

(2016) 02 OHC CK 0039

ORISSA HIGH COURT

Case No: M.A.T.A. No. 76 of 2009

Sarat Chaandra Mohapatra

APPELLANT

Vs

Amruta Prabha Mahapatra

RESPONDENT

Date of Decision: Feb. 8, 2016**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 1, Order 23 Rule 23, Order 23 Rule 3, Order 23 Rule 3A, Section 151
- Hindu Marriage Act, 1955 - Section 13

Hon'ble Judges: Biswanath Rath, J.**Bench:** Single Bench**Advocate:** D. Mohapatra, M. Mohapatra, G.R. Mohapatra and S.P. Nath, for the Appellant; B. Jalli, S. Satpathy and J.P. Tripathy, for the Respondent**Final Decision:** Allowed

Judgement

Biswanath Rath, J.

1. This matrimonial appeal has been filed against the judgment dated 30.6.2008 passed by the Civil Judge (Senior Division), Aska in Civil Suit No. 26 of 2004.

2. Short background involved in the case is that the respondent (plaintiff in the court below) claiming to be the daughter of the appellant (defendant in the court below) filed the suit bearing Civil Suit No. 26 of 2004 claiming therein monthly alimony of Rs. 1,500/- per month from the month of July, 2002 till completion of her education or till her marriage and a sum of Rs. 2,50,000/- towards her marriage expenses from the appellant. The respondent claimed to be the only daughter of appellant having born on 2.3.1988 out of the wedlock of the appellant and Smt. Namita Mohapatra (mother of the respondent). It is in view of difference and dissension between her mother and father, the appellant drove away the mother of the respondent from the house of the appellant. The appellant did not take care either of his wife or his daughter (respondent) not even provided anything for their maintenance. It is at

this stage, the appellant filed a suit bearing C.S. No. 71 of 1988 under Section 13 of the Hindu Marriage Act for divorce against the respondent's mother. The suit C.S. No. 71 of 1988 was decreed by dissolution of their marriage and a sum of Rs. 50,000/- was awarded as permanent alimony for both the respondent and her mother. It is averred that though the mother of the Respondent received the aforesaid sum from the appellant following the decree but in course of time, the mother-Smt. Namita Mohapatra spent the entire amount for the education and maintenance for herself as well as for the respondent, as a result of which the respondent was compelled to depend upon her maternal grand mother and the respondent is still under her guardianship. After the respondent completed her High School examination, the maternal grandmother became unable to provide money for her college education and for her maintenance constraining the respondent to write a letter to the father-appellant for providing her financial assistance. The respondent alleged that the appellant is a man of sufficient means having movable and immovable properties. He used to get Rs. 2,500/- per month as house rent from one of his buildings at Aska town, he also earns Rs. 15,000/- per month out of his business and he has also income from agricultural sources of more than Rs. 10,000/- per annum. The respondent having already reached the marriageable age, finding the father has an obligation to meet her marriage expenses, the respondent required a sum of Rs. 2,50,000/- towards her marriage expenses. Thus, the respondent was constrained to file the suit bearing C.S. No. 26 of 2004 making the claim as indicated hereinabove.

3. The appellant as defendant in C.S. No. 26 of 2004 filed written statement though claiming the respondent not to be his daughter but took a plea that when he and his wife were staying separately in the year 1988, his wife Smt. Namita Mohapatra along with her minor daughter, namely Bunu filed a suit bearing C.S. No. 32 of 1988 for passing an order of restitution of conjugal right and for granting compensation in their favour. Thereafter, the appellant filed C.S. No. 71 of 1988 for obtaining a decree of divorce. Considering the cases involved between the parties, the parties i.e. wife, husband and daughter being parties to C.S. No. 71 of 1988 as well as O.S. No. 32 of 1988, they all arrived at a compromise having terms and conditions that the appellant is to return some house hold articles of his wife and also to pay a sum of Rs. 14,000/- towards the cost of the deficit articles. Further, the appellant is to pay a sum of Rs. 50,000/- by way of a Bank Draft towards permanent alimony for the wife and minor daughter-Bunu and another Bank Draft of Rs. 20,000/- was also made in favour of Namita Mohapatra for separate residence of herself as well as Bunu and further a Demand Draft of Rs. 20,000/- towards marriage expenses of the child. The compromise decree further contained that the amount of Rs. 20,000/- to be paid in favour of the respondent shall not be utilized for 16 years which shall be kept in fixed deposit for 16 years and the whole amount shall be utilized in the marriage of Bunu. The compromise decree also contained a term that by virtue of such compromise, the mother of the respondent and the respondent herself will

forfeit their entire future claim against the appellant with closer of all litigations pending between them.

