

Sh. Krishan Lal and anr. Vs. Sh. Ramesh Kumar and anr.

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Court : Himachal Pradesh

Decided On : Sep-10-2009

Judge : Sanjay Karol, J.

Appellant : Sh. Krishan Lal and anr.

Respondent : Sh. Ramesh Kumar and anr.

Disposition : Petition dismissed

Judgement :

Sanjay Karol, J.

1. The petitioners/plaintiffs filed a suit inter alia praying for a relief of declaration that the compromise dated 24.2.2005, entered into between the defendants Sh. Ramesh Kumar and Sh. Thakru is an outcome of fraud, misrepresentation of facts and is thus illegal, null and void and not binding upon the plaintiffs.

2. Smt. Bhikmu filed a suit for declaration and possession on the allegation that the registered sale deed dated 2.12.1997 executed in favour of Sh. Ramesh Kumar with respect to the suit land was null and void. The said suit was dismissed by the trial Court but however in an appeal filed by Smt. Bhikmu, the judgment and decree passed by the trial Court was reversed and the plaintiff's suit was decreed. Sh. Ramesh Kumar filed an appeal before this Court which was registered as RSA No. 357 of 2003. During the pendency of the appeal Smt. Bhikmu died and the

appeal was allowed to be pursued by her relative/legal representative Sh. Thakur Ram. In the said appeal, on 24.2.2005 an application under Order 23 Rule 3 read with Section 151 C.P.C. was filed, placing on record the compromise arrived at between the parties with a prayer that the original plaintiff be permitted to withdraw the suit. Over and above the sale consideration as already stood paid and acknowledged in terms of the sale deed dated 2.12.1997 Sh. Ramesh Kumar further paid a sum of Rs. 2000/-. This Court, after recording the statements of the learned Counsel for the parties modified the decree and held Sh. Ramesh Kumar to be the owner in possession of the suit land in terms of registered sale deed dated 2.12.1997. This was so done in terms of order dated 28.3.2005.

3. Subsequently the present petitioners Sh. Roop Lal and Sh. Krishan Lal, claiming themselves to be the owners of the suit land on the strength of an alleged Will executed in their favour by Smt. Bhikmu bequeathing her entire interest in the suit property in their favour, moved an application for review in the aforementioned appeal, which was disposed of by this Court on 25.7.2005 by passing the following order:

Learned Counsel seeks leave of this Court to withdraw the condonation application being CMP(M) No. 488 of 2005 as well as the time barred review petition with liberty to agitate the matter in a civil suit, which the petitioners may be filing against the respondents on the basis of an alleged Will alleged to have been executed by Bhiknu Devi in favour of the petitioners.

Dismissed as withdrawn. Liberty prayed for is allowed subject to all exceptions.

Consequently the petitioners filed a suit for declaration and possession before the Civil Court which was opposed by the present respondents on various grounds.

4. In the said suit, based on the pleadings of the parties, on 5.8.2008 the trial Court framed the issues and passed the following order:

From the pleadings of the parties the following issues are framed as under:

1. Whether Bhikmu had executed a valid and legal will bearing No. 96 dated 18.8.2003 in favour of plaintiffs as prayed? OPP

2. Whether the plaintiffs are the legal heirs of the deceased Bhikhmu on the basis of will No. 96 dated 18.8.2003? OPP
 3. Whether the compromise deed dated 24.2.2005 entered between the defendants is the out come of fraud, misrepresentation of facts and the same is wrong, illegal, null and void not binding upon the rights of the plaintiffs as alleged? OPP
 4. Whether if the above issues are proved then whether order dated 28.3.2005 passed in RSA No. 356/03 on the basis of the said compromise contained in CMP No. 190/2005 is also wrong, illegal, null and void as alleged? OPP
 5. Whether the plaintiff is entitled to the relief of possession as a consequential relief as prayed for? OPP
 6. Whether the will No. 96 is forged and fictitious document and has been manipulated by the plaintiffs by playing fraud and by misrepresentation of facts and by undue influence as alleged? OPD
 7. Whether the suit is not maintainable in the present form and is liable to be dismissed as alleged? OPD
 8. Whether the suit is barred under Order 23 Rule 3(a) CPC as alleged? OPD
 9. Whether the plaintiffs have got no enforceable cause of action to file the present suit? OPD
 10. Whether the plaintiffs have got no locus-standi to file the present suit? OPD
 11. Whether the plaintiffs have concealed the material facts from this Court and are estopped by their own act and conduct from filing the present suit? OPD
 12. Relief.
4. The above framed issues have been read over and explained to both the parties. Issue No. 8 is with regards to the jurisdiction of this Court and therefore, it is taken up as a preliminary issue for adjudication. Now to come up for

consideration on 9.9.2008 on issue No. 8.'

