

REPORTABLE

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO(S). 3961 OF 2010**

TRILOKI NATH SINGH

....APPELLANT(S)

VERSUS

ANIRUDH SINGH(D) THR. LRS & ORS.

....RESPONDENT(S)

J U D G M E N T

Ajay Rastogi, J.

1. The question arises in the appeal for our consideration is as to whether the decree passed on a compromise can be challenged by the stranger to the proceedings in a separate suit.

2. The seminal facts which are relevant for the present purpose and the circumstances in which it arises for our consideration are that the appellant-plaintiff filed suit before 4th sub-judge, Chapra seeking a declaration that the compromise decree dated 15th

September, 1994 passed in Second Appeal No. 495/86 by the High Court is illegal, inoperative and obtained by fraud and misrepresentation and also prayed for injunction against the respondents-defendants restraining them from entering into peaceful possession of the suit property.

3. The case in shorn of the appellant-plaintiff is that the land described in Schedule 1 of the plaint originally belonged to Lakhan Singh who died leaving behind three sons, namely, Din Dayal Singh, Jalim Singh and Kunjan Singh. Din Dayal Singh is said to have died issueless during lifetime of his father and his other brother, namely, Jalim Singh also died leaving behind a son Ram Nath Singh and two daughters Sampatiya and Soniya. As regards the third son Kunjan Singh, he is said to have died issueless but prior to his death he gifted the land of his share to Sampatiya on the basis of a gift deed dated 10th July, 1978 which came on possession over her.

4. The further case of the appellant is that one Salehari wife of Satyanarayan Prasad claiming herself to be the daughter of late Kunjan Singh filed a partition suit 13/78 in the Court of Munsif,

Chapra for setting aside the aforesaid gift and for partition of her share in the ancestral property. In that suit, Sampatiya, Dulari Devi, Ram Nath and Soniya were impleaded as party respondents-defendants. Ram Nath died during pendency of the proceedings and only Sampatiya contested the suit. It was further stated that suit was dismissed and it was held that Salehari was not the daughter of Kunjan Singh and have no right in the properties.

5. Salehari filed T.A. No. 19/84 which was dismissed on 7th April, 1986. The further case is that a total of 3 Bigha 6 Katha 3 Dhurs was sold by Sampatiya to appellant-plaintiff for a sum of Rs. 25,000/- by a registered sale deed dated 6th January, 1984 and put the appellant-plaintiff in possession over the suit property. In July, 1995, when respondents-defendants started making interference in possession of the suit property of the appellant-plaintiff and on query it revealed that it was claimed on the strength of a compromise decree entered between Sampatiya and Salehari which was filed in second appeal before the High Court of Patna.

6. The case of the appellant-plaintiff is that the said compromise decree was obtained by fraud and misrepresentation concealing the

salient fact from the High Court that the sale deed was executed much prior to the compromise being executed between the parties to the proceedings and as such the said compromise was liable to be declared to be void which was obtained by fraud and misrepresentation.

7. The respondents-defendants contested the suit on the ground that the suit was not maintainable. It was also alleged that the suit was hit by the provisions of Section 34 of the Specific Relief Act and Order 23 Rule 3A Code of Civil Procedure(hereinafter being referred to as "CPC"). It also urged that the appellant-plaintiff has no right to file the suit in the Court of Sub-Judge rather he ought to have filed an application before the High Court which passed the compromise decree and the appellant-plaintiff has no right to seek relief of injunction. That apart, it was stated to be barred by Section 52 of Transfer of Property Act. The specific plea of the respondents-defendants in the written statement was that Kunjan Singh has not died issueless rather he had a daughter namely Salehari being his sole heir. It was also denied that he had executed a deed of gift in favour of Sampatiya and has delivered

possession of the gifted land to her. It was, however, conceded that Salehari filed a partition suit no. 13/79 in which she lost, whereafter she filed First Appeal No. 19/84 which was dismissed. In Second Appeal No. 495/86 before the High Court, at her instance, a compromise was executed between the parties and accordingly, the compromise decree was passed by the High Court dated 15th September, 1994. The extract of the terms of compromise is reproduced ad infra:-

