

**State of Orissa and anr. Vs. Deepak Kumar Das and ors.**

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**Court :** Orissa

**Decided On :** Jan-27-2004

**Reported in :** AIR2004Ori122; 2004(I)OLR444

**Judge :** M. Papanna, J.

**Acts :** [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 96 - Order 23, Rule 3

**Appeal No. :** Misc. A. No. 1081 of 1999

**Appellant :** State of Orissa and anr.

**Respondent :** Deepak Kumar Das and ors.

**Advocate for Def. :** M. Mishra, ;P.K. Das, ;D.S. Mohanty, ;D.K. Patnaik, ;S.K. Pradhan, ;K. Mohanty, ;S. Senapati, ;S. Mohapatra, ;S. Patnaik and ;L. Mishra, Adv.

**Advocate for Pet/Ap. :** Addl. Govt. Adv.

**Disposition :** Appeal allowed

**Judgement :**

**M. Papanna, J.**

1. Being aggrieved by judgment and decree passed by learned Civil Judge (Senior Division), Bhubaneswar in T.S. No. 727 of 1998, appellants preferred this appeal.

2. Facts of the case relevant for the purpose of adjudication of preliminary question of maintainability of the present appeal are delineated below :--

The land in dispute was leased out in 1971 by Government of Orissa in favour of one Gopal Chandra Das who is respondent No. 2 herein. The lessee sought for permission of the Government for transfer of the said land in favour of his son Ashok Kumar Das, respondent No. 3. Government, in turn, allowed the lessee to transfer the property in favour of his son provided a sum of Rs. 92,976/- is deposited by the transferee. When the matter stood thus, T. S. No. 727/ 98 was brought by one Deepak Kumar Das as plaintiff before learned Civil Judge (Senior Division), Bhubaneswar. The said plaintiff is no other than brother of Ashok Kumar Das and son of original lessee. He prayed for partition of the lease hold property claiming 1/3 interest in the same. However, on the compromise petition filed by the parties jointly, learned Civil Judge decreed the suit in terms of compromise entered into between them.

3. Aggrieved by the said decree, State Government represented through the Director of Estate-cum-Joint Secretary, General Administration Department, Orissa Secretariat, Bhubaneswar and the Collector, Khurda brought the present appeal.

4. The main contention raised on behalf of appellants is that they have not signed the petition for compromise nor they were present in the Court below when the compromise was effected nor they have given any special power to the Government Advocate appearing on their behalf and as such the judgment and decree passed by the learned Civil Judge is not binding On them.

5. On the other hand, learned Counsel for the respondents contended that the judgment and decree impugned in this appeal have been recorded basing on the petition for compromise entered into between the parties and since the Government Pleader had given his consent for such compromise, the same are binding on the appellants. In view of that learned Counsel for the respondents raised the question of maintainability of the present appeal.

6. Admittedly, the land in question is a lease-hold land. It is also true that when the lessee sought for transfer of the same in favour of one of his sons, Government allowed, him to do so provided a sum of Rs. 92,760/- is deposited by the transferee. That apart, a tripartite agreement is to be executed before the Sub-Registrar, Bhubaneswar but before that the suit in question was brought by the plaintiff who is respondent No. 1 herein claiming 1/3 share in the suit property. The settled principle of law is if a compromise is fraudulent it will be void being unlawful. In the present case, appellants did not give their consent to compromise the matter before the learned Civil Judge. The Counsel appearing for them played fraud in signing the compromise petition in collusion with other defendants. Since the suit land is a Government property, consent of the appellants cannot be avoided saying that the Government Pleader is competent to sign the petition for compromise on behalf of the Government. In this regard, reliance can be placed on AIR 1993 SC 1139, Banwart Lal v. Smt. Chando Devi through L.R. In another decision rendered in AIR 1984 Bombay 475, Deorao v. Devklnandan Bhojraj Chandak, law is well settled that where a decree has been passed in a suit on the basis of a compromise alleged to have been arrived at between the parties, an appeal against a decree disputing such compromise is maintainable as an appeal against decree under Section 96(1) of the Code of Civil Procedure and would not be hit by Section 93(3).

7. Learned Counsel for the respondents relying on AIR 1991 SC 2234, Byram Pestonji Gariwala v. Union Bank of India, contended that a compromise in writing and signed by Counsel representing the parties but not signed by the parties in person is valid and binding on the parties and is executable even if the compromise relates to matters concerning the parties but extending beyond the subject matter of the suit.

8. However, in my considered view, on the petition of compromise filed by the parties without consent of appellants 4 and 5, the learned Civil Judge ought not to have recorded the impugned judgment and decree.

9. Therefore, after hearing learned Counsel for the parties and in view of the facts and circumstances of the case, I hold that for the reasons recorded above, the

appeal is maintainable.

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