

**Ram Mehar Vs. Moji and ors.**

**Ram Mehar Vs. Moji and ors.**

**SooperKanoon Citation :** [sooperkanoon.com/692256](http://sooperkanoon.com/692256)

**Court :** Delhi

**Decided On :** Nov-07-1985

**Reported in :** 1986(10)DRJ175

**Judge :** Yogeshwar Dayal, J.

**Acts :** [Code of Civil Procedure \(CPC\), 1908](#) - Order 23, Rule 3; [Constitution of India](#) - Article 226

**Appeal No. :** Civil Writ Petition No. 987 of 1985

**Appellant :** Ram Mehar

**Respondent :** Moji and ors.

**Advocate for Pet/Ap. :** S. Pappu,; Ramesh Keshwani,; Ramesh Chandra and;

**Judgement :**

**Yogeshwar Dayal, J.**

(1) This petition under Article 229 of the [Constitution of India](#) is directed against an order dated 25th March, 1985 passed by the Financial Commissioner, Delhi, declining reopening of an appeal which had been decided earlier by order dated 22nd November, 1983 passed by the predecessor-in-interest of the Financial Commissioner, Delhi, who passed the impugned order.

(2) To appreciate the controversy, I may state the facts briefly.

(3) There were four sons of one Kanhaiya namely-(1) Jug Lal,(2) Moji, (3) Pirbhu and (4) Lakhi. Lakhi had been murdered and one Daya Ram was tried for his murder. He was, however, acquitted and after acquittal of Daya Ram the other three sons were prosecuted for the murder of Daya Ram. All the three namely Jug Lal, Moji and Pirbhu were convicted on 26th October, 1951 and they were serving life sentences when the Delhi Land Reforms Act, 1954 came into a force. Before their convictions they were tilling the disputed land measuring about 45 Bighas and 2 bids was situated in village Mitraon. Delhi. The petitioner herein is Ram Mehar son of the deceased brother, Lakhi. He was working in the Indian Navy as a Gunner and he came back after the convictions of his three uncles for the murder of Daya Ram. While the three uncles, Jug Lal, Moji and Pirbhu were in Jail the bhumidari certificate was issued in favor of Ram Mehar, the petitioner herein. It appears that one of the uncles, Pirbhu, died and is represented by his son Chand Singh.

(4) All the three brothers on their release from the Jail filed an application for grant of bhumidari rights under Section 13(i)(f) of the Delhi Land Reforms Act. The Revenue Assistant after examining the evidence came to the conclusion that Ram Mehar was tilling the land on the commencement of the Act for himself and on behalf of his three uncles, who were in Jail, and he accordingly held that the three uncles and Ram Mehar are jointly bhumidars of the disputed land. Ram Mehar being dissatisfied went up in appeal before the Additional Collector, Delhi, who reversed the decision of the Revenue Assistant. During the pendency of the appeal before the Additional Collector Jug Lal also died. Thereafter Moji and Chand Singh son Pirbhu filed an appeal before the Financial Commissioner. Before the Financial Commissioner it is alleged that the appeal was compromised. Paragraphs 2 and 3 of the order of the Financial Commissioner dated 22nd November, 1983 reads as under :-

'2. Very lengthy arguments in this matter were heard by me. After hearing the arguments the matter was listed for orders. On 18-11-1983, it came to notice that some negotiations to compromise the matter were going on. Both parties have on

this day compromised the matter in the following manner : (1) Shri Ram Mehar will get land of the share of Jug Lal in addition to his share. It means that Shri Ram Mehar along will get 22 bighas and 10 bids was adjoining his tube-well out of land is suit. (2) Sarvshri Moji and Chand Singh will get land only to the extent of 22 bighas and 10 bids was out of the suit land meaning thereby which is the only remaining land. (3) In view of the above the present appeal shall stand disposed of as per compromise incorporated in Sub-paragraphs (1) and (2) of para 2 of this judgment. Copy of this order be sent to the revenue Authorities for implementation. The present file be consigned to record room.'

The result of this compromise was that Ram Mehar got 50 percent of the disputed land whereas the families of bother two brothers namely Moji and Pirbhu got the balance of the 50 percent land.

(5) Thereafter Ram Mehar filed a writ petition in this Court namely C.W- No. 97 of 1984. That writ petition came up before a Division Bench of this Court consisted of Sachar, J. (as His Lordship then was) and Leila Seth, J. and they passed the following orders :-

'THE impugned order of the Financial Commissioner dated 22-11-1983 has been passed apparently because the parties had compromised and the order is in those terms. The whole gravamen of the petition is that no such compromise was effected and no such statement was given. These are all matters of facts which must be raised before the Financial Commissioner and his decision invited on it. On this the counsel for the petitioner wants to withdraw the petition and says that he will move the Financial Commissioner. In that view the petition is dismissed as withdrawn.'

(6) After this order Ram Mehar filed an application on or about 8th February, 1985 before the Financial Commissioner inter alias disputing the genuineness of the compromise as well as its validity. The submissions of Ram Mehar before the learned Financial Commissioner were; that he had not entered into any compromise ; that his counsel Mahipal Singh had no authority to enter into compromise; that the counsel and opposite parties played a fraud on the Financial Commissioner in having the compromise recorded and that in any case Mahipal

Singh was not authorised to enter into the compromise.

