

**Mandrawati Vs. Maruti and Others**

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**Court :** Mumbai Aurangabad

**Decided On :** Feb-25-2014

**Judge :** A.I.S. Cheema

**Appeal No. :** Civil Revision Application No. 131 of 2012

**Appellant :** Mandrawati

**Respondent :** Maruti and Others

**Judgement :**

1. Heard counsel for both sides. The Revision Application has been admitted and finally heard with consent of learned counsel for both sides.
2. The Applicant is original Plaintiff. Respondents are legal heirs of original Defendant No.1 Maruti. Respondent No.1C is Legal Heir of Defendant No.1 and also original Defendant No.2. I will refer to the Applicant as Plaintiff and Respondent No.1C as Defendant.
3. The Plaintiff filed Regular Civil Suit No.151 of 2007 for partition against her brother Defendant Maruti and his son Defendant No.2 Datta. According to the Applicant-Plaintiff, Defendants prepared a compromise deed and compelled the Plaintiff for her signature on the compromise and the same was filed in the trial Court of Civil Judge, Senior Division, Latur at Exhibit 16 on 2nd January, 2008. She did not give free consent to the said compromise. The same was obtained by force. Defendants succeeded in getting decree passed by the trial Court on 7th

February, 2008. The same is illegal and improper. Plaintiff had filed Civil Revision Application No.75 of 2008 in the High Court to quash the said order recording compromise on dated 7th February, 2008. By Judgment dated 23rd June, 2009 High Court quashed and set aside the impugned order of the trial Court and remanded the matter directing the trial Court to hear the parties afresh on the point as to whether really there was a compromise between the parties and then to pass appropriate orders.

After the matter was remanded, parties led oral evidence regarding the alleged compromise. Plaintiff brought evidence to claim that the compromise was not willful and the same deserved to be discarded. Defendant brought evidence to prove that there was wilful and lawful compromise. After hearing the parties, the trial Court vide order dated 21st December, 2011 held that the allegations of fraud and other grounds are vague and that the compromise which was recorded was by free will and consent and there was no coercion. Accordingly compromise was taken on record and decree passed vide orders dated 21<sup>st</sup> December, 2011. Thus, the present Revision has been filed.

4. I have heard counsel for both sides. The learned counsel for Applicant-Plaintiff has submitted as follows:.

The compromise which was tendered in the Court had been obtained by fraud by the Defendant No.2. Plaintiff filed application that the compromise was fraudulent. The compromise recorded, was only between the Plaintiff and Defendant No.2 and Defendant No.1 was not party to the same. On the same day when the compromise Exhibit 16 was tendered, the Advocate Mr. Sonawane of Plaintiff filed purshis Exhibit 17 withdrawing the suit against Defendant No.1 Maruti. On 2<sup>nd</sup> January, 2008, order below Exhibit 16 was passed by the Court, the order remained to be passed below Exhibit 1 as on 2nd January, 2008 matter had been taken on board. Before the matter came up on next date, the Plaintiff had filed an application not to record the compromise. Such application Exhibit 19 was filed by the Plaintiff on 14<sup>th</sup> January, 2008 retracting the earlier compromise.

Reliance was placed by Plaintiff on the matter of **Jaywantraj Punamiya and others vs. H. Chokshind Co. Pvt. Ltd., reported in (1997) 10 Supreme Court**

**Cases, Page 193** to submit that in that matter there was contingent compromise appointing third person for disposal of the flats in dispute. Court declined to record the said compromise. This was upheld by the Hon'ble Supreme Court. Reliance is also placed on the matter of **Santoshvs. Jagat Ram and another, reported in (2010) 3 Supreme Court Cases, Page 251**, where, in view of the facts of that matter and on appreciating the evidence concerned, Hon'ble Supreme Court set aside the partition decree fraudulently obtained in subsequent suit filed by appellant therein. Reference was made to the matter of **ArjanSingh vs. Punit Ahluwalia and others, reported in 2009(2) Mh. L.J. Page 13**. In that matter for one property there were two suits against one Dr. Bawa for specific performance and in the subsequent suit Dr. Bawa compromised. It was found that such compromise decree did not satisfy requirement of law and same was not binding on the Plaintiff of the earlier suit, as the same would be hit by the doctrine of lispendens.

