

Gopal Dass Vs Pawan Kumar and Others

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: May 19, 2009

Acts Referred: Civil Procedure Code, 1908 (CPC) â€” Section 151, 152
Contract Act, 1872 â€” Section 20

Citation: (2009) 155 PLR 557

Hon'ble Judges: S.D. Anand, J

Bench: Single Bench

Final Decision: Allowed

Judgement

S.D. Anand, J.

The controversy between the parties is as under:

2. The parties were litigating in a suit for permanent injunction pending in the Court of learned Civil Judge (Senior Division), Jagadhri. They

announced to the Court that they had come to terms. A documented compromise (Annexure P-I) was placed on record. The learned Trial Court

passed a decree on the basis thereof. Thereafter, the plaintiff therein (respondent No. 1 before this Court) filed a plea u/s 152 read with Section

151 CPC for correction of a particular rect. number indicated in the impugned compromise. The averment was that the aforementioned rect.

number had been inadvertently mentioned as 27/10 in place of correct rect. number 28/10. Infact, the averment proceeded that there is no rect.

number corresponding to the recorded numbers.

3. The plea for rectification was contested by the defendant petitioner, however, the learned Trial Court allowed the plea vide impugned order

dated 21.10.2004. In the course of the impugned order, the learned Trial Court held that ""both the suits were contested and the main grudge of the

plaintiff in both the suits was to reach the Khasra No. 7 of Rect. No. 27 which was the land of the plaintiff and there was no rasta to that land.

Thereafter, compromise Ex.CX was reached between the parties which was signed by both the parties, dated 23.01.1999 and the same was

produced in the Court.... From the perusal of the compromise Ex.CX as well as the intention of the parties, that the plaintiff was given a rasta

alongwith the southern dole of both the khasra numbers, so that the plaintiff should have an ingress/outgress to his khasra No. 7, 8 of Rect. No. 27

from the rasta left the time of consolidation, as is clear from the copy of Aks-sajra placed on file. This clearly envisages if a rasta is traced from the

southern dole of khasra No. 6 of Rect. No. 27 to reach the khasra Nos. 7 & 8 of Rect. No. there is no khasra No. 10 of Rect. No. 27 in that line,

rather khasra No. 10 of rect. No. 28 falls on the Eastern side of khasra No. 6 of Rect. No. 27 which has been mentioned in the compromise

Ex.CX but there is no khasra No. 10 of Rect. No. 27 even existed in the revenue estate of village Rapri, Tehsil Jagadhri, District Yamuna Nagar.

only clerical/typographical one, which can be well corrected by invoking the provisions of Section 151/152 CPC.

4. Mr. ML. Sarin, learned Senior counsel appearing on behalf of the petitioner, argued that the approach of the learned Trial Court is invalid

particularly when it was not even the plea on behalf of the plaintiff-respondent that there was any typographical or clerical error (in noticing the

averred rect. number) on the part of the Court.

5. In support of the averment that any error on the part of the parties could not form the basis of exercise of jurisdiction u/s 152/151 C.P.C.,

learned Counsel relied upon Jayalakshmi Coelho Vs. Oswald Joseph Coelho, .

6. The learned Counsel, appearing on behalf of the respondents argued that the impugned compromise/agreement was void (in terms of the

provisions of Section 20 of the Indian Contract Act) on the face of it as both the parties were under mistake ""as to matter of fact essential to the

agreement"".

7. There can be no difference of opinion about the fact that the correction of a clerical or typographical error is authorised in terms of the

provisions of Section 152 CPC. The only condition precedent in that behalf is that the error must have occurred on the part of the Court. If an

error occurs on the part of a party, resort cannot be had to the provisions of Section 152 CPC. Likewise, if there is a case where a party makes

an averment that the contract is void in terms of Section 20 of the Indian Contract Act, 1872, the parties shall have to obtain a declaration from the

Civil Court about the invalidation thereof, In that eventuality too, a resort to the provisions of Section 152 CPC. shall, in any case, not be called

for.

8. By the very nature of things, a compromise is a consensual act as between the parties to a cause. The parties compromising the matter announce

the factum thereof to the Court and would make a plea for disposal of the cause on the basis thereof. In the allowance of the compromise plea, the

Court would be merely putting its seal upon the terms and conditions of the compromise already arrived at between the parties. The only job of the

Court would be to validate it after satisfying itself that the compromise was not in violation of the public policy etc. If any party to the compromise

has to wriggle out of the compromise, for one reason or the other, it has to go for a civil suit to obtain invalidation thereof. On a plea of the present

category being filed, the learned Trial Court would not be justified in proceeding to adjudicate upon the validity or otherwise of an averment made

by a party with regard to an alleged mistake of fact having occurred in the impugned compromise. The exercise of that jurisdiction would be the

prerogative of the Civil Court wherein the validity of the compromise itself is challenged.

9. In the light of the foregoing discussion, the petition shall stand allowed. The impugned order dated 21.10.2004 shall stand set aside. If the

plaintiff-respondent has a grievance, he may have the recourse to the proper remedy available to him under the law.