4. The appellant claimed that he had fully complied with all the terms and conditions of the compromise and in view of such compromise, neither the mother nor the daughter-present respondent can have any future claim. Consequently the respondent is also debarred from bringing the present suit bearing Civil Suit No. 26 of 2004.

5. Considering the rival contentions of the parties, the trial court framed the following issues for determination of the suit.

"Issues in C.S. No. 26 of 2004:

1. Whether the suit is not maintainable being hit under the principle of res judicata?
2. Whether the plaintiff has cause of action to file the suit?
3. Whether the plaintiff is entitled to get monthly alimony, her educational expenses and marriage expenses and if so, to what amount?
4. Whether the plaintiff is the daughter of the defendant?
5. Whether the suit is bad for non-joinder of necessary party like Namita Mohapatra?
6. To what relief/reliefs the plaintiff is entitled to?"

6. The trial court took up all the issues together and partly allowing the suit, passed the following order:

"The plaintiff's suit is decreed in part on contest against the defendant, with cost. The defendant is hereby directed to pay Rs. 1,500/- (Rupees one thousand five hundred) per month to the plaintiff towards her maintenance including her educational expenses from the date of filing of the suit till her marriage. Further, the defendant is directed to pay a lump sum of Rs. 2,50,000/- (Rupees Two lakhs and fifty thousand) to the plaintiff towards her marriage expenses. The arrear maintenance dues and the aforesaid sum of Rs. 2,50,000/- shall be paid to the plaintiff by the defendant within three months hence, failing which the plaintiff is at liberty to file execution case for realization of her arrear maintenance dues and marriage expenses through process of court.

Pleader's fees assessed at contested scale."

7. In assailing the aforesaid order, the defendant as appellant contended that the trial court failed to appreciate the compromise decree entered in C.S. No. 71 of 1988 involving the interest of the present respondent-the daughter of the present appellant. The trial court also failed to appreciate the scope of Order 23, Rule 1, C.P.C. and erred in law by not dismissing the suit as not maintainable. The trial court also failed to appreciate the fact that by virtue of earlier compromise, the interest of

the respondent was well protected by not only granting maintenance of Rs. 50,000/- for both mother and daughter but also granting a sum of Rs. 20,000/- towards the minor daughter-Bunu with further undertaking to keep the said amount in Fixed Deposit scheme at least for sixteen years and that no permission shall be granted for spending the said amount before the marriage of the respondent-daughter. The appellant also contended that the suit at the instance of the respondent was clearly hit by the principle of res-judicata and the trial court has miserably failed to appreciate this legal aspect involved in the matter.

8. Mr. Jalli, learned counsel appearing for the respondent on the other hand contended that the respondent was a minor when the husband and wife were fighting litigations. She was also never a party to any of the litigation and therefore there is no question of principle of res-judicata applying to the present case. The trial court has taken the decision in its proper prospective and there is no illegality in the impugned order.

9. Under the above facts and circumstances, the moot question that emerges for consideration is as to whether the present suit C.S. No. 26 of 2004 is hit by principle of res-judicata for the reason of compromise between the parties in O.S. No. 71 of 1988, thereby closing the C.S. No. 32 of 1988 accordingly? and As to whether the respondent is estopped from claiming any further compensation from her father?

10. Before proceeding to decide anything else in view of admitted position of initiation of two suits by the present appellant and his wife and present respondent, it is first to be seen the substance of the compromise between the parties in O.S. No. 71 of 1988 and the development in C.S. No. 32 of 1988. There is no dispute between the parties that the husband (present appellant) filed O.S. No. 71 of 1988 to obtain a decree of divorce against the wife (mother of the respondent) and this suit was disposed of on compromise. It is relevant to note here that at the same time, the mother of the respondent along with the present respondent had also one suit bearing O.S. No. 32 of 1988 as against the present appellant praying therein for several reliefs including prayer for restitution of conjugal right.

