

(1997) 07 P&H CK 0034

High Court Of Punjab And Haryana At Chandigarh

Case No: Second Appeal From Order 70 of 1986

Kanya Devi

APPELLANT

Vs

Som Nath

RESPONDENT

Date of Decision: July 1, 1997

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3, 96

Citation: (1998) 118 PLR 561 : (1998) 2 RCR(Civil) 435

Hon'ble Judges: V.K. Bali, J

Bench: Single Bench

Advocate: M.L. Sarin and Vikash Suri, for the Appellant;

Final Decision: Dismissed

Judgement

V.K. Bali, J.

Kanya Devi aggrieved of judgment passed by the learned Additional District Judge, Kurukshetra dated 4th October, 1996 has filed the present appeal wherein her obvious prayer, is to set aside the order of the Additional District Judge and to restore the judgment and decree passed by the learned trial Court. Before, however, the grounds on which the judgment of the learned Additional District Judge is sought to be set aside are noticed and discussed, it will be useful to give a brief backdrop of the facts culminating into filing of the present appeal.

2. Rikhi Ram original plaintiff survived by Kanya Devi his widow, filed a suit for possession of suit land measuring 159 Kanals 10 Marlas situated in village Dhola Majra, one house and a room as described in the plaint. He pleaded that he was son of Shankari, the real sister of Dropti Devi who was original owner of the suit land. Dropti Devi died issueless and her husband had predeceased her. She used to reside with her husband Dhani Ram, resident of Khera but sometime prior to her death she started residing with plaintiff and she used to render services to her. Dropti Devi expired on 20th February, 1975 leaving the plaintiff as her sole heir.

However, the defendant Som Nath who was not related to the original owner got the mutation entered in his favour fraudulently and dishonestly alleging that Dropti had executed a will in his favour on 7th February, 1969. It was further pleaded by him that Dropti never executed any Will nor she had any right to execute the same. However, the defendant on the basis of forged Will obtained the possession of the land and house. The suit was, thus, filed praying for possession of the property in dispute. The matter was contested primarily on the ground that the defendant was close relative of the deceased and she executed a valid Will in his favour and got it registered and that she also got installed a tubewell in the name of defendant during her life time. He also pleaded that he was in possession of the suit property since 1964 and that plaintiff Rikhi Ram Was an old man and his wife was blind" and therefore, there was no question of rendering any service to the deceased. Defendant, however, admitted the relationship of the plaintiff with the deceased. On the pleadings of the parties the trial Court framed various issues but when the case was fixed for recording evidence of the plaintiff both counsel and the parties appeared on 26th August, 1981 and obtained an adjournment on the ground that compromise talks were going on and therefore, the case be adjourned. The case was, thus, adjourned to 24th September, 1981. On the adjourned date, yet another adjournment was sought for producing compromise. The Court then adjourned the matter to 3rd November, 1981. On the said date, the plaintiff moved an application that the case has been compromised, and be decided in terms thereof. Compromise Ex. P-1 dated 24th July, 1981 was, thus, placed on record. The defendant, however, denied the existence of any such compromise and asserted that the same was fake and procured document. He also pleaded that no such document was read over to him nor he thumb-marked/signed the same knowing its contents and the admission, if any, made in the alleged compromise was herewith withdrawn. On account of this development i.e. compromise deed having been produced by the one party and denied by the other, the trial Court framed the following issue for decision:-

1. Whether the compromise dated 24th July, 1981 is executed by the parties and is valid in the eye of law, if so, its effect?

3. After recording evidence of the parties and discussing the same the trial Court returned a finding on the sole issue referred to above in favour of plaintiff and thus, held that the suit stands adjusted in view of the compromise and therefore, decree for declaration that she was owner of the suit land, house and room in dispute was granted. However, the right of the defendant to remain in possession of four acres of land adjoining to G. T. Road and two rooms in the house as licensee under the plaintiff was protected. It is this judgment and decree passed by the learned trial Court which was successfully challenged by the defendant culminating into the order that has been impugned in the present appeal.

