
Chand Kaur Vs Raj Kaur (died) and others

Regular Second Appeal No. 905 of 1995

Court: High Court Of Punjab And Haryana At Chandigarh

Date of Decision: Aug. 1, 1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 12 Rule 6, Order 23 Rule 3, Order 23 Rule 3A, Order 43 Rule 1A, Order 43 Rule 1A(2)#Registration Act, 1908 " Section 17

Citation: AIR 1997 P&H 155 : (1996) 2 CivCC 564 : (1996) 3 RCR(Civil) 512

Hon'ble Judges: Swatanter Kumar, J

Bench: Single Bench

Advocate: R.K. Battas, for the Appellant; B.S. Gill, Ms. Reeta Kohli and G.S. Savra, for the Respondent

Judgement

1. Chand Kaur has preferred the Regular Second Appeal against the judgment and decree dated 27-3-1995 passed by the learned Additional

District Judge, Rup Nagar, affirming the decree passed by the Additional Senior Sub-Judge, Ropar dated 23-2-1995.

2. As the present appeal raises substantial questions of law, it will be appropriate to "refer to the necessary facts. The plaintiff Chand Kaur,

hereinafter referred to as the appellant, had filed a suit for declaration that she is the owner in possession of the land comprising of Khewat/Khatauni No. 218/318, Khasra No. 34, 23/6/2, 8/4, 27/15/1, 15/2, Khewat Khatauni No. 219/319, 320, Khasra No.23/ 14/1 min,

17/2, 23 /14/1 min, as entered in the Jamabandi for the year 1983-84 of village Barsalpur. Tehsil and District Ropar.

3. Defendant No. 1 Raj Kaur in the suit expired during the pendency of the present appeal and vide order dated 7-3-1996 the Court had

permitted the applicants in C.M. No. 1018-C of 1996 to be impleaded as intermeddlers leaving the question of validity and any other challenges to

the will open to be determined in appropriate proceedings.

4. This suit was contested seriously by three different groups of defendants, namely, (i) Raj Kaur; (ii) Sadhu Singh and others being defendants

Nos. 2 to 7 in the suit; and (iii) Jagir Singh and Karnail Singh defendants Nos. 8 and 9 in the suit. All these different sets of defendants had filed

their respective written statements and were contesting the suit. The learned trial Court vide order dated 23-2-1995 passed an order directing ex

parte proceedings to be taken against defendants Nos. 2 to 7 as nobody had appeared on their behalf in spite of the fact that the case had been

called out time and again. Vide the same order the learned trial Court proceeded to decree the suit in favour of parties on the basis of a

compromise. It will be appropriate to reproduce the judgment passed by the learned trial Court dated 23-2-1995 hereunder :--

None has appeared on behalf of defendants Nos. 2 to 7. Case called time and again. It is now 3.15 p.m. Hence ex parte proceedings are taken

against defendants Nos. 2 to 7.

Case is fixed for evidence of the defendants and today is the last opportunity, but compromise between the parties has been effected. Statement of

Chand Kaur-plaintiff on S. A. recorded. She has stated that Court has got effected compromise between the parties and as per the compromise

she may be declared owner in possession to the extent of 1/3rd share out of land in dispute, while Raj Kaur defendant No. 1 be declared owner in

possession to the extent of 1/3rd share out of the land in dispute and Jagir Singh and Karnail Singh defendants Nos. 8 and 9 be declared owners in

possession in equal shares of the remaining 1/3rd share of the land in dispute and that suit be decided accordingly. Separate statement of Raj Kaur,

defendant No. 1 recorded. She has accepted the statement of Chand Kaur-plaintiff and stated that suit be decided as per her statement. Separate

statement of Darshan Singh, Attorney of Karnail Singh defendant No. 9 on S. A. and Shri Bhupinder Singh, Advocate counsel for Defendants

Nos. 8 and 9 also recorded. They have stated that they have heard the statements of Chand Kaur-plaintiff and Raj Kaur, defendant No. 1 and

they accept the same as correct and suit be decided accordingly.