5. Per contra, learned counsel for Respondent-Defendant submitted as under:.

The Plaintiff had compromised the suit with Defendant No.2 and withdrew the suit against Defendant No.1. The compromise tendered as well as the withdrawal application, both, had signatures of Plaintiff. The Defendant No.2 not merely joined the compromise but also acted upon the same by depositing the money in the Bank. Defendant had called Plaintiff and her daughters to receive the money as per the compromise. The daughter came and so from the account of Defendant, money was transferred to the daughter Asha to the extent of Rs.70,000 (Rupees Seventy Thousand) and the same was put in fixed deposit, which is on record. Asha subsequently encashed the fixed deposit premature. The orders passed in Revision were merely to confirm if in reality the compromise was there. The evidence on record shows that the Plaintiff was aware of the compromise which was drafted and shared by her with her Advocate Mr. Sonawane and she had discussed the same with her daughters and was aware of the contents and Plaintiff herself had tendered the compromise in the Court which came to be recorded, but somehow, subsequently she has tried to retract. Defendant maintained account in Bank so that Plaintiff could be paid any moment and as soon as present impugned order was passed on 21st December, 2011, Defendant

deposited the remaining money of compromise in the Court on 22<sup>nd</sup> December, 2011 itself. The impugned order dated 21st December, 2011 of the Court after recording evidence regarding the compromise, as passed by the trial Court is properly reasoned order and in Revision, it would not be appropriate to disturb the findings of facts as same are legally tenable. The Revision is not maintainable as decree on the basis of compromise has been passed. The Revision deserves to be dismissed.

6. In reply, learned counsel for the Plaintiff submitted that the present Revision is maintainable as under Section 96(3) of the Code of Civil Procedure, appeal would not lie as the decree concerned would be treated as passed by consent of parties.

7. The document of compromise Exhibit 16 filed in the suit, in Para 1 referred to the facts of the matter and that the original owner was Arjun Kshirsagar who had by Will given the property to Defendant No.2 Datta and so Plaintiff accepted that she did not have right in the same. However, (in Para 2 it is mentioned) she has two daughters and is old and due to the relations, Defendant No.2 agreed to pay Rs.2,10,000 (Rupees Two Lakh Ten Thousand) to the Plaintiff within next six months, out of which Rs.70,000/- (Rupees Seventy Thousand) each would be paid to Plaintiff and to her two daughters. Compromise with such contents was tendered before the Civil Judge, Senior Division, Latur on 2nd January, 2008 and he passed orders below the same to the effect that, the Plaintiff and Defendant No.2 are present “ they verified and admitted contents and compromise is read over to them, and hence verified. Trial Court record shows that on same day Advocate of Plaintiff Mr. Sonawane filed purshis Exhibit 17 mentioning that as matter is compromised between Plaintiff and Defendant No.2, therefore the Plaintiff does not want to proceed against Defendant No.1. The purshis was signed by Plaintiff also and the Court read and recorded the same.

8. It appears that on 14th January, 2008 Plaintiff engaged another Advocate Mr. D.K. Jadhav and filed application Exhibit 19 claiming that a so said compromise has been filed but the compromise was not explained or read over to the Plaintiff and that she has been cheated. Plaintiff was not accepting the Will Deed also. The market price of the property was not considered and Defendant No.2 on his own,

put the figure of Rs. 2,10,000/- (Rupees Two Lakh Ten Thousand) and Plaintiff had no guarantee that Defendant No.2 would pay the amount. The compromise should not be accepted and suit should be continued.

On such application being filed, the Civil Judge, Senior Division, passed following order on 7th February, 2008:

"1. The suit for partition and separate possession by sister against brother and brother's son. The plaintiff and defendant no.2 filed compromise and plaintiff filed withdrawal pursis against defendant no.1 vide exh.16 and 17 respectively. I have read over the contents of compromise to plaintiff and defendant no.2 to which they admitted, hence compromise is verified and order came to be passed. However, the final order was deferred because on the date of filing of the compromise, file was taken on board as it was fixed on 8.1.2008. On 8.1.2008 holiday declared and hence file was fixed on 14.1.2008 for order. On 14.1.2008 present application came to be filed on the allegations that the contents of compromise deed were not read over and explained to the plaintiff and she was cheated. So also she do not admit will deed. However, the contention is incorrect because I have personally read over and explained the contents to her and she admitted it to be true and correct and then compromise was verified. The second contention raised in the application is that she have no guarantee as to whether or not the defendant no.2 will pay the amount of compromise i.e. Rs. 2,10,000/- to her and hence the compromise should not be accepted.