4. The learned Appellate Court taking into consideration the evidence led by the parties as also the circumstances leading to the compromise came to a definite conclusion that defendant Som Nath was not a consenting party to the compromise deed and that his thumb-impression was obtained thereon under a mistaken belief. He also held that the witnesses to the compromise appear to be men of the plaintiff and have tried to help her out of the way though their presence at the time of alleged compromise appears to be doubtful. Before embarking upon discussion on evidence and circumstances, the appellate Court observed, "I have given my anxious thought to the rival contentions of the parties. It is a case of type where men have supported the plaintiff but circumstances have not. It is well said that men may tell lie but have no hesitation to hold that Som Nath was not a consenting party to the compromise deed at issue and his thumb-impression was obtained thereon under a mistaken belief"

5. The first circumstance taken into consideration by the appellate Court was that the witnesses of the compromise were clearly inclined to depose against the defendant and in favour of the plaintiff. The witnesses to the compromise are Krishan Lal, Sadhu Ram and Ram Sarup. It is proved and so held by the appellate Court that all these witnesses had appeared against the defendant Som Nath and in favour of Rikhi Ram in the proceedings initiated for getting the suit land formerly owned by Dropti mutated in his favour as also that all witnesses were declared as false witnesses and disbelieving them the mutation was sanctioned in favour of Som Nath. The circumstance that even though suit regarding property was pending in the Court at Kurukshetra, compromise was executed at Ambala and that the witnesses of the compromise who were residing in various villages were not informed that they were to go to Ambala to attest the compromise on 24th July, 1981 was also taken into consideration. As to how all these witnesses collected at the same place coming from different villages to attest the compromise could not at all be explained by the plaintiff. The circumstance that only those witnesses became attesting witnesses of the compromise who had deposed in favour of the plaintiff during the mutation proceedings was also taken into consideration by the appellate Court. The other circumstance taken into consideration was that in compromise deed it was mentioned that the Will executed by Dropti Devi in favour of the defendant was a forged one. The appellate Court, it appears, rightly came to the conclusion that no sane person would agree to such a writing when the same could result into launching criminal proceedings against him. It may be recalled at this stage that it has always been the case of Som Nath that Dropti Devi used to live with him and in recognition of the services rendered by him, she had executed a Will in his favour. It has further been mentioned in the compromise deed Ex. P-1 that Som Nath worked as servant of Dropti Devi and inasmuch as, the case of the defendant has always been that he was closely related to her and he served her when the latter used to live with him, would also go a long way to show that Som Nath could not agree to such words being mentioned in the compromise deed. Once again the

appellate Court took into consideration that whereas by virtue of registered Will Som Nath was to become owner of land measuring 79 Kanals 15 Marlas, one house and a room, how he all of a sudden could forego his claim over the suit property and agree to have only four Killas of land and one or two rooms out of the entire suit property and that also as a licensee, thus, authorising Kanya Devi to take back possession thereof at any time she liked. The Court also observed that if compromise was actually arrived at between the parties on 24th July, 1981 it should have been produced on the next date of hearing in the civil suit pending between the parties, Actually it was produced in Court on 3rd November, 1981. Issues in the main case were framed on 15th October, 1980 and the case was adjourned to 8th May, 1981 for evidence. The plaintiff produced some evidence on that date and the case was adjourned to 21st August, 1981. On the adjourned date Presiding Officer was on leave and the case was adjourned to 26th August, 1981. On the said date the case was once again, adjourned to 24th September, 1981, when for the first time it was stated that both the parties to the suit were having talks of compromise. The case was adjourned to, 3rd November, 1981 for compromise and in case no compromise was effected, then for recording evidence of the plaintiff. It is on 3rd November, 1981 that an application under Order 23 Rule 2 of the CPC for adjustment of the claim was filed. The appellate Court from these facts came to the conclusion that no compromise was arrived at between the parties on 24th July, 1981 because had it been there Ex. P-1 would have been produced on 12th August, 1981 or even on the next date of hearing i.e. 26th August, 1981 or even still on 24th September, 1981. As mentioned above, it was produced in Court on 3rd November, 1981. The appellate Court also observed that even as per terms of compromise Ex.P-1 Som Nath was to continue in possession of 4 Killas of land situate on the G. T. Road whereas no portion of the suit land abuts G. T. Road. To hold that no portion of disputed land abuts G. T. Road. the appellate Court relied upon Akas Shajra Ex.D-1 as also statement of the Patwari of the area who was examined as DW-1. Patwari stated that no land of the parties abuts G.T. Road or is within the vicinity of 2/3 Killas. The appellate Court not only took into consideration the various circumstances as fully detailed above but also thread-bare examined evidence of all the witnesses. Kanya Devi appeared as AW-1. She deposed that she gave power of attorney in favour of her brother's sister, who was mother of Superintendent of Police. She further deposed that compromise between the parties was concluded after 4-5 months of scribing of Ex.P-1 since there was some dispute between the parties regarding the particular numbers of Killas contained in the suit land. Her own statement goes a long way to show that Ex. P-1 is a procured document as how could the compromise between the parties be arrived at 4/5 months after scribing Ex.P-1. Dharam Pal who appeared as AW-1 and who scribed agreement Ex.P-1 deposed that compromise deed Ex.P-1 was the last document written by him on 24th July, 1981. It was written on a ten paise paper. Details of the compromise were, written in the register. The names and the signatures of the witnesses were also not in his register and the register did not carry any page number and did not carry any