5. In view of statements of the parties recorded today a decree for declaration that Chand Kaur-plaintiff is owner in possession of the 1/3rd share

out of the land in dispute and that Raj Kaur alias Laj Wanti, defendant No. 1 is owner in possession to the extent of 1/3rd share out of the land in

dispute and that defendants Nos. 8 and 9 are owners in possession in equal share of the remaining 1/3rd share of the land in dispute, is passed in

their favour and against defendants Nos. 2 to 7. Decree against defendants Nos. 2 to 7 is, however, ex parte. Parties are left to bear their own

costs. Counsel fee is assessed at Rupees 500/-. Decree sheet be prepared and file be consigned to record-room.

6. Aggrieved from this judgment and decree Chand Kaur had preferred a regular first appeal before the learned Additional District Judge, Rup

Nagar, a copy of which has been placed on record. Appellant had stated that the case of the appellant was specific that she was owner in

possession of the entire land and she never made any statement anywhere to the contrary. Amongst other grounds it was also specifically alleged

that no compromise as required under the provisions of Order 23 of CPC was recorded and that the trial Court could not have decreed the suit in

the present manner. The learned First Appellate Court noticed in its judgment that the case was fixed for recording of evidence of the defendant on

the date when these statements in question were recorded and on that basis the trial Court decreed the suit vide impugned judgment. The trial

Court on the basis of these statements of some of the parties to the suit held that plaintiff was entitled to 1/3rd share of the entire land and

possession thereof and further held on the one hand that defendant No. 1 and defendants Nos. 8 and 9 jointly to be owners in possession of 1/3rd

share each respectively. While passing this decree as already noticed, on the same day the learned trial Court had passed an order directing ex

parte proceedings against defendants Nos. 2 to 7 but passed the decree against them in the above terms on the basis of the statement of other

parties. The learned First Appellate Court while holding that there could be no dispute regarding the legal proposition argued by the learned

counsel for the appellant before it, still held that the provisions of Order 23 of the Code postulate an oral compromise which was permissible, as in

the present case, and consequently the trial Court had not erred in passing a decree. It was also held by the Court that the appeal itself was not

maintainable because it was a consent decree under Order 23, Rule 3, C.P.C. and no appeal against a compromise decree was permissible u/s 96

of the Code. The Appellate Court was further of the view that even if the compromise was not in conformity with the provisions of Order 23, Rule

3, C.P.C. still in the alternative the present decree was a decree under the provisions of Order 12, Rule 6 of the Code and was based upon

admission of the parties.

7. The learned trial Court in its judgment and decree has specifically noticed that the parties have compromised their disputes and statement of

Chand Kaur-plaintiff has been recorded on S. A. The order in fact shows that according to the plaintiff the Court has got effected compromise

between the parties and as per terms of the compromise she was declared owner in possession to the extent of 1/3rd share out of the entire land in

dispute while giving 2/3rd share of the land to the other defendants as afore-stated. Defendants Nos. 2 to 7, as already observed had been

proceeded against ex parte vide the same order and statement of defendant No 8 was not recorded but statement of his counsel is stated to have

been recorded. It was in view of the statements of the parties that a decree was passed as afore-stated.

8. A bare perusal of the record and orders passed by the trial Court including order dated 23-2-1995 leaves no doubt of any kind that the decree

in question is a compromise decree between the parties who made statements before the Court on that date. Rule 3 of Order 23 of the Code

governs and controls compromise of suits. The term "compromise" has to be understood in its true meaning and cannot be given a construction

which would frustrate the very intention of the Legislature behind this provision. The intention of this provision is to achieve the object of recording

of a lawful compromise or settlement and passing a decree with the free consent of the parties and to achieve ends of justice. Defeating of ends of

justice and mere disposal of a matter by using this provision as an instrument for such purpose certainly is not an underlying feature of this

provision. The Legislature has intentionally imposed, by use of specific language, certain inbuilt safeguards and obligations upon the Court before a

decree on the basis of a compromise between the parties can be passed. One of such conditions which is of paramount consideration is the

satisfaction of the Court in regard to the adjustment of the entire or part claimed by means of a lawful agreement or compromise in writing and

signed by the parties. Thus, upon recording of such satisfaction alone, the Court can pass a decree on the basis of such a lawful compromise in a

suit pending before it. A compromise is a settlement of differences by concession of each party. For such concession of either side an agreement of

mind, free from pressure and influence, is essential. Every compromise undisputedly is a form of contract, which, thus, must essentially fulfil the

ingredients for entering into a lawful contract and agreement.

