
(2001) 09 AHC CK 0046
In the Allahabad High Court
Case No : C.M.W.P. No. 28212 of 1992

Bans Raj Singh and Others	Vs	APPELLANT
Ist Addl. District Judge, Varanasi and Others		RESPONDENT

Date of Decision : 17-09-2001

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 96(2)

Citation : (2001) 4 AWC 2833 : (2002) 1 CivCC 500

Hon'ble Judges : S.K. Singh, J

Bench : Single Bench

Advocate : Sankatha Rai and Ajay Kumar Singh, for the Appellant; Vinod Prasad, for the Respondent

Final Decision : Allowed

Judgement

S.K. Singh, J.—By means of this writ petition, the petitioners have challenged the Judgment of the respondent No. 1 dated 30.4.1992 (Annexure-8 to the writ petition). Ram Ujagir Singh and Jagannath filed suit No. 665 of 1970 for relief of cancellation of the sale deed dated 7.7.1990 executed by the plaintiff No. 2 Jagannath Singh in favour of present three petitioners, viz.. Bans Raj Singh and two others. Bans Raj Singh and Baij Nath filed separate written statements. On the basis of the compromise dated 16/17.5.1985, a compromise decree was passed on 17.5.1985 by the trial court. It is said that Bans Raj Singh did not sign the compromise at all. After the aforesaid compromise decree, Bans Raj Singh, petitioner No. 1 filed an application u/s 151, C.P.C. to set aside the compromise decree dated 17.5.1985. 1116 trial court allowed the aforesaid application of the petitioner vide his order dated 20.4.1991 and cancelled the compromise decree. Against the aforesaid order of the trial court, respondents filed revision which was allowed by the respondent No. 1 in part and the judgment of the trial court was modified. The decree in respect to Bans Raj Singh only was ordered to be cancelled and the compromise decree in respect to petitioner Nos. 2 and 3 was maintained. It is this order of the respondent No. 1 dated 30.4.1992

(Annexure-8 to the writ petition) which has been challenged before this Court.

2. It has been submitted by the learned counsel for the petitioner that in view of the findings as has been given by the respondent No. 1 that the petitioner No. 1 Bans Raj Singh has not signed the compromise and, therefore, in respect of his rights, the compromise decree is to be cancelled, has not been challenged by the respondents before this Court and, therefore, the compromise decree having been set aside against the petitioner No. 1, the decree, being joint and inseparable, it has to be set aside as a whole.

According to the learned counsel the trial court has taken correct view in setting aside the entire decree.

3. On behalf of the respondents, learned counsel Sri Vinod Prasad has submitted that the judgment of the respondent No. 1 requires no interference for the reasons (i) this writ petition is not maintainable on behalf of the petitioner Nos. 2 and 3 as they have signed the compromise, (ii) if the decree has been passed on the basis of compromise then no application u/s 151, C.P.C. is maintainable and petitioner's remedy lay in filing the appeal, (iii) the plea of decree being inseparable has not been taken before the court below.

4. So far the controversy that whether Bans Raj Singh, petitioner No. 1 has signed the compromise or not, it is now not in dispute as the respondent No. 1 who has partly allowed the revision of the respondents has also recorded a finding that Bans Raj Singh was not a signatory to the compromise and the decree is not binding against him. The trial court has recorded a finding that a fraud has been practised on the court as it appears that Sri P. N. Singh, advocate though has filed Vakalatnama for both sides and got the compromise filed. Irrespective of the finding as has been recorded by the courts below in this respect, in view of the non-challenge of the judgment of the respondent No. 1 by the respondents, the finding about the invalidity of the compromise decree against the petitioner No. 1 will have been accepted by this Court.

5. The submission of the learned counsel for the respondents that writ petition on behalf of the petitioner Nos. 2 and 3 is not maintainable do not merit consideration as if in the writ petition filed by Bans Raj Singh, petitioner No. 1 it is held that the decree is Inseparable and if it is set aside against the petitioner No. 1, it has to be set aside as a whole when the question as has been raised by the respondents will carry no merit and, therefore, nothing turns on this arguments of the learned counsel for the respondents.

