
(1997) 2 ShimLC 203

High Court of Himachal Pradesh

Case No: Civil Revision Petition No. 77 of 1996

Dhan Sukh

APPELLANT

Vs

Liaq Ram

RESPONDENT

Date of Decision: Dec. 6, 1996

Acts Referred:

Civil Procedure Code, 1908 (CPC) " Order 23 Rule 3A, Order 47 Rule 1, Order 7 Rule 11,
Order 7 Rule 2, 151#Contract Act, 1872 " Section 19

Citation: (1997) 2 ShimLC 203

Hon'ble Judges: Arun Kumar Goel, J

Bench: Single Bench

Advocate: Bhupender Gupta, for the Appellant; Jagdish Vats, for the Respondent

Final Decision: Allowed

Judgement

Arun Kumar Goel, J.

This is Plaintiff's revision against the order dated 29th March, 1996 whereby the suit for declaration and perpetual

injunction filed by the Petitioner, hereinafter referred to as Plaintiff, against the Respondent, hereinafter referred to as Defendant, has been ordered

to be returned under Order 7, Rule (II)(d) of the Code of Civil Procedure.

2. Brief facts giving rise to this case are that earlier suit No. 202-1 of 1992 was filed by the Defendant against the Plaintiff. This case was listed on

5-11-1992, an application was filed on 29-9-1992 for preponement of the said suit and deciding it since the matter has been compromised

between the parties. Accordingly, the said suit was preponed from 5-11-1992 to 29-9-1992 and a compromise decree was passed. And, before

passing the compromise decree in the suit, statements of the parties were recorded by the trial Court and written compromise was also taken on

record, which was marked as Ext. CA and in term thereof Liaq Ram was declared as owner in possession of the suit land comprised in Khasra

Nos. 1775/129 and 1787/516, Kita 2 measuring 4.8 Bighas, situated in Chak Ratnari, Tehsil Theog, District Shimla, H.P. and the revenue entries

to the contrary were held wrong and illegal.

3. The aforesaid compromise decree was challenged by the Plaintiff to be the result of fraud and misrepresentation having been practised by the

Defendant upon him. It was a time when he was in bad state of health and the document which was filed as compromise had been held out to be a

Will executed by the Plaintiff in favour of Liaq Ram, Defendant. In these circumstances, declaration was sought that the judgment and decree

passed in Civil Suit No. 202-1 of 1992 dated 29-9-1992 is null and void and is not binding on the Plaintiff. Further, decree for perpetual injunction

was also prayed for.

4. In this case pleadings are complete However, when the matter came up before the trial Court, by means of impugned order it was held that the

present suit wherein compromise decree in Civil Suit No. 202-1 of 1992 in case titled Liaq Ram v. Dhan Sukh, is challenged was not maintainable

and accordingly the plaint was ordered to be rejected under Order VII, Rule 11(d) of the Code of Civil Procedure. It is this order, which is

assailed by the Plaintiff in the present case.

5. Mr. Bhupender Gupta, learned Counsel appearing for the Plaintiff, has urged that unless the matter was put to issue by the trial Court, simply on

the basis of Order 23, Rule 3-A of the CPC his client could not have been thrown out Further it was pointed out that a compromise decree in

order to be binding has to be shown to be according to law. The question of the compromise being lawful or not could only be determined after

going into the said question. Mr. Gupta further pointed out that he has no other remedy except by way of filing the present suit, whereas on the

other hand, Mr. Jagdish Vats, learned Counsel for the Defendant has submitted that the compromise decree was lawful and no infirmity has been

pointed out for holding that the same is unlawful within the meaning of Contract Act and as such the challenge made by the Plaintiff in this behalf is

not at all sustainable.

6. I have gone through the records of the case and have also heard learned Counsel for the parties.

7. Mr. Bhupender Gupta, learned Counsel for the Plaintiff has placed reliance on certain decisions to which reference is being made now.

8. In Syed Shah Gulam Ghous Mohiuddin Khamesul Qadri and Others Vs. Syed Shah Abdul Har Khamisul Qadri and Others, it was observed

that a suit to set aside decree on the ground of fraud is not purely a question of law, but involves a mixed question of law and fact and no finding

can be given without giving opportunity to lead evidence. Unless an opportunity is given, this question cannot be gone into.