“That the said compromise has been reached on following terms and conditions:-

- (i) That the respondent no. 1(Sampatiya D/o Late Jalim Singh) accepts that the plaintiff-appellant Salehari Devi is the daughter of Kunjan Mahto.
- (ii) That respondent no. 1 accepts the alleged deed of gift dated 10.7.1987 executed by Kunjan Mahto in favour of respondent no. 1 is illegal, void and in-operative and that respondent no. 1 derived neither title nor possession on account of the said deed of gift.
- (iii) That it is accepted by the respondent no. 1 that the plaintiff appellant Salehari Devi after the death of her father Kunjan Mahto came in possession of his properties as she was the sole surviving legal heir of her father,
- (iv) That the plaintiff-appellant accepts that she has got only half share in the entire suit properties and other half share belongs to respondent no. 1 Sampatiya Devi.
- (v) That to remove vagueness as to which suit properties will go to whose share, it is made clear that schedule-I property of the plaint which is made annexure-1 containing exhaustive details of properties will go to the

- share of plaintiff appellant and the rest of the suit properties as described in schedule-II of the plaint will go to the share of respondent no. 1,
- (vi) That according to their respective shares the appellant and respondent nos. 1 and 2 have come in possession thereof.”

8. On the basis of pleadings of the parties, the learned trial Judge in all framed 9 issues. The same are reproduced as under:-

1. Is the plaintiff got any valid cause of action?
2. Is the suit as framed maintainable?
3. Is the Court fee paid sufficient?
4. Is the suit barred by limitation?
5. Is the suit u/s 34 S.R. Act.
- 6. Is the compromise dated 30th May, 1994 and order dated 15th September, 1994 in 2nd appeal 495/95 of the Hon'ble High Court is illegal, inoperative and inaffective due to fraud.**
- 7. Is the plaintiff got right, title and interest in the suit property?**
8. Is the plaintiff entitle for decree as claimed
9. To what over relief and reliefts plaintiff to?

9. It is relevant to notice that issue nos. 4 & 5 were not pressed and rest of the issues were decided against the appellant-plaintiff after due appreciation of the evidence on record on merits by the trial Judge by its judgment and decree dated 31st July, 1998 which was challenged by the appellant-plaintiff in appeal before the learned District Judge in Title Appeal No. 80/98(3/99). On due

appreciation of evidence on record, the appeal came to be dismissed by the Court of Appeal by its judgment dated 5th May, 2003 that came to be challenged by the appellant in Second Appeal No. 153 of 2003 before the High Court which came to be dismissed at the motion stage by judgment dated 20th April, 2009 which is a subject matter in appeal before us.

10. Learned counsel for the appellant-plaintiff submits that provision of Order 23 Rule 3A CPC is applicable only to the parties to the suit and the said provision does not apply to a stranger to the compromise decree, therefore, the remedy is always open to a stranger to the compromise decree to file a separate suit to ventilate his grievance in the appropriate proceedings. In the given circumstances, the High Court has committed a manifest error in dismissing the appeal at the motion stage to non-suit the appellant-plaintiff and make him remediless in questioning the compromise decree which has seriously affected his right over the subject property in question and the only remedy available with the appellant-plaintiff was to file a suit claiming his right over the subject land in question which was created on the basis of a sale

deed executed by one of the party to the proceedings dated 6th January, 1984 much before the compromise decree was passed by the High Court.

11. Learned counsel further submits that when the previous suit filed by Salehari was dismissed on merits on 30th December, 1983, thereafter on 6th January, 1984, Sampatiya sold the suit property to the appellant-plaintiff on the basis of the gift deed executed in her favour. It was not open for Sampatiya to enter into the compromise against her pleadings without any consideration and such an act of Sampatiya clearly implies her collusion with Salehari in order to dishonestly and fraudulently defeat the rights of her vendor/the appellant/plaintiff for no forceable reason whatsoever.

12. Per contra, learned counsel for the respondents-defendants while supporting the findings recorded by the High Court under the impugned judgment submits that at least the compromise decree which was executed between the parties was not open to question even by the stranger to the proceedings although suit could have been filed by the appellant-plaintiff for the protection of his own rights admissible under the law but, in the instant proceedings, suit

was filed seeking a declaration that a compromise decree dated 15th September, 1994 passed in Second Appeal by the High Court of Patna be declared to be illegal which was obtained by fraud and misrepresentation and that was not open to the civil court for adjudication in view of bar under Order 23 Rule 3A CPC. That apart, the learned trial Judge on the basis of pleadings of the parties specifically framed issue nos. 6 & 7 and recorded a finding regarding the effect of the compromise decree dated 15th September, 1994 passed by the High Court against the appellant. Even the finding in reference to issue no. 7 with regard to right, title and interest in the suit property of the appellant has been decided against him on merits. In the given circumstances, there appears no substance in the present appeal and deserve to be dismissed.

