

B. Anjamma and ors. Vs. A. Pullaiah and ors.

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SooperKanoon Citation : sooperkanoon.com/446057

Court : Andhra Pradesh

Decided On : Mar-31-2003

Reported in : 2003(4)ALT153

Judge : P.S. Narayana, J.

Acts : Indian Registration Act, 1908 - Sections 17, 17(2) and 49; [Indian Contract Act, 1872](#); Code of Civil Procedure (CPC) - Order 12, Rule 6 - Order 23, Rule 3

Appeal No. : Civil Misc. Petition Nos. 24287 of 2001 and 4729 of 2003 in S.A. No. 1117 of 2000

Appellant : B. Anjamma and ors.

Respondent : A. Pullaiah and ors.

Advocate for Def. : N. Satyanarayana Reddy, Adv. for the Respondent No. 4

Advocate for Pet/Ap. : B. Venkata Rama Rao, Adv.

Judgement :

ORDER

P.S. Narayana, J.

1. The petitioners/appellants filed these Civil Miscellaneous Petitions under Order 23 Rule 3 of the Code of Civil Procedure, hereinafter in short referred to as 'Code',

praying for recording of compromise so far as the compromise relates to the parties specified and the properties mentioned in the appended schedules to the said compromise petitions. Objections were filed to the memorandum of compromise by the other contesting parties in the Second Appeal. It is also brought to my notice that in C.M.P. No. 22454/2001, already a similar compromise was recorded insofar as the parties specified in the said C.M.P. are concerned. No doubt, the counsel for the objectors in the present Civil Miscellaneous Petitions had stated that the said compromise was recorded when these objectors had not entered appearance before this Court.

2. I had perused the terms of the compromise to be recorded by this Court in both these Civil Miscellaneous Petitions and also the schedules of the property appended to the said Civil Miscellaneous Petitions.

3. The facts in brief, as may be relevant for the present purpose, are as hereunder:

Respondents 1 to 12 and one late Viswanadham originally filed O.S. No. 62/91 on the file of Principal Junior Civil Judge, East & north, Ranga Reddy District at Saroornagar in respect of certain specified plots of Nagole village, Uppal Mandal, Ranga Reddy District and the suit was dismissed and aggrieved by the said Judgment and decree, the respondents herein had carried the matter in Appeal In A.S.No. 67/98 before the II Additional District Judge, Ranga Reddy District and pending the said Appeal even in the first appellate Court, respondents 10 and 11 had compromised with the appellants in respect of their properties such as plot No. 46 admeasuring 315 sq. yards of Nagole village, Uppal Mandal, Ranga Reddy District and the appeal A.S.No. 67/98 filed by the respondents was allowed on 30-10-2000 by setting aside the Judgment and decree of the trial Court and a decree for perpetual injunction was granted against appellants in respect of the plaint schedule property except to an extent of 315 sq. yards in plot No. 46 of Nagole village and aggrieved by the same, the present Second Appeal is filed.

4. The petitioners/appellants herein and the respondents specified in the Civil Miscellaneous Petitions referred to supra, to avoid prolonged litigation had mutually settled their disputes and had compromised the matter and the terms of compromise were reduced to writing duly signed and admitted by the parties and

the counsel. At this juncture, objections are raised stating that the compromise had virtually reconveyed the property in favour of the appellants and respondents 4 and 5 have relinquished their rights which they got by registered sale deeds and hence the same is compulsorily registerable and the compromise is hit by Section 17 and Section 49 of the Indian Registration Act, 1908. It was also stated that the rights of the parties as determined by virtue of the Judgment and decree of the appellate Court cannot be taken away by compromise and such a partial compromise cannot be recorded since it is not a lawful compromise within the meaning of Order 23 Rule 3 of the Code. It was further stated that the compromise also is vitiated by duress and misrepresentation and the agreement and compromise also are hit by the provisions of the [Indian Contract Act, 1872](#).

5. The Second Appeal is coming up for admission and at this stage, as already referred to supra, certain parties already had got the compromise recorded and the present Civil Miscellaneous Petitions are coming up for recording of compromise so far as they relate to the parties specified therein. Sri B. Venkat Rama Rao, the learned counsel representing the appellants had brought to my notice that in C.M.P. No. 22454/2001, already similar terms of compromise as in these Civil Miscellaneous Petitions had been recorded in relation to certain parties. The learned counsel also submitted that even in A.S.No. 67/98 on the file of II Additional District Judge, Ranga Reddy District, appellants 10 and 11 in the Appeal filed I.A. No. 1877/2000 under Order 23 Rule 3 of the Code for recording compromise and the compromise in fact had been recorded, but certain directions were made and aggrieved by the same, the appellants herein had preferred C.R.P. No. 5604/2000 on the file of this Court and the conditions imposed by the appellate Court had been set aside. The learned counsel also submitted that with a view to avoid litigation and to have amicable settlement this compromise is being entered into and there is nothing unlawful or illegal in recording the said compromise. The learned counsel also made it clear that in any view of the matter, compromise will be recorded so far as it relates to the parties to the compromise and the other parties will not be bound by the terms of the present compromise. The learned counsel also had drawn my attention to the pleadings of the parties and also the specific properties claimed by the plaintiff in the suit and the findings recorded by both the Court of first instance and also the appellate Court in this