2. Say filed by defendant No.2 below exh.22 and resisted the application. I heard advocates for the parties.

3. After verification of the compromise the only role of the Court was to pass formal order and in such circumstances the contention of the plaintiff cannot be accepted now. The apprehension that the defendant no.2 will not pay Rs. 2,10,000/- is of no consequences because after passing final order the decree would be drawn in terms of the compromise and plaintiff have every right to get it executed for which the Court will certainly help her for recovering the amount along with incidental charges. The allegation of the cheating is vague hence cannot be accepted. As such the application being devoid of merit is rejected."

9. Further Order was passed on Exhibit 1 and Suit was decreed in terms of compromise. When the Civil Revision Application No.75 of 2008 was carried over to this Court by the Plaintiff, the above order of the trial Court was quashed and set aside as it was observed that formalities required to be followed in such matters had been given go-bye. The order was quashed and set aside and matter was remanded to the trial Court to hear afresh on the point as to, whether in reality a compromise was entered into between the parties to the proceedings and then to pass appropriate orders.

10. The impugned order dated 21st December, 2011, which is now before this Court, shows that the trial Court has given opportunity to both sides to lead evidence and discussed the evidence of each of the witnesses examined. Material is, whether the compromise Exhibit 16 which was filed and recorded by the Court was out of free will or not. Learned counsel for the Respondent-Defendant has taken me through the evidence of Plaintiff herself, whose cross-examination shows that she is aware of the worldly affairs. She can read and write Marathi language (The compromise Exhibit 16 is also in Marathi language). Her cross-examination shows that she has transacted earlier with the Bank for taking loan and regarding purchase of plot and that she had negotiated for selling the plot. Thus, learned counsel for Respondent submitted that Plaintiff is conversant with handling documents. Cross-examination of Plaintiff has been referred by the learned counsel further to point out that Plaintiff was attending the Court on every hearing and she had herself provided information to her Advocate. There were talks between her and Defendant No.2 about compromise which talks were going on for one year. Her daughter Soni was acquainted with the talks. Plaintiff admitted in the cross-examination that the compromise deed was drafted 23 days before the same was filed in the Court and she had given copy of the compromise to her Advocate Mr. Sonawane also. Her cross-examination reveals that she and her Advocate Mr. Sonawane had discussed the terms of the compromise and she herself had filed compromise before the Court. She admitted that the Court did ask her about the terms of compromise and she did admit the contents of the compromise. She admitted that it was mentioned in the compromise that the Defendant No.2 will pay Rs.2,10,000/- (Rupees Two Lakh Ten Thousand) to her within six months. She admitted that according to the compromise, Defendant

No.2 had deposited Rs.2,10,000/- (Rupees Two Lakh Ten Thousand) in the Bank. She stated that she does not know if her daughter Asha had already withdrawn Rs.70,000/- (Rupees Seventy Thousand) from the Bank. She accepted that she does not have any dispute with her daughter Asha. In the cross-examination, at one place she stated that it is not true that she knowingly filed compromise in the Court but again volunteered that she had knowingly filed compromise in the Court.

Learned counsel for Respondent referred to the above evidence of Plaintiff to submit that the cross-examination itself shows that the Plaintiff was totally aware of the contents of the compromise and had voluntarily filed the same and there was no coercion or pressure on her. She had discussed the contents with her own Advocate and also admitted that the Court did explain the terms of the compromise to her and she accepted the same. According to the learned counsel, when this is so, there does not remain anything else. The Court had properly verified and recorded the compromise.