13. The precise question that falls for our determination is as to whether the suit filed by the appellant-plaintiff in seeking a declaration against the decree of compromise dated 15th September, 1994 passed by the High Court of Patna in Second Appeal was maintainable in view of the provisions of Order 23 Rule 3 and Rule

3A CPC. Order 23 Rule 3 and Rule 3A CPC may at this stage be extracted for ready reference:-

“3. Compromise of suit.—Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise, or satisfaction is the same as the subject-matter of the suit:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this Rule.

3A. Bar to suit – No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

14. What is emerged as a legislative intent has been considered in extenso by this Court in **Pushpa Devi Bhagat(Dead) Through LR Sadhna Rai(Smt) Vs. Rajinder Singh and Others**¹, after taking note of the scheme of Order 23 Rule 3 and Rule 3A added with

¹ 2005(5) SCC 566

effect from 1st February, 1977. The relevant paragraphs are as under:-

“17. The position that emerges from the amended provisions of Order 23 can be summed up thus:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for

setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code.

(Emphasis supplied)

15. The scope of intent of Order 23 Rule 3 and Rule 3A was further considered by this Court in **R. Rajanna Vs. S.R. Venkataswamy and Others**² wherein this Court held as under:-

“11. It is manifest from a plain reading of the above that in terms of the proviso to Order 23 Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the Court before whom such question is raised, shall decide the same. What is important is that in terms of Explanation to Order 23 Rule 3, the agreement or compromise shall not be deemed to be lawful within the meaning of the said Rule if the same is void or voidable under the Contract Act, 1872. It follows that in every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the court concerned. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree that would make the same void or voidable under the Contract Act. More importantly, Order 23 Rule 3-A clearly bars a suit to set aside a decree on the ground that the compromise on

² 2014(15) SCC 471

which the decree is based was not lawful. This implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone who can examine and determine that question. The court cannot direct the parties to file a separate suit on the subject for no such suit will lie in view of the provisions of Order 23 Rule 3-A CPC. That is precisely what has happened in the case at hand. When the appellant filed OS No. 5326 of 2005 to challenge the validity of the compromise decree, the court before whom the suit came up rejected the plaint under Order 7 Rule 11 CPC on the application made by the respondents holding that such a suit was barred by the provisions of Order 23 Rule 3-A CPC. Having thus got the plaint rejected, the defendants (respondents herein) could hardly be heard to argue that the plaintiff (appellant herein) ought to pursue his remedy against the compromise decree in pursuance of OS No. 5326 of 2005 and if the plaint in the suit has been rejected to pursue his remedy against such rejection before a higher court.”

(Emphasis supplied)

16. By introducing the amendment to the Civil Procedure Code(Amendment) 1976 w.e.f. 1st February, 1977, the legislature has brought into force Rule 3A to Order 23, which create bar to institute the suit to set aside a decree on the ground that the compromise on which decree is based was not lawful. The purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the Court of competent jurisdiction once and for all.

17. Finality of decisions is an underlying principle of all adjudicating forums. Thus, creation of further litigation should never be the basis of a compromise between the parties. Rule 3A of Order 23 CPC put a specific bar 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. The scheme of Order 23 Rule 3 CPC is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. The Court can be instrumental in having an agreed compromise effected and finality attached to the same. The Court should never be party to imposition of a compromise upon an unwilling party, still open to be questioned on an application under the proviso to Rule 3 of Order 23 CPC before the Court.

18. It can be further noticed that earlier under Order 43 Rule 1(m), an appeal which recorded the compromise and decide as to whether there was a valid compromise or not, was maintainable against an order under Rule 3 of Order 23 recording or refusing to record an agreement, compromise or satisfaction. But by the amending Act, aforesaid clause has been deleted, the result whereof

is that now no appeal is maintainable against an order recording or refusing to record an agreement or compromise under Rule 3 of Order 23. Being conscious of this fact that the right of appeal against the order recording a compromise or refusing to record a compromise was being taken away, a new Rule 1A was added to Order 43 which is as follows:-

“1-A. Right to challenge non-appealable orders in appeal against decree.— (1) Where any order is made under this Code against a party and thereupon any judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.”