6. The main thrust of the argument of the learned counsel for the respondents appears to be that In the event of their being a compromise decree and if it is challenged, the remedy of the aggrieved party lay in filing the appeal as is clear from the provisions as contained u/s 96(2), C.P.C. and the application u/s 151, C.P.C. is not maintainable. To support the aforesaid contention, learned counsel for the respondents has placed reliance on the decisions in Laraiti Devi Vs. Sia Ram, and Deorao v. Deokinandan Bhojraj Chandak and Ors. AIR 1984 Bom 474.

In the aforesaid decisions relied upon by the learned counsel for the respondents, it has been held that if there is signature of the party on the compromise and the decree was passed, then appeal against the decree based on such compromise, is maintainable u/s 96(2), C.P.C.

7. In the present case, petitioner No. 1 has clearly stated that he has never signed on the compromise and this fact has been duly accepted by the court below and, therefore, once it is found that petitioner No. 1 has not signed and the compromise decree was passed. It will be clear case of practising fraud on the Court and thus power of that very court to recall its order u/s 151, C.P.C. cannot be taken away. It has been held in *Tarabai v. Krishna*, AIR 1985 Kar 720 and *Maimun Nisa and Another Vs. Mohammad Khodabin and Others*, , that the court can entertain application u/s 151, C.P.C. and the compromise decree can be set aside. It has been held that the Court cannot shut its eyes against the fraud or mis-representation which vitiates the compromise. In view of this, it is held that the trial court has full Jurisdiction to entertain the application moved by the petitioners u/s 151. C.P.C. to screen the fraud as has been practised in getting proceedings of the suit terminated by way of compromise.

8. In respect to the submissions of the learned counsel for the respondents that even though decree can be set aside against the petitioner No. 1, it is to be maintained against the petitioner Nos. 2 and 3, suffice it to say that the nature of the claim of the parties in the light of the pleading as set forth, it appears that the decree is joint and inseparable and, therefore, it is either to be maintained as a whole or it is to be set aside as a whole. By the compromise decree a share was given to the petitioner No. 1 and remaining share/portion has been divided and allocated to the petitioner Nos. 2 and 3 on one hand and the other respondents on other hand and, therefore, in the event of setting aside decree against petitioner No. 1 alone, if the matter is directed to be retried in respect to his rights apparently, it will be a futile exercise as there will be nothing to be retried at the instance of the petitioner No. 1 as everything remains settled in respect to the entire land between petitioner Nos. 2 and 3 on one hand and the respondents on the other hand and it is only what is left by the aforesaid arrangement will be only available for the petitioner No. 1, which will have to be accepted by him. This cannot be the intention and purpose of setting aside the decree against the petitioner No. 1. On the facts and circumstances, I am satisfied that the decree is joint and inseparable and, therefore, it is to be set aside as a whole. It has been held by this Court that the decree can be set aside even against those defendants also who have not moved application for setting aside the decree if it appears that the decree is one and indivisible. Reference can be made to the decisions in *Baljit Singh and Another Vs. Munnu Lal and Others*, , and the decision in *Samir Snigdha Chandra Vs. Pranaya Bhusan Chandra and Others*,

9. In view of this, it appears that on the findings so recorded by the court below, the decree as was passed by the trial court was as a result of fraud which

vitiating the most solemn proceeding before any court, the trial court appears to be justified in setting aside the compromise decree as a whole. Respondent No. 1 has not taken correct view in setting aside the decree only against the petitioner No. 1. The exercise by the respondent No. 1 appears to yield no result as no adjudication on merits in respect to right of the petitioner No. 1 will be available.

10. In view of the aforesaid discussions, the writ petition succeeds and is hereby allowed. The impugned judgment of the respondent No. 1 dated 30.4.1992 Annexure-8 to the writ petition is hereby quashed. As the matter is quite old the trial court is directed to expedite the disposal of the suit.

11. Parties are directed to bear their own costs.