certificate showing the total page numbers of the register. AW-3 Baij Nath stamp vendor stated in his cross-examination that he did not know Som Nath personally. There is no need to go into the deposition of other witnesses AW-4 Ram Sarup, AW-5 Kishan and AW-6 Sadhu Ram. The appellate Court has thread-bare discussed their evidence as also number of circumstances as fully detailed above to come to the conclusion that no reliance can be placed on the compromise Ex.P-1 which is not with free consent and Som Nath was not a consenting party to the same and therefore, the same was not binding upon him.

6. Shri M. L. Sarin, learned Senior Advocate representing the appellant, however, vehemently contends that there was no question with the original owner to bequeath her property to her servant by way of Will. There could not be any love and affection between the Testator and the defendant who was only her servant. With a view to buttress the aforesaid contention the learned "counsel has also endeavoured to show relationship between the Testator i.e. original owner and the plaintiff. I am afraid, this is not the stage to go into all these questions as concededly no evidence so far at all has been recorded on the merits of the controversy and with regard to the authenticity of the will propounded by the defendant. Any opinion by this Court at this stage would not only be pre-mature but would also prejudice either of the parties at the time" of trial. This Court, therefore, declines to go into this question at this stage. It is further the contention of the learned counsel for the appellant that appeal before the first appellate Court Was incompetent as the matter had been disposed of by the trial Court on the basis of compromise and no appeal is competent against an order which is an outcome of a compromise arrived at between the" parties. For the aforesaid contention, the learned counsel relies upon Order 23 Rule 3A of the CPC which reads as follows:-
"No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

It is the contention of the learned counsel that if the suit is not competent to challenge the compromise even if the same is not lawful, how can an appeal which is against a judgment and decree arrived at on account of compromise between the parties would be competent. There is no merit whatsoever in the contention of the learned counsel. The matter came to be disposed of by the trial Court on an application made by the " plaintiff under Order 23 Rule

3. Proviso to Rule 3 of Order 23 reads thus:-

"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."

The Explanation that came to be inserted by CPC (Amendment) Act, 1976 with effect from 1st February, 1977, however, reads as follows:-

"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."

A bare, look at the proviso and the explanation reproduced above would clearly reveal that it is always open to a party to the suit to contend that there has been no compromise or adjustment as also that if such denial is made, the Court has to satisfy itself and decide the said question. The defendant in the present case denied having arrived at compromise and it was, thus, necessary for the trial Court to determine the question. While determining the said question, the trial Court passed judgment and decree obviously in tune with the compromise and such a judgment and decree is certainly appealable u/s 96 of the Code of Civil Procedure. That apart, in view of this Court, even a suit is competent where it may be alleged by the plaintiff that the compromise that Was arrived at between the parties was void of voidable as per provisions contained under the Indian Contract Act. What has been observed above, is explicit from the explanation inserted by CPC Amendment Act. Further compromise is only a contract between the parties super imposed with the seal of the Court and that such a compromise or compromise decree can be challenged on all grounds on which a contract can be challenged.