(7) This application dated 8th February, 1985 was decided by the impugned order dated 25th March, 1985. In the impugned order the learned Financial Commissioner posed a question, which came to be decided by him, as under :-

'I find that the main question before me was whether there was a compromise or not'.

(8) For giving a finding on this question the learned Financial Commissioner perused the order sheets of his predecessor dated 18th November, 1983 as well as 22nd November, 1983. He noticed that the parties were present before the Financial Commissioner when the compromise was recorded. He also found that both the counsel Shri Mahipal Singh and Sh. D.K. Goel had signed on the margin of the order sheet. He also found that Sh. Mahipal Singh was a duly authorised Advocate of the petitioner, Ram Mehar. He also found that Ram Mehar had given the power of attorney in favor of Sh. Mahipal Singh on 27th September, 1983. He also noticed that the power of attorney contained a clause which reads as under :-

'To sign, file, verify and present pleadings, appeals, cross-objections or petitions for executions, review, revision, withdrawal, compromise or other petitions or affidavits as may be deemed necessary or proper for the prosecution of the said case in all its stages.'

(9) After noticing this clause the learned Financial Commissioner further found 'that it is impossible to believe that he was not aware of what was going on. The Financial Commissioner's order also shows that the matter was compromised by the parties in open court. Here I find no reason to infer that because the proceedings were conducted in English as stated by the learned counsel for the applicants the applicant Ram Mehar not understand what was going on. He could not have been oblivious of the fact that the compromise had been effected as it was announced by the court.'

(10) In view of these findings the learned Financial Commissioner dismissed the application filed by Ram Mehar.

(11) It is against this decision that the present petition has been filed and I have had the advantage of hearing Mrs. Shyamala Pappu, counsel for the petitioner, who urged the following points :-

(1) that the provisions of Order XXIII Rule 3 of the Code of Civil Procedure, as applicable, were not complied with, the compromise was not recorded as contemplated by the said provisions ; (2) that the counsel's only authority was to file a petition for compromise, since no petition for compromise was filed, the compromise could not have been recorded ; (3) that the compromise could not have been recorded without the parties signing it; (4) that the counsel had no authority to enter into compromise ; and (5) that the learned Financial Commissioner failed to give any opportunity to the petitioner to lead evidence to substantiate the fact that no compromise had been entered into.

(12) I will take up the first four points together. Before dealing with the submissions of the learned counsel for the petitioner, it will be advantageous to refer to the provisions of order 23 Rule 3 of the Code of Civil Procedure as were applicable when the proceedings started i.e. when the application was filed by the respondents for being declared as bhumidars. The provisions of Order 23 Rule 3 of the Code of Civil Procedure, as were applicable, reads as under :-

'23.(3) 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, 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 suit.'

(13) It will be noticed that in the present case the compromise was recorded by the Financial Commissioner himself which I have reproduced earlier. The recorded compromise had also been signed by the respective counsel in the margin. The order had also been passed in accordance with the compromise. It will thus be seen that the provisions of Sub-rule (3) of Order XXIII are fully satisfied. It is not the requirement of Sub-rule 3 of Order 23 that it should be proceeded by a separate compromise in writing signed by the parties. The compromise can be

entered into in open court also. This is what had happened in the present case. It had been entered into in the presence of the parties and their counsel even appended their signatures on it. It may be noticed that the above quoted term of the power of attorney contemplated that the counsel has power to present a petition for compromise. A petition for compromise can also be oral like a petition for execution which can be filed orally. Parties can always apply orally for execution and similarly the parties can apply for compromise orally. The power of attorney does not exclude oral petition being filed. Mrs. Shyamala Pappu submits that the power of attorney contemplated a previous express written petition for compromise signed by the parties which could have been presented only, by the counsel. I am afraid I cannot agree with the learned counsel for the petitioner for this submission. It is obvious that learned Financial Commissioner has found as a fact that the compromise was entered into in the presence of the petitioner. Ram Mehar with his knowledge The learned Financial Commissioner has also found that the said compromise was entered into. These are pure findings of fact and cannot be disturbed in the present proceedings. There is thus no merit in the first four submissions/points.

(14) Coming to the last submission it will be noticed that this point has been taken in the writ petition that the Financial Commissioner has violated the principles of natural justice having failed to give an opportunity to the petitioner to lead evidence to show that no compromise was effected.

(15) It will be noticed that no such application was filed before the Financial Commissioner for any opportunity being given to lead evidence. It appears that the parties were satisfied for the matter being decided on the basis of records and the pleadings. This point which has been taken for the first time in the writ petition cannot be permitted to be taken in the circumstances of the case. The petitioner was very much conscious of his case that he is disputing the very factum of the compromise. If that was the case, it was his duty to apply for being given opportunity to lead evidence. It appears that it is a new point and I am not permitting the same to be taken at this stage.

(16) The result is that this writ petition fails and is dismissed. Petitioner is however, allowed a fortnight time to handover the possession of the disputed land.

(17) Parties are left to bear their own costs.

**SooperKanoon - India's Premier Online Legal Search - [sooperkanoon.com](http://sooperkanoon.com)**