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Court : Himachal Pradesh

Decided On : Nov-28-1989

Reported in : AIR1991HP1

Judge : P.C. Balakrishna Menon, C.J. and; Bhawani Singh, J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Order 23, Rule 3; ;[Constitution of India](#) - Article 299

Appeal No. : R.F.A. No. 775 of 1978

Appellant : Durga Singh

Respondent : State of H.P.

Advocate for Def. : M.S. Guleria, Asst. Adv. General

Advocate for Pet/Ap. : Devinder Gupta, Adv.

Judgement :

P.C. Balakrishna Menon, C.J.

1. This appeal by the defendant is against the decree of a teamed single Judge of this court in Civil Suit No. 10/71 declaring that the judgment dt. 4-5-1968 in Civil Suit No. 21 /1 of 1965 (Durga Singh v. Union of India) passed by the Senior Sub-Judge, Mahasu District and the mutation of 'Patta' obtained by the defendant in pursuance to the said judgment are illegal and void and also granting

consequential reliefs in the suit.

2. The defendant is the owner in possession of the land in Khasra Nos. 23 and 27 of village Lindi Dhar Tehsil Kasumpti. The adjoining land in Khasra No. 22 belongs to the Forest Department of Government of Himachal Pradesh. The defendant had encroached upon the land in Khasra No. 22 and had planted an extent of 17 bighas 7 biswas of land in 1958. The Naib Tehsildar on demarcation of boundaries found the aforesaid extent of 17 bighas 7 biswas belonged to the Government and formed part of Khasra No. 22. The Government thereafter took proceedings for the ejectment of the defendant and by order dt. 16-2-1962 of the District Collector, the defendant was ordered to be evicted from the aforesaid extent of land encroached upon by him. The order of the Collector was confirmed by the Financial Commissioner as per his proceedings dt. 7-6-1962. The Defendant thereafter filed civil suit No. 21/1 of 1965 in the Court of the Senior Sub Judge, Mahasu, Shimla, for declaration of his title to the 17 bighas 7 biswas of land and for setting aside the orders of the revenue authorities. During the pendency of the suit there were negotiations for compromise between the defendant and the Government. The suit came up for trial on 4-5-1968. The Government Pleader late Shri K. C. Pandit, on behalf of the Government prayed for an adjournment to the case. The adjournment was refused whereupon the Government Pleader made a statement in the Court extracted at page 3 of the judgment under appeal. As per this statement, the subject matter of dispute in the suit was to be settled on the defendant transferring an equal area of 17 bighas 7 biswas of his land in khasra No. 27 to the Government in exchange of the 17 bighas 7 biswas in khasra No. 22 trespassed upon by him. The defendant by his statement extracted at page 4 of the judgment of the learned single Judge accepted the proposal and a compromise decree was passed in civil suit No. 21/1 of 65 on the above terms on 4-5-1968. In pursuance to this decree, the defendant obtained mutation of 'Patta' in regard to a much larger extent of 39 bighas 14 biswas of land in khasra No. 22.

3. The present suit is filed by the State of Himachal Pradesh for declaration that the compromise decree aforesaid is not valid and binding on the Government and the mutation of Patta obtained in pursuance thereto is also of no legal effect. There is also a consequential prayer for recovery of possession of the land

encroached upon by the defendant.

4. The compromise decree passed in Civil Suit No. 21/1 of 65 was challenged on the ground that the Government Pleader (late Shri K. C. Pandit) had no authority to compromise the suit, the Government had not approved the proposed compromise and had never entered into any settlement with the defendant. The compromise was obtained by misrepresentation and fraud played by the defendant and it is also invalid for the reason that the agreement on which it is based is not in conformity with Article 299 of the Constitution. There were also several other contentions raised which are not necessary to advert to for the disposal of this appeal. The defendant raised the contention that the compromise was valid as the Government Pleader had acted on behalf of the Government and he was fully within his powers in entering into the compromise. It was also contended that the defendant was always ready and willing to transfer 17 bighas 7 biswas of land in khasra No. 27 in exchange for the same extent of land involved in that suit in terms of the compromise decree but the officers of the Forest Department had declined to act in terms of the compromise decree and it was for that reason that he could not surrender possession of the land in khasra No. 27. All other allegations made in the plaint were also denied in the written statement. As many as six issues were raised in the suit. All the issues were found in favour of the plaintiff. But on issue No. 4 the plaintiff was found entitled to compensation Rs. 3,764.94 instead of Rs. 19,206.50 claim for the trees cut and removed from the Government land encroached upon by the defendant. The suit was accordingly decreed in the following, terms:

'In the light of the above, I, therefore, pass a decree for a declaration to the effect that the judgment dt. 4-5-1968 in civil suit No. 21/1 of 1965 (Durga Singh v. Union of India), passed by the Senior Subordinate Judge, Mahasu District and mutation No. 19 sanctioned on 28-8-1970 are nullity, illegal, void and ineffective and not executable and as such are not binding on the plaintiff and further the plaintiff is held entitled to possession of the land covered by khasra Nos. 22/2, 22/3, 22/4, 22/5 and 22/1 measuring 39 bighas and 14 biswas of land situated in jungle Mahduda Mashobra, Tehsil Kasumpti (now tehsil Simla of District Simla) and further a decree for damages for Rs. 3,764.94 is passed against the defendant

with interest at the rate of 6 per cent per annum from the date of the suit till the date of payment. The rest of the claim for damages is hereby dismissed. The defendant is saddled with proportionate costs.'

