

Dilraj Yadav Vs. Iird Additional District Judge, Azamgarh and Others

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Court : Allahabad

Decided On : Apr-15-1998

Reported in : 1998(3)AWC1699

Judge : D.K. Seth, J.

Acts : [Code of Civil Procedure \(CPC\), 1908](#) - Order 23, Rules 1, 1(1), 3 and 3A - Order XXXII, Rules 1 to 4, 3 and 3A; [Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950](#) - Sections 229B; [Indian Contract Act, 1872](#); Guardians and Wards Act - Sections 37; Limitation Act - Sections 6 and 7; Hindu Minority and Adoptions Act

Appeal No. : C.M.W.P. No. 442 of 1983

Appellant : Dilraj Yadav

Respondent : Iird Additional District Judge, Azamgarh and Others

Advocate for Def. : S.C., ;Prakash Chandra, ;M.C. Kand Pal and ;A.K. Srivastava, Adv.

Advocate for Pet/Ap. : Shamshad Ahmad Ansari, Adv.

Judgement :

D.K. Seth, J.

1. A suit for cancellation of compromise decree dated 29.9.1972 in Case No. 675/391 under Section 229B of the U. P. Zamindari Abolition and Land Reforms Act was filed by the plaintiff-respondent No. 3 in which issue No. 5 was framed with regard to the maintainability of the said suit. By the order dated 16.7.1962 the said issue was decided in favour of the plaintiff--defendant filed a Civil Revision No. 196 of 1982. By judgment and order dated 20.11.1982, the said revision was dismissed. It is against these orders the present writ petition was filed.

2. Order XXXII of the Code governs the procedure in suit in which minor is involved. A minor neither can sue nor can be sued without the next friend who is supposed to furnish security when so ordered by the Court and normally the Court appoints proper person as guardian of the minor. All these provisions have been engrafted to secure the interest of the minor. If such interests are not secured or in the event that the next friend of the guardian had interest adverse to that of the minor, in that event such decree is liable to be set aside. Rule 3A of Order XXXII provides in sub-rule (1) that even if the next friend or guardian has interest adverse to the minor the same would not be a ground for reversing the decree unless such an adverse interest of the next friend or guardian prejudices the interest of the minor. However, sub-rule (2) provides that nothing in this rule shall preclude minors from obtaining any relief available under any rule by reason of misconduct or gross negligence on the part of next friend of the suit resulting any prejudice to the interest of the minor.

3. In the present case, this Court is called upon to decide as to whether a suit by a minor to set aside decree through compromise under Order XXIII, Rule 3 of the Code could be maintainable. Inasmuch as Order XXIII, Rule 3A provides that 'no suit shall lie to set aside the decree on the ground that compromise on which decree is based was not lawful.'

4. Relying on this provision, it is contended on behalf of defendant that the present suit by the minor after having attained majority to set aside the compromise decree is not maintainable.

5. Order XXIII, Rule 1 of the Code provides for withdrawal of the suit or abandonment of part of the claim. Proviso to sub-rule (1) of Rule 1 provides that

unless provisions contained in Rules 1 to 4 of Order XXXII of the Code are satisfied, no suit or any part of the claim of the minor shall be abandoned without leave of the Court. Sub-rule (2) provides how such leave is to be applied for.

6. Order XXIII. Rule 3 of the Code which deals with recording of compromise of the suit provides that where it is proved to the satisfaction of the Court that by any lawful agreement or compromise which is in writing and signed by the parties, that the suit has been adjusted wholly or in part, the Court may record such compromise and pass a decree in accordance therewith. It also provides that where defendant satisfies the plaintiff in respect of whole or any part of subject-matter of suit the Court shall order such agreement, compromise or satisfaction to be recorded and pass a decree in accordance therewith. Now recording of compromise and passing of the decree in both the above contingencies are to be recorded or decree to be passed so far as it relates to the parties to the suit.

