was arrived at by that date, judgment should be entered for the plaintiff." The motion was allowed. The terms of an alleged settlement were embodied in a document; but there was nothing in the document to show that the plaintiff was a party to the so-called settlement; and nothing was said as to what was to happen to the case. On December 4 the plaintiff denied that there was any settlement so far as he was concerned. The District Judge made an inquiry and held that there was a settlement as alleged, and dismissed plaintiff's action.

*Held*, that the order was wrong.

"The Court can only act upon a settlement which has not only been mutually arrived at, but is stated to the Court by both parties. If one of the parties denies, though falsely, that there was any settlement, there is an end of the matter, and the case must take its ordinary course."

**T**HE facts appear from the judgment.

*Hayley* (with him *H. V. Perera*), for plaintiff, appellant.

*Keuneman*, for first defendant, respondent.

*H. J. C. Pereira*, K.C. (with him *J. Joseph*), for second defendant, respondent.

March 27, 1924. DE SAMPAYO J.—

The proceedings in this case are somewhat extraordinary and require to be overhauled. The plaintiff sued upon a promissory note for Rs. 5,000 made by the first defendant in favour of the second defendant and endorsed by the second defendant to the

plaintiff. The second defendant was in default, and the first defendant filed answer, stating that he granted the promissory note as security for moneys that might become due from him to the second defendant on transactions between them, that the endorsement to the plaintiff was fraudulent, that the plaintiff was only an employee of the second defendant, that at the time of the endorsement there was due by the first defendant to the second defendant only a sum of Rs. 500 which he brought into Court.

1924.

DE SAMPAYO

J.

*Ramayah*

v.

*Meera Lebbe*

On November 3, 1922, when the case appears to have come on for trial, a motion was made on behalf of the plaintiff and the first defendant that the case should stand over till December 4 for settlement, and that if no settlement was arrived at by that date judgment should be entered for plaintiff as prayed for. This motion was allowed. So far the matter is clear, but what took place thereafter is difficult to understand. It would seem that one Noor Mohamado Rawter took upon himself to effect a settlement, but his settlement is quite extraordinary. The terms of that settlement are embodied in the document marked 1 D 1. The document purports to be a "receipt" granted by Noor Mohamado Rawter to the first defendant. There is nothing in the document to indicate that the plaintiff was party to the so-called settlement, but at the inquiry by the Court it was stated that the plaintiff was present at the arrangement, and agreed to it. The only reference to the plaintiff and to the case is in a recital that the first defendant had given the promissory note in connection with his transactions with the firm of "Sana Moona Sana & Co.," and that one of the members of that firm (the second defendant) endorsed the promissory note and delivered it "in trust" to Seena Ramayah Pulle (the plaintiff) "who has sued you in case No. 4,165." The document proceeds to state the amount due by the first defendant to the said firm was settled at Rs. 4,000 to be paid in the manner therein mentioned. The plaintiff was wholly ignored, and nothing is 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. See section 408 of the Civil Procedure Code. On December 4 when the case was called, the plaintiff would appear to have denied that there was any settlement so far as he was concerned. The duty of the Court in those circumstances was obvious. It was either to enter judgment for the plaintiff as agreed on November 3, or sweep aside all that related to an attempt at a settlement of the case, and to hear the case and give judgment. The Court, instead of doing so, entered upon a lengthy inquiry as to whether there was a settlement or not. This is an impossible procedure. The plaintiff, even if he was present at the discussion of the terms of a settlement, might well have withdrawn from the compromise. All said, the Court can only act upon a settlement which has not only been mutually arrived at, but is stated to

1924.  
 DE SAMPAYO  
 J.  
*Rumoyah*  
*v.*  
*Mee.ia Lubbe*

the Court by both parties. If one of the parties denies, though falsely, that there was any settlement, there is an end of the matter, and the case must take its ordinary course. The inquiry made by the Acting District Judge is useless, and is a pure waste of time. As the result of the inquiry, the District Judge held that there was a settlement as alleged by the first defendant, and dismissed the plaintiff's action. In view of the nature of these proceedings, I am not surprised to find that, though the settlement was made on the footing that there was nothing due to plaintiff from the second defendant, and that the plaintiff was only an endorsee for collection, the Court on December 22 entered judgment for plaintiff against the second defendant for the full amount of his claim.

I think the only thing we can do is to set aside the order of dismissal of the plaintiff's action, and quash all proceedings since December 4, 1922, and remit the record to the District Court for a proper trial of the case. The plaintiff is, I think, entitled to the costs of the proceedings in the Court below, and of this appeal.

PORTER J.—Agreed.

*Set aside.*