

Narayan Prasad Vs. Vijay Kumar

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Court : Madhya Pradesh

Decided On : Nov-19-2014

Judge : S.K. Gangele & Rohit Arya

Appeal No. : R.P. No. 43 of 2014

Appellant : Narayan Prasad

Respondent : Vijay Kumar

Judgement :

Heard on IA 433/2014 n application for condonation of the delay in filing this review petition. Considering the facts of the case and the averments made in the application, the application is allowed and delay in filing this review petition is hereby condoned.

Heard on merits of the case.

This review petition has been filed for review of the order dated 10th May, 2011 passed by this Court in First Appeal No.597/2005. Aforesaid first appeal was filed by the defendant challenging the judgment and decree dated 26/10/2005 passed in Civil Suit No.10A/2004 whereby the Trial Court decreed the suit of the plaintiff partially and set aside the sale deed dated 20/10/2003 for an area of the land admeasuring 0.107 hectare. It was held by the Trial Court that at the time of execution of the sale deed no consideration was paid by the defendant to the plaintiff nor possession of the land was delivered, hence, the sale deed was void.

Against the aforesaid judgment and decree passed by the Trial Court, First Appeal No.597/2005 was filed before this Court. During the pendency of the first appeal, an application for urgent hearing (IA 1945/2011) as also an application under Order 23 Rule 3 CPC (IA 1946/2011) were filed. The case was listed on 10/5/2011. On the aforesaid date, the Court allowed the application for urgent hearing and also passed order on the application for compromise IA 1946/2011. By the aforesaid compromise, the Court set aside the judgment and decree passed by the Trial Court and it was declared that the appellant/defendant is the owner of the suit land bearing survey No.172 situated at Shankarpur, Tahsil Ashok Nagar, District Guna which was purchased by the registered sale deed dated 26/10/2005.

The judgment and decree dated 11/9/2006 passed in Civil Suit No.11A/2006 was also modified accordingly in terms of the compromise.

Rule 3 of Order 23 CPC reads thus :

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 satisfies 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 appended to the aforesaid Rule provides that 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.

Section 25 of the Indian Contract Act provides that an agreement without consideration is void unless it is in writing or registered or is a promise to compensate for something done or is a promise to pay a debt barred by limitation law.

In the application for compromise IA 1946/2011 filed in the first appeal, there is no mention that the respondent plaintiff had received any consideration. That apart, the Court by the order under review also modified the judgment and decree dated 11/9/2006 passed in Civil Suit No.11A/2006 while there was no challenge to the judgment and decree passed in Civil Suit No.11A/2006 in First Appeal No.597/2005. There is no signature of the petitioner before the Court. The application for compromise was drafted at Ashoknagar. Affidavit was also sworn at Ashoknagar. None of the parties were present before the Court on the aforesaid date, because there is no signature of any of the parties on the order sheet. Apart from this, when the consideration was not paid, such compromise could not be entered into in view of the explanation appended to Rule 3 of Order 23 CPC. By way of compromise, judgment and decree passed in Civil Suit No.11A/2006 had also been modified. Petitioner has specifically pleaded in the review petition that there was an agreement that price of the land shall be fixed and it shall be paid to the petitioner, however, no amount was paid to the petitioner.

In view of the aforesaid facts of the case, in our opinion, the ingredients of Order 23 Rule 3 CPC have not been fulfilled at the time of passing of the order of compromise.

Hon'ble the Supreme Court in Kamlesh Verma Vs. Mayawati and others,(2013)8 SCC 320, has laid down the following principle with regard to maintainability of review petition :

(i) Discovery of new and important matter or evidence which, after the exercise of due diligence, was not within knowledge of the petitioner or could not be produced by him;

(ii) Mistake or error apparent on the face of the record;

(iii) Any other sufficient reason.

The words any other sufficient reason have been interpreted in Chhajju Ram, (1921-22) 49 IA 144 and approved by this Court in Moran Mar Basselios Catholicos, AIR 1954 SC 526 to mean a reason sufficient on grounds at least analogous to those specified in the rule

Applying the aforesaid principle of law laid down by Hon'ble the Supreme Court, it is clear that compromise was not lawful and legal and it was accepted without recording satisfaction by the Court. Hence, there is apparent error on the face of record.

Consequently, we allow this review petition and set aside the order of compromise dated 10th May, 2011 passed in First Appeal No.597/2005. First Appeal No.597/2005 is restored to its original number. It be listed for hearing accordingly.

No order as to costs.

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