9. The provisions of Order 23 of the Code postulate that it is only some forms of compromises or agreements which, subject to their being in

writing and lawful, can be recorded by a Court and a decree passed in terms thereof provided they judiciously satisfy the Court of these

ingredients. The minimum pre-requisite of a valid compromise is that it must emerge from a willing and voluntary act of the parties and an act which

is forced on the parties loses the very essence of its being a valid and lawful agreement. The parties have to be ad idem with regard to the terms

which emerge from a valid consent and terms which are lawful. The provisions of Order 23, Rule 3 of the Code cast a duty upon the Court that

to record its satisfaction with regard to these various ingredients as a precedent to passing of a decree as the basis of such a compromise under

Order; 23, Rule 3, C.P.C.

10. Consistent views taken by various Courts by now have clearly spelled the conditions which normally must be satisfied for validly invoking the

provisions of Order 23. Rule 3 of the Code and for passing of such a decree, which are as under:--

(i) There should be a lawful agreement or compromise;

(ii) This compromise has to be in writing and signed by the parties;

(iii) The compromise must be recorded by the Court;

(iv) A decree on such compromise can be passed so far it relates to the parties to the suit but may extend to a special matter which is not the

subject-matter of the suit.

The Court has to record its satisfaction with regard to adjustment of the whole or part of the claim in terms of such lawful compromise.

11. The explanation to sub-rule (3) of Rule 23 of the Code further makes legislative intent more clear by specifying that an agreement or

compromise which is void or voidable under the Indian Contract shall not be deemed to be lawful within the meaning of the rule. 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 fully and

finally.

12. 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 3(a) of Order 23 of the Code further provides 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 of the Code 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.

13. In the present case the Court had proceeded against some of the defendants ex parte on the same day and immediately proceeded to pass a

decree on the alleged compromise, which definitely prejudicially-affected the rights and contentions of the said defendants. A compromise decree

has to be between the parties to the suit and the Court must apply its mind and use its judicial discretion if the case is otherwise. Obviously the suit

was being contested by different sets of defendants, and compromise between some of them adversely affecting the rights of another set of

defendants, had to be looked into by the Court with caution. Compromise between some of the parties to the suit and prayer for passing of a

decree effecting rights of all, the Court had a discretion to accept or reject such a request. In fact in some of the cases where partial compromise

would be prejudicial to the interests of the parties not joining such a compromise, the Court has gone to the extent of holding that such compromise

cannot be recognised. In this regard reference can be made to Shrimati Rani Bai Vs. Shri Yadunandan Ram and Another, and Gopika Raman Roy

v. Atal Singh AIR 1926 Cal 193

14. In the suit it had been admitted that defendant Nos. 2 to 6 were also in possession of the property in question. Thus, their interests were

inseparable and were intermingled with the stands and rights of other defendants. Postulation of their rights and consequently extinguishment by the

consent decree does not appear to be very fair in the facts and circumstances of the case.

15. The ground taken before this Court in the present appeal is that the Court initiated the terms of compromise and the poor lady who is stated to

be an illiterate of 60 years old had succumbed to the pressure of the Court and no time was given to her to think over the matter. The order dated

23-2-1995 also indicates that Court has got the compromise effected between the parties. The parties had admittedly neither signed any

agreement nor had executed any document or compromise in writing. No such agreement was produced in the Court. Even the terms and

conditions of the compromise are not clear from the order itself. The learned Subordinate Judge passed an order taking ex parte proceedings

against defendants Nos. 2 to 7 and instantly proceeded to record the compromise and decreed the suit leaving the parties to bear their own costs,

but still went to assess the counsel fee. The Court passed no further directions upon the passing of the compromise decree dated 23-2-1996 with

regard to payment of Court-fee, stamp duty and registration,

16. It will also be doubtful if a decree in favour of the other defendants could be passed for ownership and possession in a suit for declaration by a

plaintiff. The present suit was certainly not one for partition where every party to the suit is to be treated as a plaintiff. The suit was being seriously

contested by the parties and it was expected that the Court would have adhered to compliance of the basic requirements stipulated under Order

23, Rule 3 of the Code in the facts and circumstances of this case, rather than acting in such a haste.