11. On perusal of the plaint vide O.S. No. 71 of 1988, this Court finds that the suit was filed at the instance of the present appellant (Sarat Chandra Mohapatra) with the following Cause Title and Prayer:

"Cause Title:

Sarat Chandra Mohapatra,
Son of Chandra Sekhar Mohapatra,
aged 30 years, Business man of Utkal Cinema Road,
P.O./P.S.-Aska, District-Ganjam.Plaintiff

-Versus-

Namita Palo, Daughter of Antarjyami Palo,
aged 21 years, dependant, of Village/Post-Pitala,
P.S.-Aska, At present Utkal Cinema Road,
At/P.O./P.S.-Aska, District-Ganjam;Defendant

Prayer

"The plaintiff, therefore, prays that the Hon"ble court may be pleased to pass a decree in his favour and against the defendant.

(i) for divorce and dissolution of marriage, if any, between the parties.

(ii) that he is not bound to either maintain the respondent and much less her child;
and

(iii) for any other relief or reliefs as the court deems proper under the circumstances."

Similarly looking to the plaint in O.S. No. 32 of 1988, this Court finds the following Cause Title and Prayer.

"Cause Title

1. Smt. Namita Mohapatra,
wife of Sarat Chandra Mohapatra,
aged 21 years, household duties,
residing at Utkal Cinema Road,
At./P.S.-Aska in the district of Ganjam;

2. Bunu, D/O-Sarat Chandra Mohapatra,
aged about one month, represented
by her mother guardian-plaintiff No. 1. Plaintiffs

-versus-

1. Sri Sarat Chandra Mohapatra,
aged 30 years, residing at Utkal Cinema Road,
At./P.S.-Aska in the district of Ganjam;

3. Chandraskhar Mohapatra,
Son of Late Bansidhar Mohapatra,
aged 60 years, residing at Badakharuda,
At/P.O.-K.S. Nagar,
At present Utkal Cinnema Road;

4. Bijaya Kumar Mohapatra,
Son of Chandrasekhar Mohapatra,
aged 40 years, residing At- (not legible).

5. Harihar Mohapatra,
Son of Chandrasekhar Mohapatra,
aged 25 years, residing -do-

6. Promodo Mohapatra,
Wife of Chandrasekhar Mohapatra,
aged 50 years, household duty, residing at -do- Defendants

Prayer

"The plaintiffs therefore pray that the Hon"ble court may be pleased to pass a decree in their favour as against the defendants directing:

(i) For restitution of the conjugal rights the first plaintiff with the first defendant by way of a decree of restitution of conjugal rights.

(ii) To direct the defendants to pay a sum of Rs. 700/- per month towards the maintenance of the plaintiffs subject to their right to claim more in future according to the necessity.

(iii) To direct the defendants to provide a separate residence to the plaintiffs either at Aska or at Pitalo or at Pakidi or at Gudiali till they are taken to the house of the defendant No. 1 by the later.

(iv) To direct for recovery of "B" schedule property.

(v) To keep the suit properties as charge for the maintenance of the plaintiffs pendente lite and future;

(vi) Grant costs of the suit

(vii) And to grant any other relief or reliefs as the Hon"ble court may deem proper in the facts and circumstances of the case."

12. Similarly on perusal of Ext.A-the Compromise petition filed in C.S. No. 71 of 1988, this Court finds the petition contains the following:

"Ext.A in C.S. No. 71/1988

"IN THE COURT OF THE SUBORDINATE JUDGE, ASKA

O.S. No. 71 OF 1988

Sarat Chandra Mohapatra Plaintiff.

-Vrs.-

Namita Palo Defendant

Compromise petition under order 23 Rule 1 C.P.C. and Section 151 of C.P.C. filed by both the parties.

Most Respectfully Sheweth.

1. That the parties to the suit have compromised their difference at the intervention of gentlemen of the locality and the terms and conditions are as follows:

It is hereby made clear that the defendant is the legally wedded wife of the plaintiff. That the marriage between the parties is to be dissolved and the parties have agreed for a decree of divorce on the following terms.