11. Learned counsel for Respondent further referred to the evidence of Asha, the daughter of Plaintiff to who she herself examined as witness No.5. He submitted that although the part of affidavit as examination-in-chief tried to put blame on the Defendant, still the cross-examination of Asha also goes to show that the compromise was voluntary and duly executed. The learned counsel referred to the cross-examination of Asha where she stated that in the suit there was compromise between her mother and Defendants and that the concerned compromise was discussed between the sisters and the mother i.e. Plaintiff and it was recorded by consent. Asha also deposed that after the compromise, her mother, i.e. Plaintiff filed the compromise in the Court and that the compromise was as per what was decided between the parties. She also admitted that the contents of the compromise were read by the sisters and Plaintiff. Her evidence shows that Defendant had sent letter on 21st June, 2008 and called them to Kedarnath Bank, however she alone went to the Bank and Defendant transferred Rs. 70,000/- (Rupees Seventy Thousand) in term deposit in her name. Concerned form had been filled up and she had signed the same. She admitted that on 16<sup>th</sup> January, 2009 she again went to the Bank and opened her savings bank account and from the term deposit, she got the money transferred to savings account and she

withdrew the money for using the same for her marriage.

Learned counsel referred to the above evidence of Asha to argue that if the evidence of Plaintiff and her daughter Asha are read together, it is quite clear that there is no substance in the grievance being made by the Plaintiff after the compromise was recorded by the Court on 2<sup>nd</sup> January, 2008, that the same was not willful or that the same was product of cheating. He submitted that Asha is educated upto 12<sup>th</sup> Standard and Plaintiff had no dispute with her and there is no reason to disbelieve witness of Plaintiff herself.

12. Learned counsel for Respondent also referred to the evidence of Advocate Mr. Sunil Sonawane who was the Advocate of Plaintiff but called for evidence by Defendants. According to the learned counsel, the evidence of the Advocate also shows that the Plaintiff was explained the contents and she was aware as to what she was doing. According to the learned counsel, there is no reason to disbelieve the Advocate who has been practicing since 1990. It is submitted by the learned counsel for Respondent-Defendant that Umakant Ramkisan, the witness called by the Plaintiff from the Bank also has brought on record the fact that the Defendant had kept Rs.2,10,000/- (Rupees Two Lakh Ten Thousand) in his account and that the Defendant on 21st June, 2008 transferred amount in term deposit in the name of daughter of Plaintiff.

13. I have gone through the reasonings recorded by the trial Court while discussing the evidence. Learned counsel for Applicant-Plaintiff submitted that the observations of the trial Court that Defendant had kept Rs.2,10,000/- (Rupees Two Lakh Ten Thousand) in fixed deposit in the name of Plaintiff and her two daughters was not correct if the evidence of the employee from the Bank is perused. However, this is not material for the purpose of deciding the present matter. In the present matter, material is, whether the Plaintiff who had filed compromise herself, had understood the same and if it was filed by free will. If the evidence as pointed out by the learned counsel for Respondents is perused and the reasonings of the trial Court are considered, I do not find there is anything illegal or irregular in the findings arrived at by the trial Court that indeed compromise between the parties had taken place as is recorded in Exhibit 16 and that the same was out of free will

and consent and there was no coercion or undue influence on the Plaintiff. The same was duly verified, admitted and recorded before Court. I do not find any reason to differ from the findings arrived at by the Civil Judge, Senior Division, Latur.

14. Rulings relied on by the learned counsel for Applicant-Plaintiff are based on their own facts. Present matter has to be decided on the basis of its own facts. The suit was already withdrawn as far as regards Defendant No.1 was concerned and application Exhibit 19 filed by the Plaintiff did not seek to withdraw the said purshis Exhibit 17. The compromise recorded existence of facts regarding Will in favour of Defendant No.2 and that due to relationship Defendant No.2 has agreed to pay amount and to compromise the matter. The contents do not show that it is unlawful compromise. When it was prepared and Plaintiff discussed it with her daughters and Advocate and herself tendered it before Court and admitted contents read over before Court, subsequent retracting (before formal Order below Exhibit 1 decreeing the suit) cannot be accepted. Proceedings before Court are solemn proceedings and after the compromise is duly recorded, retracting vide application like Exhibit 19 claiming that it was not read over, is contemptuous. In evidence she admitted that Court asked her about the terms of compromise and she admitted contents. Trial Court has thus properly rejected subsequent retracting and decreed suit as compromised. The impugned order dated 21<sup>st</sup> December, 2011 in Regular Civil Suit No.151 of 2007 passed by Civil Judge, Senior Division, Latur does not call for any interference and the directions to record the compromise and decree the suit need not be interfered with.

15. There is no substance in the Civil Revision Application. The Civil Revision Application is rejected with costs.

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