9. In Kewal Krishan Vs. Shiv Kumar and Others, a Division Bench of that Court has also held that proper remedy for setting aside of a consent

decree having been obtained by fraud is to file a separate suit. This was the position of law before addition of Rule 3-A of Order 23 of Code of

Civil Procedure.

10. In Mukhtiar Singh v. Arjun Singh 1993 (Supp.) CCC 81 (P and H), it has been held that under Order 23, Rule 3-A of the Code of Civil

Procedure, a suit to challenge a compromise on the grounds of fraud, coercion or undue influence is not barred. In order to bind a party on the

basis of the compromise decree, it has to be shown that the same is lawful, and is not opposed to the law, it should have effect under the

Contract Act.

11. On the other hand, Mr. Jagdish Vats has placed reliance on Smt. Tara Bai v. V.S. Krishnaswamy Rao AIR 1985 Kar 270, wherein it has

been held that a suit to question compromise decree on the grounds of fraud or misrepresentation is barred and the purview of Order 47, Rule 1

for review also cannot be invoked such remedy is by way of filing an application u/s 151 of the Code of Civil Procedure. Another case upon which

reliance is being placed is S.G Thimmappa v. T. Anantha and Ors. AIR 1986 Kar 1, wherein it has been held that a compromise decree cannot be

challenged on the ground of fraud, undue influence or coercion under Rule 3-A of the Code of Civil Procedure. If a reference is made to this

judgment, it supports the contentions raised by the Plaintiff in the present revision petition.

12. After considering the respective submissions, it is felt that so long compromise decree subsists, it is good in law and the party who wants to

avoid it, or in other words it is voidable at the option of a party, who has to show that his consent was obtained on any of the grounds on which an

agreement can be avoided u/s 19 of the Contract Act in order to invoke bar of Rule 3-A of Order 23 of the Code of Civil Procedure, it has to be

shown by the party concerned, Defendant in the present case, that the agreement was lawful. Further in order to arrive at a finding that the

agreement is lawful and, thus, the suit is barred, unless the matter is put to issue, there is no question of such a finding being recorded, as the legality

of the agreement has to be seen on the basis of evidence that would be produced by the parties during the course of trial.

13. In this behalf, it may be appropriate to clarify that a compromise decree is in the nature of an agreement arrived at between the parties and

such an agreement has to be shown to be lawful in accordance with the provisions of Contract Act.

14. In the present case, when a reference is made to the plaint, the Plaintiff has enumerated the circumstances on the basis of which he has

challenged the agreement in question and unless this question was put to issue, it cannot be said that the suit was not maintainable. May be that

after the matter has been put to issue and the parties had led their evidence in support of their respective pleas, the Court may come to the

conclusion that the compromise decree is lawful and meets the requirement of law. But by pressing into service bar of Order 23, Rule 3-A of the

Code of Civil Procedure, the suit could not have been dismissed in the manner in which it has been done by the trial Court.

15. This view is in consonance with the law decided by the two judgments of Punjab and Haryana High Court after the amendment of the CPC

which came into force with effect from 1st February, 1977 and which was the view even prior to the amendment of the Code of Civil Procedure,

similar is the view of the Karnataka High Court So far the decision reported in AIR 1985 Kar 270 (supra), is concerned, it has held that the suit is

not maintainable, to question the compromise decree, as also review, it has further held that an application u/s 151 of the CPC is maintainable. In

that case also the matter has to be put to issue on such an application and a decision has to be given after recording evidence, which may be

produced by the parties concerned. Even then the Court cannot shut its eyes against fraud or misrepresentation which vitiates compromise. In any

way, this judgment also does not support the line of argument adopted by Mr. Vats, on the contrary it supports the case of the Plaintiff.

16. From whatever angle the present case may be examined, the fact remains that the trial Court has failed to exercise jurisdiction vested in it

according to law and, thus, the impugned order cannot be sustained Consequently, this revision petition is allowed and the impugned order is set

aside. Trial Court is directed to proceed with the case and decide it in accordance with law, after framing the issues. The parties through their

learned Counsel are directed to appear before the trial Court on January 15, 1997. The Registry will ensure that the record of the trial Court is

available to it well before the next date of hearing. No costs.