(a) That the plaintiff returns back the golden ornaments to the defendant in Court which he had received at the time of the marriage e.g.-

(i) One ring with red stone, weighing about T.0.5.3.

(ii) Khasu necklace with 20 Nos. of Khasu weighing T.3.0.0

(iii) One sorisia mali weighing about T.1.2.0

(iv) One gold ring with white stone, weighing about T.0.6.3.

(v) One gold ring with blue stone, weighing about T.0.5.0.

(vi) Two gold rings fitted with red stones weighing about T.0.4.2 & T.0.5.0.

(vii) Gold Rulis (two numbers) weighing about T.1.12.0.

(viii) A pair of gold ear rings weighing about T.0.1.2.

(b) The wooden furniture, steel Almirah, Sofa-cum-Bed and the utensils as per list, will be returned to the defendant under a proper receipt in presence of gentlemen, immediately after return of the parties from court,

(c) As decided by the gentlemen, the plaintiff paid Rs. 14,000/- (Rupees fourteen thousand only) by cash in court today towards the price of deficit gold under full settlement.

(d) As a consideration for dissolution of marriage and divorce, the plaintiff has paid to the defendant today in court a sum of Rs. 50,000/- (Rupees fifty thousand only) in shape of Demand Draft bearing No. OL/A14/64716 dt. 19.09.88 towards her life maintenance and the minor child, Rs. 20,000/- (Rupees twenty thousand only) for their separate residence vide Demand Draft No. OL/A14/614717 dt. 19.09.88 and Rs. 20,000/- (Rupees twenty thousand only) for the marriage expenses of the child vide Demand Draft OL/A14/614718 dt. 19.09.88 when she comes of marriageable age. The amount of Rs. 20,000/- (Rupees twenty thousand only) under OL/A14/614718 will be deposited under a fixed deposit scheme jointly in the name of the defendant and the child with a condition to be payable to either or survivor, with the mother (defendant) as her guardian for a period of 16 years from today and the defendant will not deplete amount nor its interest in any way because that amount will be solely utilized for the marriage of the child when she comes of marriageable age. The defendant or her minor child forfeits their entire claim over the joint family

properties, if any, from this day.

(e) The defendant agreed before the gentlemen that she shall meticulously follow the terms and conditions as laid down above and in case of breach of conditions, she will have no right to demand anything in future from the plaintiff on any of the aforesaid accounts.

(f) The defendant will withdraw the suit O.S.32/88 today on the file of Subordinate Judge, Aska as not pressed.

(g) It is agreed that the copy of this compromise petition along with the court order will be given at Aska Police Station for information and a proper entry.

The parties pray, that the suit be decreed as per the terms of this compromise.

13. The certified copy of compromise petition as available at Ext. A clearly demonstrates the signatures of Smt. Namita Mohapatra for herself as well as for her minor child-Bunu, the present respondent and also the husband, the present appellant. Looking to the conditions indicated in Clause-C and D of the compromise petition, it is apparent that the compromise not only covered the case of the mother of the respondent but also covers the case of the present respondent being represented through her mother guardian. Further as per Clause-F of the compromise petition, the mother of the present respondent categorically agreed for withdrawing the suit bearing C.S. No. 32 of 1988 that was pending on the file of Civil Judge (Senior Division), Aska. As per the terms and conditions in Clause-D of the compromise, the mother of the respondent received a sum of Rs. 50,000/- in the year 1988 itself towards her life maintenance as well as the maintenance of minor child. Besides above, the mother of the respondent also received a sum of Rs. 20,000/- for their separate residence and a further sum of Rs. 20,000/- towards marriage expenses of minor child with a further guarantee to keep the said amount in Fixed Deposit jointly in the names of mother - Smt. Namita Mohapatra and respondent at least for sixteen years from the date of receipt and encashable only after the minor attaining the age of marriage and to be solely utilized for marriage of the present respondent. Both parties were also agreed with a further condition that the mother and her minor child shall forfeit their all claim over the joint family property of the present appellant along with an undertaking therein to withdraw the C.S. No. 32 of 1988 specifically in view of the compromise.

14. As appears, following the agreement between the parties in the aforesaid compromise, the mother of the respondent withdrew the suit O.S. No. 32 of 1988 involving the present respondent as defendant No. 2 therein and the memo withdrawing the suit as appearing at Ext. E to the present suit contains the following:

"In view of the compromise in O.S. No. 71 of 1988 filed in court, the plaintiff does not press the suit which may be dismissed."