5. Hence issue No. 8 was considered by the Court below as a preliminary issue and keeping in view the provisions of Order 23 Rule 3-A CPC as also the ratio of law laid down by the Apex Court in Pushpa Devi Bhagat v. Rajinder Singh and Ors. : (2006) 5 SCC 566 and Gopal Lal v. Babu Lal and Ors. AIR 2004 Rajasthan 264 dismissed the suit.

6. Hence the present petition.

7. It cannot be disputed that the plaintiffs right flows through Smt. Bhikmu Devi. In terms of judgment and decree passed by this Court the registered sale deed dated 2.12.1997 executed by Smt. Bhikmu Devi was agreed to have been validly executed and not only that, over and above the sale consideration a sum of Rs. 2000/- was paid to the Sh. Thakru who persued the interest of Smt. Bhikmu Devi after her death. Importantly this Court had allowed the plaintiff to withdraw the application with liberty to agitate the matter before the civil Court, subject to all exceptions. Keeping in view the provisions of Order 23 Rule 3-A CPC the Court below has rightly dismissed the plaintiffs' suit as no suit shall lie to set aside a decree on the grounds that the compromise on which the decree is based is not lawful. Importantly the said legislation was brought in only to ensure finality to the judgments passed by the Civil Courts and also to ensure that the parties are not embroiled in wasteful, unnecessary, frivolous and protracted litigation.

8. It is not disputed that Sh. Thakru was intermeddling with the estate of Smt. Bhikmu Devi. Hence, he as legal representative had entered into the compromise. His relationship with Sh. Ramesh Kumar would not matter. Further, the withdrawal of the suit relates back to the date of filing of the plaint. Will of Smt. Bhikmu Devi would have become operational only after her death whereas the property in question stood transferred during her life time when admittedly some payment was received by her at the time of handing over possession to Sh. Ramesh Kumar.

9. The Court below has rightly appreciated the ratio of law laid down by the Courts in the decisions as mentioned hereinabove. The Apex Court in Banwari Lal v. Smt. Chando Devi : (1993) 1 SCC 581 has held as under:

Where the amending Act introduced a proviso along with an explanation to Rule 3 of Order 23 saying that where it is alleged by one party and denied by other that an adjustment or satisfaction has been arrived at, 'the Court shall decide the question', the Court before which a petition of compromise is filed and which has recorded such compromise, has to decide question whether an adjustment or satisfaction had been arrived at on basis of any lawful agreement. To make the enquiry in respect of validity of the agreement or the compromise more comprehensive, the explanation to the proviso says that an agreement or compromise 'which is void or voidable under the Indian Contract Act....' shall not be deemed to be lawful within the meaning of the said Rule. In view of the proviso read with the explanation, a Court which had entertained the petition of compromise has to examine whether the compromise was void or voidable under the Indian Contract Act. Even Rule 1(m) of Order 43, has been deleted under which an appeal was maintainable against an order recording a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1A of Order 43, of the code.

10. Further in *Ruby Sales and Services (P) Ltd. v. State of Maharashtra* : (1994) 1 SCC 531 the Apex Court held that:

merely because an agreement is in a shape of a consent decree it does not change the contents of a document. It remains an agreement and is subject to all rights and liabilities which any agreement may suffer. A compromise decree does not stand on a higher footing than the agreement which precedes it. A consent decree is merely creature of the agreement on which it is founded.

11. Issue No. 8 was to be treated as preliminary issue for adjudication. Undisputedly no evidence was required to be led on this issue. Hence the ratio of law laid down by this Court in *Puran Chand v. Pat Ram*, Latest HLJ 2008 (HP) 417 cannot be held to be applicable in the facts and circumstances of the present case as in the said decision the Court was dealing with a case where at the time of framing of the issues it had not been directed that any one of the issues was to be

treated as a preliminary issue.

12. Hence dismissal of the suit by the Court below in terms of the order dated 25.4.2009, passed by Civil Judge (Junior Division), Chachiot at Gohar, Distt. Mandi, H.P. in Civil suit No. 55/2007, titled as Krishan Lal and Anr. v. Ramesh Kumar and Anr. is neither erroneous nor illegal and perverse and the petition is accordingly dismissed.

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