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Court : Karnataka Dharwad

Decided On : Jun-09-2015

Judge : B. Veerappa

Appeal No. : W.P.No. 109988 of 2014 (GM-CPC)

Appellant : Kasturevva

Respondent : Jayashree

Advocate for Pet/Ap. : Sri. B.V. Somapur

Judgement :

(Prayer: This Writ Petition is filed under Articles 226 and 227 of the Constitution of India, praying to quash the impugned compromise decree passed by the learned Civil Judge (Jr.Dn) Ramdurga in O.S.No. 81/2004 dated 28/02/2006 and 06/03/2006 vide Annexure-B and the suit be restored on its file for hearing on merits.

1. The petitioner/plaintiff has filed the above writ petition for quashing of the impugned compromise judgment and decree dated 28.02.2006 and 6.3.2006 made in O.S. No.81/2004 on the file of Civil Judge (Jr.Dn.), Ramdurga, and for restoration of the suit on its file mainly on the ground that the impugned compromise judgment and decree of the Court below is improper and illegal and the said compromise decree obtained by the defendant is a fraudulent act committed by son-in-law of the petitioner, who is the cousin brother of respondent.

2. The facts of the case are as under:

The plaintiff/petitioner filed a suit for declaration and permanent injunction against the defendant contending that the land bearing Sy.No.250/1 measuring 4 acres 7 guntas situated at Mallur village, Kagadhal Taluk, Saundatti. The plaintiff is the mother-in-law of the defendant. Defendant is the wife of the deceased Basavaraddi Bhimappa Basuraddi. The deceased Basavaraddi is the son of the plaintiff. The defendant led the marital life with the deceased Basavaraddi for about one year and thereafter, the relation of the defendant strained with this plaintiff and the deceased Basavaraddi and the defendant started to reside in her parental house at Kagadhal Taluk, Saundatti. Thereafter the plaintiff, her son - Basavaraddi and elderly persons of the village went to the defendant's house and tried to bring her back in order to lead matrimonial life, but the defendant did not return to the house of the plaintiff's and the suit schedule property is under the ownership of the plaintiff-deceased Basavaraddi. The suit schedule property devolves upon the deceased Basavaraddi by way of Gift Deed by one Smt. Basawwa, wife of Basavaraddi Giraddi and the name of the deceased Basavaraddi has been mutated in M.E.No.2097 dated 22.10.1986. Since then, the deceased Basavaraddi was in possession and enjoyment of the suit property up to 4.2.2003 till his death. After his death, the plaintiff alone possessed and cultivated the suit land and the defendant has not possessed the suit land at any point of time. After the death of Basavaraddi, Varadi has been given to the revenue authorities to mutate the name of the plaintiff and defendant in the revenue records in respect of the suit schedule property and the same has been effected in Mutation Entry No.4952. The defendant has submitted her objections. The same was registered in RTC/SR/5/04-05. Thereafter M.E. No. 4952 has been certified holding that the plaintiff and defendant were the Class-I heirs and the names of the plaintiff and defendant have been mutated in the revenue records in respect of the suit schedule property. Against the said order, the defendant filed an appeal before the Assistant Commissioner, Bailhongal in RTC No.85/03-04 and thereafter, the mutation entry No.4952 has been cancelled and the name of the defendant alone was ordered to be recorded and disposed off the appeal with a direction to the plaintiff to file a suit to establish her right over the suit property. Therefore, she was constrained to file the present suit.

3. The respondent/defendant filed her written statement denying the entire plaint averments and admitted that the suit property was in actual possession and enjoyment and cultivation of the deceased Basavaraddi and also admitted that Basavaraddi got the property by way of Gift Deed. She also admitted that after the death of Basavaraddi, the plaintiff has filed Varadi before the Tahsildar, Ramadurga to mutate her name. Accordingly, the Deputy Tahsildar mutated the name of the plaintiff and defendant in respect of the suit schedule property vide Mutation Entry No.4952, against which the defendant preferred an appeal before the Assistant Commissioner and the Assistant Commissioner allowed the appeal and cancelled mutation entry No.4952 and entered the name of the present defendant only etc.

4. In order to establish her case, the plaintiff examined herself as P.W.1 and two witnesses “ P.Ws.2 and 3 and marked the documents Exs.P.1 to 4. The respondent/defendant did not appear before the Court and hence, the case was closed and the matter was posted for arguments.