From the reading of Exits. A, C, D and E, it clearly appears that the attempt of compromise in O.S. No. 71 of 1988 as well as the attempt in O.S. No. 32 of 1988 are not only simultaneous attempt to close both the proceedings on the basis of compromise but are also clear indication of compromise held between the parties including the present respondent particularly. Keeping in view the compromise in O.S. No. 71 of 1988, both the proceedings are also disposed of by the same court on the same date may be one after another. It is in these circumstances and particularly keeping in view the involvement of parties in both the suits and recording of the specific terms in Clause-C, D, E and F of the compromise petition, there is no doubt that all the disputes involving the parties including the respondent are settled in one stroke by virtue of the compromise entered into in the O.S. No. 71 of 1988 and are closed for all times to come by virtue of withdrawal of O.S. No. 32 of 1988 particularly indicating the reasons therein. The case of the present respondent having been covered and taken care of by the mother-guardian in the concluded suits, the respondent is not only estopped to bring any other suit claiming compensation against father but the present suit is also hit by principle of res-judicata. Accordingly both the questions framed here in above in paragraph-9 are answered in affirmative.

15. Law as laid down in the case of Gurupreet Singh-vrs-Chaturbhuj Goel as reported in , AIR 1988 SC 400, mandates that the compromise must be in writing and signed by the parties and there must be a completed agreement between them. Looking to the factual back ground in the present case, it is observed that the compromise entered into between the parties in C.S. No. 71 of 1988 is a complete compromise and following the above principle of law, the compromise can not be subject matter in a subsequent suit. Further in the event, one of the party to the compromise if not satisfied with the compromise, then procedure laid down by proviso to Order 23, Rule 3, C.P.C. for setting aside the decree must be followed. In view of the Apex Court judgment in the case of Banwarilal -vrs- Smt. Chando Devi as reported in , AIR 1993 SC-1139, a party challenging compromise can file appeal or can file petition under proviso 9 to Rule 3 of Order 23, CPC quashing the validity of compromise and under the circumstances no fresh suit was maintainable. Further looking to the prayer involved in the suit at hand, the respondent even did not challenge the compromise decree involving herself. It is also further observed that the position of Order 23 pre-amendment and post amendment, there is a great difference and in view of introduction of Order 23, Rule 3A, C.P.C. with effect from 01.02.1977, there is clear bar of any further suit challenging a compromise decree. The decision relied on by the trial court vide , AIR 1967 SC-591 has no application after the amendment of the order 23, C.P.C. on 01.02.1977 and there has been wrong application of this decision to the present case by the trial court. This proposition that a compromise decree can not be also a subject in a subsequent suit, has also been settled by this Court in the case between Madhab Naiik -vrs- Dhaneswar Panda & Others as reported in 34 (1992)-OJD-428 (Civil) and following

the decision as reported in , AIR 1993-SC-1139, the party has the only remedy of Appeal. Consequently the subsequent suit was also otherwise bad in law.

16. Now coming back to the decision of the trial court on Issue No. 1 as discussed in paragraph-8 of the impugned judgment, this Court finds that the decision vide , AIR 1967-SC-591 is pre amendment of Order 23 of C.P.C. This legal position has been totally changed after the amendment in the year 1977 and there is improper reading and application of the decision rendered in , AIR 1967-SC-591 by the trial court. In view of the findings of this Court on the question of res-judicata and for introduction of Order 23, Rule 3A, C.P.C. in the year 1977, this Court holds the finding of the trial court on Issue No. 1 is bad in law and the same is hereby reversed.

Since this Court holds the suit C.S. No. 26 of 2004 at the instance of the respondent, is hit under the principle of res-judicata and further the respondent is estopped from bringing a fresh suit involving her compensation in view of the compromise decree in an earlier suit i.e. O.S.71 of 1988 involving herself and her mother, the suit was not maintainable in the eye of law all other issues became irrelevant and thus there is no need for entering into other issues involved in the suit in C.S. No. 26 of 2004.

The M.A.T.A. is therefore allowed. However, there is no order as to cost.