regard. The learned counsel also maintained that in the light of the peculiar facts and circumstances, the objecting parties are in no way affected by this compromise and only with a view to put the appellants into trouble these objections are being raised for recording of the compromise. The learned counsel also submitted that the present objectors have no locus standi at all to oppose the recording of compromise and further in view of the conditions of the compromise there need not be any registration at all. The learned counsel also submitted that even otherwise, registration is not necessary in view of the Section 17(2) Clause 6 of the Indian Registration Act, 1908. The learned counsel also submitted that the compromise is not opposed to public policy in any way and hence the Civil Miscellaneous Petitions are to be allowed and the compromise has to be recorded as prayed for by the appellants/ petitioners in the Second Appeal.

6. Sri C.B. Ram Mohan Reddy, the learned counsel with all vehemence had contended that as can be seen from the terms of the compromise it cannot be said that it is a lawful compromise since recording of the terms of compromise will definitely affect the rights of the contesting parties in the Second Appeal. The learned counsel also further contended that the compromise is opposed to public policy since the effect of compromise will be virtually the relinquishment of rights which should be by a registered instrument only. The learned counsel further submitted that when the first compromise was recorded by this Court, these parties had not entered into appearance and the said compromise was recorded behind their back. The learned counsel also made elaborate submissions that in the facts and circumstances of the case, the compromise cannot be recorded. While concluding, the learned Counsel also submitted that the compromise proposed to be recorded is definitely a contingent compromise and such compromise cannot be recorded.

7. Heard both the counsel.

8. The question in controversy between the parties is plain and a simple one. The petitioners/appellants had moved the Civil Miscellaneous Petitions referred to supra for the purpose of recording compromise to have amicable settlement relating to the properties specified in the schedule so far as they relate the parties

mentioned therein. At the outset, it may be stated that even when the appeal A.S. No. 67/98 was pending, compromise was recorded, no doubt with certain further directions in I.A.No. 1877/2000 so far as they relate to appellants 10 and 11 in the said Appeal, in the first appellate Court. Aggrieved by certain directions, C.R.P.No. 5604/2000 was filed questioning the conditions imposed by the appellate Court while recording the compromise and dismissing the Appeal insofar as it relates to appellants 10 and 11. This Court had stated in the said Civil Revision Petition as follows:

'I have perused the terms of compromise entered into between the parties concerned. In those terms and conditions, there is no term to the effect that the appellants 10 and 11 have to execute a relinquishment deed or get the decree registered. Therefore, the condition imposed by the appellate Court is beyond the terms of the compromise entered into between the parties. I am, therefore, clear in my mind that the said conditions imposed by the appellate Court are liable to be set aside. I accordingly allow the revision petition.

In the result, the Civil Revision Petition is allowed. The conditions imposed by the appellate Court in the order dated 30-10-2000 in I.A.No. 1877 of 2000 in A.S.No. 67 of 1998 are set aside. The said order is confirmed regarding recording of compromise between the parties and regarding the order dismissing the appeal filed by appellants 10 and 11. No costs.'

It is pertinent to note that the present objectors also were the appellants in the first appellate Court. But no objection had been raised for the recording of compromise. It is no doubt true that these objectors may not be parties in the said Civil Revision Petition. But however, these objectors who are concerned with their specific properties, have nothing to do with the recording of compromise relating to the other specific properties of other parties and definitely they are in no way prejudiced since the compromise recorded between the parties will be binding on those parties only who are parties to the compromise. It is also pertinent to note that this Court also had recorded similar compromise in C.M.P. No. 22454 of 2001. No doubt a contention had been advanced that the present objectors were not heard at that time. But in my considered opinion, it will not alter the situation in any

way and this Court having been satisfied that the compromise is a lawful compromise within the meaning of Order 23 Rule 3 of the Code had already recorded the compromise in relation to certain parties.