5. When the matter was posted for arguments, a joint compromise petition under Order XXIII Rule 3 of the Code of Civil Procedure signed by the plaintiff, defendant and their respective Counsel was filed on 24.2.2006. Accordingly, the suit came to be decree in terms of the compromise petition on 28.2.2006. Hence, the present writ petition is filed.

6. I have heard the learned Counsel for the petitioner and perused the entire material on record.

7. Sri B.V. Somapur, learned Counsel for the petitioner submitted that the petitioner is unaware of the contents of the compromise petition and also the decree. The said decree has been passed without her knowledge. Hence, the said compromise decree is fraudulent and the same is liable to be set aside. The said compromise decree was not acted upon till today and the petitioner is in possession of the suit property. Therefore, the judgment and decree of the compromise is liable to be set aside.

8. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the petitioner and perused the entire records.

9. It is not in dispute that the present petitioner, who was the plaintiff in O.S.No.81/2004 has stated that the compromise decree dated 24.2.2006 is signed by the plaintiff, defendant and their respective advocates and the trial Court recording the same disposed off the suit in terms of the compromise petition by the impugned judgment and decree dated 28.2.2006. This Court by exercising the powers under Article 226 and 227 of Constitution of India cannot decide the validity of the compromise decree passed by the trial Court in view of the provisions of Order XXIII Rule 3, 3A of the Code of Civil Procedure which requires trial.

10. Order XXIII Rule 3 and 3A of the Code of Civil Procedure may at this stage be extracted for ready reference:

3. Compromise of suit. "Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit.

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation. "An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.

3A. Bar to suit. "No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. ?

11. By a plain reading of Order XXIII Rule 3 and 3A of Code of Civil Procedure, it is clear that where it is proved that a suit has been adjusted wholly or in the part by any lawful agreement or compromise in writing and signed by the parties, the Court before whom such person has right shall decide the same. What is important is that in terms of the explanation of Order XXIII Rule 3 of C.P.C. the agreement shall not be deemed to be lawful within the meaning of the said proviso. It follows in every case that whatever the agreement or compromise in writing and signed by the parties, is liable to be determined by the Court concerned.

12. The Apex Court while considering the provisions of Order XXIII Rule 3 and 3A of the Code of Civil Procedure in the case of R. Rajanna V. S.R.Venkataswamy and others reported in 2015(1) AIR SCW 531 at para-10 has held as under:

10. It is manifest from a plain reading of the above that in terms of the proviso to Order XXIII, Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the Court before whom such question is raised, shall decide the same. What is important is that in terms of Explanation to Order XXIII, Rule 3, the agreement or compromise shall not be deemed to be lawful within meaning of the said rule if the same is void or voidable under Indian Contract Act, 1872. It follows that in every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the Court concerned. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree that would make the same void or voidable under the Contract Act. More importantly, Order XXIII, Rule 3A clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. This implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the Court that passed the decree on the basis of any such agreement or compromise, it is that Court and

that Court alone who can examine and determine that question. The Court cannot direct the parties to file a separate suit on the subject for no such suit will lie in view of the provisions of Order XXIII, Rule 3A of CPC. That is precisely what has happened in the case at hand. When the appellant filed OS No.5326 of 2005 to challenge validity of the compromise decree, the Court before whom the suit came up rejected the plaint under Order VII Rule 11, CPC on the application made by the respondents holding that such a suit was barred by the provisions of Order XXIII, Rule 3A of the CPC. Having thus got the plaint rejected, the defendants (respondents herein) could hardly be heard to argue that the plaintiff (appellant herein) ought to pursue his remedy against the compromise decree in pursuance of OS No.5326 of 2005 and if the plaint in the suit has been rejected to pursue his remedy against such rejection before a higher Court.

13. In view of the aforesaid reasons, the plaintiff has to approach the Court that passed the decree on the basis of any such agreement or compromise, it is that Court and that Court alone, who can examine and determine that question and this Court cannot interfere under Articles 226 and 227 of Constitution of India. Therefore, the writ petition filed against the compromise judgment and decree is not maintainable. Accordingly, it is rejected. However, it is open for the petitioner to approach the concerned Court for appropriate relief in accordance with law.

Accordingly writ petition is dismissed.

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