17. The Seamed counsel for the appellant has relied upon various judgments to support his contention that a compromise decree must precede by

a written compromise recording the terms and conditions of the settlement. He relied upon the authority of Manohar Lal v. Surjan Singh 1990 PLJ

480 (DB).

18. It will be appropriate to refer to the principles governing the application of Order 23, Rule 3, C.P.C. as settled by the Supreme Court of India

in the case of Gurpreet Singh Vs. Chatur Bhuj Goel, . In unambiguous language the Court rejected the contention raised that a compromise

between the parties need to be in writing where terms are reflected in the order itself and while enunciating this principle the Supreme Court has

specifically overruled judgment of this Court in Manohar Lal and Another Vs. Surjan Singh and Another, and the Court held as under:--

Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise

must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement

or compromise must itself, be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or

appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties

should be dispensed with. The Court must, therefore, insist upon the parties to reduce the terms into writing.

Even this Court time and again has held that mere recording of statement of parties in Court even if they are signed by the parties and their counsel,

it is not a sufficient compliance of provisions of Order 23, Rule 3, C.P.C. Compromise must be reduced into writing in the form of an instrument

duly signed by the parties. Reference can be made to Sumer v. Vijay Singh, 1990 PLJ 68 and Sarup Chand v. Jagdish Chand 1990 PLJ 366, and

the Court held as under:--

Even otherwise if there was a settlement between the parties, that was required to be reduced into writing, as provided under Order 23, Rule 3 of

the Code of Civil Procedure. It has been so held by the Supreme Court in Gurpreet Singh Vs. Chatur Bhuj Goel, as well as by this Court in Sumer

Singh v. Vijay Singh 1990 PLJ 68. Gurpreet Singh's case was relied Upon and it was further held that mere recording of statements of the parties

in Court if they were signed by them and their counsel was not sufficient compliance of Order 23, Rule 3 of the Code.

19. While emphasising the need for proper application of mind while passing the decree(s) under the provisions of Order 23, Rule 3, C.P.C., the

Supreme Court in the case of Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, held as under at Page 1143:--

The present case depicts as to how on 27-2-1991 the Court receded the alleged agreement and compromise in a casual manner. It need not be

impressed that Rule 3 of Order 23 does not require just a seal of approval from the Court to an alleged agreement or compromise ""said to have

been entered into between the parties. The statute requires the Court to be first satisfied that the agreement or compromise which has been entered

into between the parties is lawful, before accepting the same. Court is expected to apply its judicial mind while examining the terms of the

settlement before the suit is disposed of in terms of the agreement arrived at between the parties.

20. A compromise between the parties presupposes a bilateral agreement or understanding. Such bilateral agreement or understanding by

necessary implication precludes an order on the basis of an endorsement. An endorsement unaccompanied by an agreement or compromise of an

adjustment cannot be made the basis for passing of a lawful decree under these provisions. In this regard reference can be made to the case of

Manohar Parshad Kapoor v. Virendra Parshad 1986 (1) ALT 347. The facts of the present case viewed from any angle in their entirety lack bona

fide on the part of the parties who negotiated the present compromise in absence of other defendants. In spite of the fact that the Court had

directed ex parte proceedings against other defendants still it could have used the judicial discretion cautiously to accept or decline such a

compromise affecting the rights of all the parties.

21. In this view of the matter the trial Court was expected to adhere to the settled principles of law governing the procedure to be complied with

under Order 23, Rule 3 of the Code.

