

(1993) 12 KL CK 0029

High Court Of Kerala

Case No: S.A. No"s. 833 and 883 of 1988

Meenakshi

APPELLANT

Vs

Manikkam

RESPONDENT

Date of Decision: Dec. 6, 1993**Acts Referred:**

- Civil Procedure Code, 1908 (CPC) - Order 23 Rule 3, Order 23 Rule 3A, Order 43 Rule 1A, Order 43 Rule 1A(2)

Hon'ble Judges: M.M. Pareed Pillay, J**Bench:** Single Bench**Advocate:** V.P. Mohankumar and Prabha R. Menon, for the Appellant; Sudhi Vasudevan, for the Respondent**Final Decision:** Dismissed

Judgement

M.M. Pareed Pillay, J.

Appellant in S.A.833 of 1988 is the Plaintiff in O.S.663 of 1979 of the Munsiff's Court, Kozhikode-II. Defendants 1 and 3 in O.S.543 of 1979 are the Appellants in S.A.833 of 1988. Plaintiff in O.S.663 of 1979 and first Defendant in O.S.543 of 1979 are sisters. Defendants 2 and 3 in O.S.543 of 1979 are the first Defendant's daughter and husband. O.S.543 of 1979 is a suit for injunction filed by the sister of the Plaintiff in O.S.663 of 1979. O.S.663 of 1979 was filed to set aside a compromise decree in A.S.340 of 1976 of the Additional District Court. Kozhikode which was an appeal filed against the judgment and decree in O.S.434 of 1974 of the Munsiff's Court, Kozhikode-II. Both O.S.543 of 1979 and O.S.663 of 1979 were tried together, the leading case being O.S.663 of 1979. O.S.543 of 1979 was decreed in favour of the Plaintiff in that suit, whereas O.S.663 of 1979 was dismissed.

2. The position of the parties as it stood in O.S.663 of 1979 is followed in the discussion hereunder. Plaintiff in O.S.663 of 1979 contended that the plaint schedule properties originally belonged to Sankaran who died in 1963, that there was oral

partition of the properties left behind by Sankaran in 1965 through the intervention of three mediators viz. Achuthan, Appu and Mammad, that as per oral partition the plaintiff schedule properties were allotted to her share and that when she received injunction notice in O.S.543 of 1979 she came to know of a compromise having been recorded in A.S.340 of 1976. According to the Plaintiff, she is completely unaware of the compromise, she has not signed the compromise and she did not engage any advocate in A.S.340 of 1976. Plaintiff contends that she is in possession of the plaintiff schedule properties on the strength of oral partition.

3. Defence contention in O.S.663 of 1979 and the averments in the plaint in O.S.543 of 1979 are to the effect that really a compromise was recorded in A.S.340 of 1976 and so O.S.663 of 1979 seeking to set aside the compromise decree is hit by Order 23 Rule 3-A of the Code of Civil Procedure

4. The lower appellate Court upheld the defence contention that O.S.663 of 1979 is not maintainable in view of Order 23 Rule 3-A. Contention of the Plaintiff's is that Order 23 Rule 3-A cannot have any application in view of the averments in the plaint to the effect that the compromise decree cannot be sustained as it is vitiated by fraud. Learned Counsel for the Defendants submitted that the aforesaid contention is not tenable in view of the specific mandatory provision contained in Order 23 Rule 3-A which makes the position clear 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.

5. Order 23 Rule 3-A envisages that no suit shall lie aside a decree on the ground that the compromise on which the decree is based was not lawful. Order 23 Rule 3 enables the Court to pass decree in accordance with the compromise entered into between the parties. Explanation to the proviso to Rule 3 states that an agreement or compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of this rule. As an agreement or compromise which is vitiated by fraud, coercion or undue influence would really come under the aforesaid explanation, Plaintiff's contention that in a case where fraud is alleged against the compromise decree it would not be hit by Rule 3-A is not tenable. A compromise decree if found to be based on fraud, collusion or undue influence cannot be considered to be lawful. Merely because Rule 3-A does not specifically mention that a compromise decree found to be vitiated by fraud, undue influence or coercion cannot be challenged by a separate suit it cannot be given a very narrow interpretation as suggested by the Plaintiff's counsel.

6. Order 23 Rule 3-A was inserted by the CPC Amendment Act, 1976. The said amendment was introduced in Order 23 with a view to avoid multiplicity of suits. Often the Courts were plagued with suits challenging compromise decrees for one reason or the other. This resulted in appeals and further appeals and procrastination of disputes. To avoid the predicament of the Courts and the parties the Parliament in its wisdom introduced Rule 3-A. By adding the proviso to Rule 3 and the explanation thereto it is discernible that the object of the amending Act is

really to compel the party challenging the compromise to question the same before the Court which had recorded it. It is that Court which recorded the compromise to decide the controversy between the parties. Explanation makes the position clear that an agreement or compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of the said rule. In view of the proviso and the explanation, contention of the Plaintiff that in a case where fraud, coercion or undue influence is alleged it can be resolved only in a separate suit and hence Rule 3-A has no application is not tenable.

7. Proviso to Order 23 Rule 3 states that where it is alleged by one party and denied by other that an adjustment or satisfaction has been arrived at, the Court shall decide the question. It can only mean the Court before which a petition of compromise was filed and which has recorded such compromise. There cannot be any doubt that in view of the proviso to Rule 3 and Explanation thereto, the Court which entertained the compromise petition has to examine whether it was void or voidable. The above position has been made clear in [Banwari Lal Vs. Smt. Chando Devi \(through L.R.\) and another](#), .

8. Counsel for the Plaintiff relied on S.G. Thimmappa v. T. Anantha AIR 1986 Kart. 1 in support of his contention that challenge against a compromise decree on the ground of fraud, under influence or coercion is not hit by Rule 3-A. In view of the aforesaid Supreme Court ruling the Karnataka decision is not longer good law. That apart, the Karnataka High Court has not considered the availability of the remedy by way of appeal to the person who challenges compromise decree. Order 43 Rule 1-A enables a party to file appeal challenging compromise decree for valid grounds. Order 43 Rule 1-A(2) states that in an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the Appellant to contest the decree on the ground that the compromise should, or should not, have been recorded. Thus, it would have been perfectly open to the Plaintiff to file appeal against the compromise decree. This provision as well as Order 23 Rule 3-A makes the position abundantly clear that challenge against a compromise decree cannot be by a separate suit.

9. The trial court's finding that the Plaintiff has not succeeded in proving that Ext.A-1 decree is vitiated by fraud has been confirmed by the lower appellate court. Both the courts held that the Plaintiff in O.S.543 of 1979 is entitled to the injunction sought for in that suit. The concurrent findings of the Courts below do not warrant interference by this Court in the second appeal.

In the result, the second appeals are dismissed. There is no order as to costs.