7. Thus, the question is to be decided in relation to the parties to the suit so far as it relates to the subject-matter which is sought to be put-forth as the basis of recording compromise, is a lawful agreement or compromise. Now lawful agreement as expressed in Rule 3 has been explained to the Explanation added thereto. The Explanation explains that an agreement or compromise which is void or voidable under [Indian Contract Act, 1872](#), is deemed not to be lawful within meaning of this rule.

8. Now the proviso to sub-rule (3) provides that if it is alleged that adjustment or satisfaction has been arrived at by one party and the same is denied by the other, the Court has to decide the said question. Now by reason of this proviso Rule 3A in such contingencies where adjustment is denied or the agreement or compromise was not lawful on account of its void or voidable, the same cannot be decided by separate suit.

9. By reason of such contingency, the above question as to the maintainability of the suit has been raised by the defendant. In Rule 3, nothing has been provided with regard to securing interest of a minor while entering into compromise, but by reason of insertion of the expression 'lawful', the same attracts implication that the agreement was not lawful. The bar under Rule 3A has been provided because

before recording compromise, it was incumbent on the Court to satisfy itself that the agreement or compromise was lawful. Once the Court comes to such finding, the same cannot be reopened through separate suit.

10. Therefore, for setting aside compromise decree on the ground that compromise was not lawful, cannot be maintained. But in the present case, it is alleged that satisfaction of the Court that compromise was lawful was arrived at without complying with the provisions of Order XXXII particularly Rule 3 and Rule 3A of the Code. Therefore, there was infaction in the very recording of the compromise by the Court. Whether such satisfaction was obtained by virtue of fraud or mis-representation, is the question to be gone into in the suit. Such question cannot be decided at present stage. Then again Rule 3A of Order XXIII cannot preclude application of Order XXXII, Rule 3A. Whether there was any interest of the guardian of the minor adverse to that of the minor, is the question which cannot be decided at this stage or whether there was any misconduct or gross negligence on the part of next friend or guardian resulting in prejudice to the interest of the minor or not, can be gone into at the stage of decision in the suit and not at this stage. Whether the guardian were appointed are guardian within meaning of Section 32 or not, these are also questions which are to be gone into. Since apparently compromise or agreement was entered into on behalf of the minor through their guardian, therefore, it was neither void nor voidable under the Contract Act, but still then minor can allege after attainment of majority that his interest had suffered prejudice by reason of such compromise and may ask for cancellation of the decree.

11. Under the Guardians and Wards Act, Section 37 provides that the Guardian of the Wards Act, as the trustee and he has the general liability of trustee towards the Ward. The said section provides that nothing can deprive a Ward of any remedy against his guardian, even if such guardian is appointed by the Court. These are the questions which can be gone into in the suit itself. Under Section 6 of the Limitation Act, minority is a legal disability, if he wants to institute a suit, he can do so only after his legal disability ceases and the period of limitation would be counted from the time legal disability had ceased. Under Section 7, if one of the several persons is jointly entitled to institute a suit, in that event unless they are

capable of giving such discharge without concurrence of other disability to sue continuous till disability of such person ceases last. Thus, special protection has been provided to the minor under-Guardians and Wards Act and the Hindu Minority and Adoptions Act prescribes that interest of the minor shall be paramount.

12. Therefore, whether the interest of the minor has been prejudiced or suffered prejudice is a question which can be gone into only in the suit itself.

13. Since the cancellation was sought not on the ground that the compromise was not lawful, the suit is very much maintainable. Both the Courts below had come to the same conclusion over-ruling the preliminary issue of maintainability. After having perused the judgments of both the Courts below, I do not find any infirmity of the said two orders. Therefore, the writ petition falls and is accordingly dismissed. However, there will be no order as to cost. The interim order, if any, stands discharged. It is expected that the Courts below will proceed with the proceedings wherefrom it had been stayed by virtue of interim order granted in the present proceeding and be expedited, after giving proper notice to both the contesting parties, preferably within a period of one year from the date of communication of this order to the learned trial court.

14. Let a copy of this order be communicated by the Registry to the learned trial court within a period of four weeks from date at cost of this Court.

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