7. It is next contended by the learned counsel for the appellant that the thumb-impression of the defendant on compromise deed Ex.P-1 stood proved by overwhelming evidence and that no evidence was led by the defendant to rebut the case. The appellant examined hand-writing expert to prove the thumb-impression of the defendant but the latter did not examine any hand-writing expert or finger print expert. That being so, the compromise Ex.P-1 could not be invalidated. There is no merit in this contention as well. The defendant while entering defence in opposition to the application filed by the plaintiff under Order 23 Rule 3 of the CPC took alternative pleas. It was not only his case that he never executed any compromise deed but also that if the same was available that was a forged document in collusion with the witnesses of the compromise. He also pleaded that compromise deed was never read over to him nor he thumb-marked the same knowing its contents as also that if there was any admission made in the compromise, he was withdrawing the same. The appellate Court in view of this Court has rightly invalidated the compromise on various grounds inclusive of that thumb-impression of Som Nath was not obtained with his free consent and that he was not a consenting party and therefore, same is not binding upon him.

8. The next contention of the learned counsel for the appellant is that details of fraud had not been pleaded as was essentially required in view of the provisions contained in Order 6 Rule 4 of the Code of Civil Procedure. Besides relying upon the provisions of Civil Procedure Code, the learned counsel also relies upon the judgment of the Apex Court in [Afsar Sheikh and Another Vs. Soleman Bibi and Others](#), . I have given my thoughtful consideration to the contention of the learned

counsel for the appellant but find no substance in this contention as well. Firstly, it is not a case of suit i.e. a plaint wherein the compromise deed might have been challenged. The trial Court was called upon to decide an application filed by the plaintiff under Order 23 Rule 3 of the CPC and if a compromise was to be disputed by either of the parties to the compromise, the matter had to be decided in view of the proviso to Order 23 Rule 3 of the Code of Civil Procedure, The Court had only to decide as to whether there had been any compromise or adjustment. That apart, in the reply that was filed by the defendant it was clearly pleaded that no lawful compromise has been arrived at between the parties. It was mentioned by the defendant that if there was any such document, when it was an act of fraud and fabrication and the witnesses of the documents were stooges of the plaintiff and they have never signed or thumb-marked any document in the presence of the defendant. He also pleaded that no document was read over to him nor he thumb-marked the same knowing its contents. If the aforesaid facts could be proved by him, then the agreement in itself would be void or voidable and in that case giving details of the fraud and the manner in which the plaintiff brought about the document in question i.e. compromise Ex.P-1 would not be necessary.

9. The last contention of the learned counsel for the appellant is that the learned appellate Court has not taken into consideration that the defendant who had instituted a suit for declaration had withdrawn the same on 4th August, 1981, by making a statement in the Court that he had effected a compromise and did not wish to proceed any further with the case. The copy of the statement is Ex.P.8. This circumstance was taken into consideration by the trial Court but the learned appellate Court while reversing the judgment of the trial Court did not consider this fact at all. It is true that this fact has been noticed by the trial Court but the appellate Court has missed it but is that in itself sufficient to set aside the well reasoned judgment of the first appellate Court. It appears to this Court that the judgment rendered by the learned first appellate Court is correct and the findings with regard to compromise said to have been arrived at between the parties have been correctly given after appreciating the entire evidence and the circumstances of the case. Merely because one relevant fact has not been mentioned would not be enough to set aside the judgment of the first appellate Court. It may be true that some compromise talks was going on and perhaps on that basis the defendant made a statement in his suit that he was withdrawing the same as parties had arrived at a compromise but did the defendant arrive at compromise Ex.P-1 was the question before the Court below. It could well be a case where defendant was assured something more than what actually came to be scribed in compromise deed Ex.P-1 and that he made a statement only on the basis of oral assurances given to him. In that situation when compromise Ex.P-1 came to his notice as also the contents thereof, he was well within his rights to challenge the same, if the same was not read over to him or he was kept in dark with regard to contents thereof. There is no merit in the last contention of the learned counsel as well.

10. Finding no merit in this appeal, I dismiss the same. Since proceedings before the trial Court were stayed by this Court vide interim order dated 15th January, 1987, the appellant is directed to appear before the trial Court on 4th August, 1997. As no one has put in appearance on behalf of, the defendant, actual date notice be given to him of the date mentioned above. No order as to costs.