19. Thus, after the amendment which has been introduced, neither any appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3A of Order 23 CPC. As such, a right has been given under Rule 1A(2) of Order 43 to a party, who denies the compromise and invites order of the Court in that regard in terms of proviso to Rule 3 of

Order 23 CPC while preferring an appeal against the decree. Section 96(3) CPC shall not be a bar to such an appeal, because it is applicable where the factum of compromise or agreement is not in dispute.

20. In the present case, the partition suit was filed in 1978 and after the decision of the trial Court, the matter went in first appeal and eventually, Second Appeal No. 495/86 before the High Court. During the pendency of first appeal being continuation of the suit as stated, one of the parties to the pending proceedings, namely, Sampatiya allegedly entered into a sale deed with the appellant on 6th January, 1984. Indubitably the issue regarding right, title and interest in respect of the land which was the subject matter of sale deed dated 6th January, 1984, was still inchoate and not finally decided. In that sense, the claim of the appellant was to be governed by the decision in favour of or against Sampatiya in the pending appeal. It must follow that the alleged transaction effected in favour of the appellant by a sale deed dated 6th January, 1984 ought to abide by the outcome of the said proceedings which

culminated with the compromise decree passed by the High Court in Second Appeal No. 495/86 dated 15th September, 1994.

21. Indeed, the appellant was not a party to the stated compromise decree. He was, however, claiming right, title and interest over the land referred to in the stated sale deed dated 6th January, 1984, which was purchased by him from Sampatiya-judgment debtor and party to the suit. It is well settled that the compromise decree passed by the High Court in the second appeal would relate back to the date of institution of the suit between the parties thereto. In the suit now instituted by the appellant, at the best, he could seek relief against Sampatiya, but cannot be allowed to question the compromise decree passed by the High Court in the partition suit. In other words, the appellant could file a suit for protection of his right, title or interest devolved on the basis of the stated sale deed dated 6th January, 1984, allegedly executed by one of the party(Sampatiya) to the proceedings in the partition suit, which could be examined independently by the Court on its own merits in accordance with law. The trial Court in any case would

not be competent to adjudicate the grievance of the appellant herein in respect of the validity of compromise decree dated 15th September, 1994 passed by the High Court in the partition suit.

22. In other words, the appellant can only claim through his predecessor- Sampatiya, to the extent of rights and remedies available to Sampatiya in reference to the compromise decree. Merely because the appellant was not party to the compromise decree in the facts of the present case, will be of no avail to the appellant, much less give him a cause of action to question the validity of the compromise decree passed by the High Court by way of a substantive suit before the civil Court to declare it as fraudulent, illegal and not binding on him. Assuming, he could agitate about the validity of the compromise entered into by the parties to the partition suit, it is only the High Court, who had accepted the compromise and passed decree on that basis, could examine the same and no other Court under proviso to Rule 3 of Order 23 CPC. It must, therefore, follow that the suit instituted before the civil Court by the appellant was not maintainable in view

of specific bar under Rule 3A of Order 23 CPC as held in the impugned judgment.

23. In the instant case, the suit was instituted in the year 1995 and 25 years have rolled by now and after the finding has been recorded in reference to issue no. 7 regarding the right, title and interest of the suit property against the appellant by the learned trial Judge devolved on the basis of a stated sale deed dated 6th January, 1984 and not interfered by the Court of Appeal preferred at the instance of the appellant, in the given circumstances, remitting the matter back to the learned trial Court to examine the suit filed at the instance of the appellant-plaintiff independently for protection of his right, title or interest being devolved on the basis of the stated sale deed dated 6th January, 1984 which as alleged to have been executed by one of the party to the compromise(Sampatiya) in the changed circumstances may not serve any purpose more so after the concurrent finding of Courts below have been recorded against the appellant-plaintiff.

24. Consequently, in our view, the appeal is without substance and the same is accordingly dismissed. No costs.

25. Pending application(s), if any, stand disposed of.

.....J.
(A.M. KHANWILKAR)

.....J.
(AJAY RASTOGI)

NEW DELHI
MAY 06, 2020