9. In *B.D. Mohan Rao v. Co-operative Industries Estates (Ltd.)*, : AIR 1975 AP308 it was held that recording of compromise is not purely a formal matter, but a question of substance and under Order 23 Rule 3 of the Code, the Court has to find out if there is any agreement between the parties for compromise and the terms of settlement must be examined with care and caution and see that the parties understood the terms of the compromise and there is no fraud or misrepresentation and a Court making a decree by consent would be performing a judicial and not a ministerial act. In *R. Krishna Rao (Died) Per L.Rs. v. P. Ananda Rao*, : 1993(1)ALT562 it was held that the terms of compromise or subsequent decree passed in terms of compromise are not binding on those who are not parties to compromise and who have not signed the compromise petition. In *T. Dubbaiah v. T. Laxmiah*, : AIR 1970 AP253 it was held that in a compromise comprising properties in suit as well as properties outside the suit, registration is required only to the extent of property which is outside the subject matter of the suit. In *Nagarapu Venkata Rama Rao v. Nagarapu Lakshmipathi Rao and Ors.*, : 2002(3)ALT96 it was held that an act of recording of compromise is a judicial act by application of mind. In *Chilamkurthi Subbulu v. Katragadda Radha Bai and Ors.*, 2002 (1) An.W.R. 766 (A.P.) where specific plea was taken in the written statement that the 4th defendant was entitled to a share in the joint family properties, it was held that compromise ignoring her rights is not in accordance with Order 23 Rule 3 of the Code. In *Jayawantraj Punamiya and Ors. v. H. Choksi and Co. Pvt. Ltd.*, : [1997]1SCR862 wherein by a compromise the parties appointed a third person for disposal of the flats in dispute and after adjusting the outstanding amount and deducting the expenses to give the balance amount in equal shares to the parties, and when the person so appointed had not taken any step to sell the disputed flats, it was held that there was no complete agreement and the compromise being contingent upon action by the third party i.e., making adjustment, the dispute did not reach finality and therefore refusal to record compromise was held to be justified. In *Bai Chanchal v. S. Jalaluddin*, . 7. : [1971]2SCR171 the Apex Court held that Rule 3 of Order 23 of the Code clearly

envisages a decree being passed in respect of part of the subject matter of the suit at a compromise and Rule 6 of Order 12 of the Code permits the passing of a Judgment at any stage without waiting for determination of other questions and thus it is clear that in the same suit there may be more than one decree passed at different stages.

10. Explanation to Order 23 Rule 3 of the Code no doubt says that an agreement or compromise which is void or voidable under the [Indian Contract Act, 1872](#) shall not be deemed to be lawful within the meaning of this rule. In the present case, no substantial ground had been pointed out by the objectors to say that the agreement or compromise in the present matter is either void or voidable under the [Indian Contract Act, 1872](#) and hence at any stretch of imagination it cannot be said that the proposed compromise between the concerned parties in the aforesaid Civil Miscellaneous Petitions is not lawful.

11. Yet another objection that a partial compromise of this nature cannot be recorded also cannot be sustained even in view of the opening words of Order 23 Rule 3 of the Code, which read:

'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.....'.

There may be cases where a suit had been adjusted wholly or in part by certain of the parties and due to which the other parties may be affected by the recording of compromise by virtue of the nature of the suit, nature of the reliefs prayed for, the subject matter of the suit and the cause of action being joint and indivisible or for any other reason of the like nature. Whether a compromise - be it in relation to whole of the suit or in part of the suit, between all the parties to the suit or certain parties to the suit had to be recorded or not depends upon the satisfaction of the Court relating to the conditions specified in Order 23 Rule 3 of the Code and since each case depends upon the facts and circumstances, no hard and fast rule can be laid down in this regard. For arriving at such satisfaction, the Court may, if necessary, definitely look into the respective pleadings, the nature of the relief prayed for, the terms of compromise and also if such compromise to be recorded at appellate stage, the findings recorded in the Judgment of the Courts below. I

have gone through the nature of the pleadings of the parties, the Issues settled and the findings which had been recorded by both the Courts and the terms of compromise in these Civil Miscellaneous Petitions and I am satisfied that the terms reduced to writing cannot be in any way said to be unlawful or illegal or opposed to public policy and I am also thoroughly satisfied that these compromise memos filed by the respective parties in the aforesaid Civil Miscellaneous Petitions will not in any way affect the right of the objectors to prosecute the Second Appeal further.

12. So far as the objection relating to the registration is concerned, already similar direction had been given by the first appellate Court while recording the compromise which had been questioned in the Civil Revision Petition referred to supra and the said direction had been set aside. In the light of the same, the contentions advanced by both the counsel in relation to Section 17 and Section 49 of the Indian registration Act, 1908 need not be dealt with any further.

13. In the light of the peculiar facts and circumstances of the present case, since the plaintiffs themselves claimed specific extents and the recording of compromise by certain of the plaintiffs in the suit will in no way affect the interests of the other plaintiffs, I am of the considered opinion that the compromise to be recorded by this Court in the Civil Miscellaneous Petitions referred to supra definitely is a lawful compromise and hence the said relief cannot be negated to the petitioners/appellants. Accordingly, the Civil Miscellaneous Petitions are ordered and the compromise memos are hereby recorded.

14. Office is directed to list the Second Appeal for admission, after one week.