5. For the purpose of disposal of the appeal, it is necessary to advert to only issue No. 3 extracted below :

'Whether the impugned decree dt. 4-5-1968 in Civil Suit No. 21/1 of 1965 titled Durga Singh v. Union of India, decided by the Senior Sub Judge, Mahasu, is a nullity for the reasons set out in the plaint? (OPP)

6. The learned single Judge has found that the compromise decree is not valid and binding on the Government for the reason for non-compliance to the requirements of Article 299(1) of the Constitution. The Supreme Court in AIR 1977 SC 2149, The Bihar Eastern Gangetic Fishermen Co-operative Society Ltd. v. Sipahi Singh, has at page 2152 laid down the requirements of Article 299 :

'It is now well settled that the provisions of Article 299 of the Constitution which are mandatory in character require that a contract made in the exercise of the executive power of the Union or of a State must satisfy three conditions viz. (i) it must be expressed to be made by the President or by the Governor of the State, as the case may be; (ii) it must be executed on behalf of the President or the Governor, as the case may be and (iii) its execution must be by such person and in such manner as the President or Governor may direct or authorise. Failure to comply with these conditions nullifies the contract and renders it void and unenforceable.'

7. This decision reiterates the principle laid down in AIR 1968 SC 1218, Mulamchan v. State of Madhya Pradesh and extracts the following passage as page 2153 :

'There is no question of estoppel or ratification in a case where there is contravention of the provisions of Article 299(1) of the Constitution. The reason is that the provisions of Section 175(3) of the Government of India Act and the corresponding provisions of Article 299(1) of the Constitution have not been

enacted for the sake of mere form but they have been enacted for safeguarding the Government against unauthorised contracts. The provisions are embodied in Section 175(3) of the Government of India Act and Article 299(1) of the Constitution on the ground of public policy on the ground of protection of general public and these formalities cannot be waived or dispensed with.'

8. The same principal is re-affirmed by the latter decisions of the Supreme Court in 1987 Supp SCC 84, Union of India v. Hanuman Oil Mills Ltd. and AIR 1988 SC 2149, State of Punjab v. Om Parkash Baldev Krishan.

9. The decision of a Division Bench of Calcutta High Court in ILR (1971) 2 Cal 119, State of Bihar v. Ramgarh Farms and Industries Ltd. related to the validity of a compromise entered into by the Government Pleader on behalf of the Government tested in the light of the requirements of Article 299(1) of the Constitution. The Division Bench in that case stated at page 204:

'On general principle there is no reason why an agreement made by a State for the adjustment of a suit under Order 28, Rule 3, should not be regarded as a contract within the meaning of Article 299(1) of the Constitution. The executive power of the State extends to the making of contracts for any purpose. Article 299(1) says that all contracts made in exercise of the executive power of the State shall be expressed to be made by the Governor. All contracts certainly include a contract for the adjustment of a suit. It is needless to point out that the word 'agreement' Order 23, Rule 3 has been used in the sense of 'contract'. A State cannot enter into a contract except through some human agency. Some responsible officer usually acts as the agent of the State. In the matter of an adjustment of a suit the Government Pleader generally acts on behalf of the State. If a contract made by an officer on behalf of the State requires to be made in the manner laid down in Article 299(1) there is no reason why a contract for the adjustment of a suit made by the Government Pleader should not be executed in that manner.'

10. In the light of these authorities we are clearly of the view that the compromise decree passed in Civil Suit No. 21/1 of 65 of the Senior Subordinate Judge's Court, Mahasu is not valid and binding on the Government. An adjustment of the suit under Order 23, Rule 3, C.P.C. can only be by a 'lawful agreement or

compromise' and after the amendment of the C.P.C. in 1976 should also be in writing and signed by the parties. In the present case the compromise was prior to the C.P.C. Amendment Act 1976 and need not necessarily be in writing. It should, however, be lawful, if the Court is to pass a decree in terms thereof. A compromise decree has no greater validity than the agreement or compromise on which it is based and since there was no agreement in terms of Article 299(1) of the Constitution, there was no valid compromise and the decree passed on the basis of the statement of the Government Pleader accepted by the defendant is invalid and cannot be enforced in law.

11. The only other question urged before us by the learned counsel for the appellant relates the 22 bighas 7 biswas of land over and above the extent covered by the compromise decree, in respect of which also the defendant had obtained mutation of 'Patta'. The mutation obtained in pursuance to the compromise decree which we have found is invalid and inoperative, is also of no legal effect. Counsel for the appellant submits that except for the mutation, there is nothing on record to show that the defendant had obtained possession of the excess area of 22 bighas 7 biswas of land. There is no evidence in the case of show that he had obtained possession of the excess area. We, therefore, modify the decree passed by the learned single Judge and the plaintiff is given a decree for recovery of possession of 17 bighas 7 biswas of land involved in the compromise decree in civil suit No. 21/1 of 65 from the defendant. There will also be a decree declaring the plaintiffs title to and possession of the remaining extent of 22 bighas 7 biswas of land involved in the suit.

12. In light of the finding on issue No. 3 as above, it is unnecessary to consider the other questions raised in the appeal.

13. Subject to the above modification, the decree of the learned single Judge is confirmed. The parties will suffer their respective costs.