22. The learned First Appellate Court erred in law in converting it as a decree of admission and, therefore, upholding the decree as a decree

passed under the provisions of Order 12, Rule 6 of the Code. Firstly from the record it is clear that the trial Court itself did not pass any decree on

admission but passed a decree on the basis of the compromise between the parties. The judgment and decree of the trial Court as well leaves no

doubt in this regard. Thus, I find that the approach of the First Appellate Court is legally not correct. Even otherwise the provisions of Order 12,

Rule 6 of the Code are attracted only when an admission in pleading or otherwise exists on the record of the Court before passing the decree. In

the present case no such admission was made on record because the parties had entered into a compromise as recorded by the trial Court. This

could not be twisted to be termed as an admission within the purview of Rule 6. If the compromise as recorded by the Court was lawful, was in

consonance with the provisions of Order 23, Rule 3 of the Code and there was no challenge to the same, the parties would be bound by such

compromise, but by no stretch of imagination it could be treated as a judgment on admission in the facts and circumstances of the present case and

which fact was not even intended by the trial Court.

23. The learned counsel for the respondents before this Court has relied upon a judgment of this Court in the case of Smt. Raksha Rani @ Rakha

Devi v. Ram Lal reported as 1986 (2) PLR 504 to contend that as this was a consent decree under the provisions of Order 23, Rule 3 of the

Code, no appeal could lie and that there was substantial compliance that the statement of the parties was recorded by the Court which was signed.

This judgment is on distinguishable facts but in any case is not a good law in view of the subsequent judgments pronounced by the Hon'ble

Supreme Court of India as referred to above. To make this controversy clear beyond doubt it will be appropriate to refer to recent judgments of

the Supreme Court in the case of Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, where the Court held as follows (at page 1142

of AIR):--

After the amendments which have been introduced, neither an appeal against the order recording the compromise nor remedy by way of filing a

suit is available in cases covered by Rule 3-A of Order 23. As such a right has been given under Rule 1-A(2) of Order 43 to a party, who

challenges, the recording of the compromise, to question the validity thereof while preferring an appeal against the decree. Section 96(3) of the

Code shall not be a bar to such an appeal because S. 96(3) is applicable to cases where the factum of compromise or agreement is not in dispute.

As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under S. 96(1) of the Code, in

which he can now question the validity of the compromise in view of Rule 1-A of Order 43 of the Code.

Thus the observations of the First Appellate Court that appeal itself was not maintainable is also erroneous and, therefore, cannot be sustained.

24. Another factor which must weigh against the respondents herein is that even if decree is held to be valid, it was required to be compulsorily

registered in accordance with the provisions of S. 17 of the Indian Registration Act and appropriate stamp duty ought to have been paid on this

decree. The decree certainly created rights which were not preexisting. In fact there was a definite dispute between the parties with regard to title

and possession. It was for the first time during the pendency of the suit that the parties are stated to have compromised the matter on 23-2-1995

and it was for the first time that their rights of possession and title in the land in question were agreed to be given and created. It was not an

affirmation of existing rights, but was creation of rights for the first time in an immovable property which valued more than Rs. 100/-. As such the

decree of the present kind would attract the payment of appropriate stamp duty and would be hit by the provisions of S. 17 of the Act, requiring

the decree to be registered. In Bhoop Singh Vs. Ram Singh Major and others, , the. Court held as under:--

It would, therefore, be the duty of the Court to examine in each case whether the parties have pre-existing right to the immovable property, or

whether under the order or decree of the Court one party having right, title or interest therein agreed or suggested to extinguish the same and

created right, title or interest in praesenti in immovable property of the value of Rs. 100/- or upwards in favour of other party for the first time,

either by compromise or pretended consent. If latter be the position, the document is compulsorily registrable.

The present decree till date has neither been stamped in accordance with law nor has been registered according to law. The result of both these

basic infirmities in the document is that the decree does not vest any right in the parties in whose favour the same was passed at present.

25. Respondents Nos. 2 to 7 (defendants Nos. 2 to 7 before the trial Court) have also appeared before this Court and the learned counsel

appearing on their behalf argued that they were seriously contesting the suit and came to know of the passing of the decree when notice of the

present appeal was served upon them and they have also been aggrieved by the said judgment and decree. The said respondents have not

preferred any appeal before this Court and they are at liberty to take such appropriate steps as are permissible to them in accordance with law.

26. For the reasons aforestated the judgments and decree of both the Courts below are set aside. The case is remanded to the trial Court for

taking further proceedings in accordance with law as on 23-2-1995 and subject to the above directions. The parties are directed to appear before

the trial Court on 29-8-1996. There shall be no order as to costs.

27. Appeal allowed.