

(2015) 07 KAR CK 0172
In the Karnataka High Court
Case No : CRP. No. 100031/2014 (CPC)

Irashad Hashimsab Nalaband and Others	APPELLANT
Vs	
Shivappa Vitthal Lendyagol and Others	RESPONDENT

Date of Decision : 08-07-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 23 Rule 3A, Order 7 Rule 11, 141, 151

Citation : (2015) 07 KAR CK 0172

Hon'ble Judges : B. Veerappa, J

Bench : Single Bench

Advocate : Geetha K.M. (Pawar), for the Appellant; Rekha Patil for M.G. Naganuri, Advocates for the Respondent

Final Decision : Dismissed

Judgement

B. Veerappa, J—The plaintiffs filed the above revision petition against the order dated 22.04.2014 made in Misc. Case No. 1/2008 filed under Section 151 read with Section 141 and proviso to Order 23 Rule 3 of Code of Civil Procedure on the file of the learned Senior Civil Judge, Athani, who allowed the application filed by respondents 1 and 2 and set aside the compromise decree dated 21.04.2007 in O.S. No. 79/2007 and restored the original suit on file.

2. It is the case of the plaintiffs that the plaintiffs have filed suit for declaration and injunction contending that they are the owners in possession and enjoyment of the suit schedule property and revenue authorities may be directed to rectify the wrong entry in the revenue records in respect of suit properties bearing R.S. Nos. 703, 704, 704/2 and 695 of Athani town, etc.

3. The defendants filed their written statement and resisted plaint averments and sought for dismissal of the suit.

4. When the matter was posted for evidence, at that stage, the parties filed joint compromise petition under Order 23 Rule 3 of Code of Civil Procedure. In terms

of the compromise petition the suit was decreed 21.04.2007. Thereafter, the present respondents have filed application under Section 151 read with Section 141 and proviso to Order 23 Rule 3 of Code of Civil Procedure praying to set aside the compromise decree alleging that the decree was made in collusion between the parties and there was no notice to them, contending that applicants 1 and 2 are permanent residents of Badachi village in Athani Taluk and originally, one Devappa Lendyagol the grandfather of applicants 1 and 2 and Opponent No. 12 was the owner of the movable and immovable properties. The said Devappa had four sons, namely, a) Chintamani, (b) Ammanna (father of applicant No. 1), (c) Ramappa (father of applicant No. 2) and (d) Laxman and after his death, the above said four sons of Devappa succeeded to the properties left behind by said Devappa and they were in joint possession and enjoyment of the same as joint family properties. Subsequently, the applicant Nos. 1, 2 and Opponent No. 12 jointly inherited the said properties and they too continued in joint possession of the said joint family properties as tenants-in-common. It is also contended that Opponents 1 to 11 taking advantage of illiteracy, innocence, old age and simple nature of applicants-1 and 2 and opponent 12 colluding among themselves with an intention to cheat and deceive the applicants in order to make wrongful gain for themselves and wrongful loss to the applicants on the basis of false statements knowing fully well that they are so by inducing the applicants and opponent No. 12 into giving their consent for the compromise have succeeded in obtaining an illegal and unlawful compromise decree and have consequently not only played fraud on the applicants but also on the Court. Hence, the said compromise decree is illegal, unlawful, void ab-initio, a nullity not binding on the applicants and therefore sought to recall the order. The said application was resisted by the present petitioners. After hearing both the parties the present impugned order is passed.

5. I have heard the learned Counsel for the parties to the lis.

6. Smt. Geetha KM. learned Counsel for the petitioners contended that the compromise was entered into between the parties after their consent and the compromise was signed by all the parties to the compromise and decree was drawn in the presence of the parties concerned. Therefore, there is no fraud as alleged and the impugned order passed by the trial court is liable to be set aside.

7. Per contra, Smt. Rekha Patil, appearing for Sr. M.G. Naganuri, learned Counsel for respondent sought to justify the impugned order.

8. I have given my thoughtful consideration to the arguments advanced by the learned Counsel for the parties and perused the entire material on record.

9. The trial court while passing the impugned order has recorded a finding that, on going through the contentions of the parties, the oral and documentary evidence placed by them and also on hearing the arguments of their respective Counsel he has no hesitation to say that this is yet another fraudulent act by the men with knowledge against illiterate, innocent, infirm and gullible villagers.

Even after good effort as he could not summarize the objection statement of opponent No. 7 as it was deliberately drafted in an ambiguous and clumsy manner in order to misled and misdirect the court and in a nutshell what all the grievance of the opponent Nos. 1 to 11 who form one group.

10. It has also recorded a finding that it is significant to note that the three survey numbers are of Athani and they are of different extents. It is not the contention of opponent Nos. 1 to 11 that extent of the lands mentioned are not correct. In fact they admit the correctness of the said extents in oral evidence and also through the documents. The opponents 1 to 3 opened the pandora box of fraudulent acts by filing O.S. No. 79/2007. The applicants have produced certified copy of the said plaint and got it marked as Ex. P.15. It shows that these opponents 1 to 3 stating that they are the owners of land bearing Sy. No. 704/2 measuring 10 acres 20 guntas of Athani with the boundaries described therein, urged that the said survey number is wrongly shown in the ROR as 703/2 and since the defendants in that suit viz., the present applicants and opponent Nos. 4 to 12 are trying to alienate the lands standing in their names, which are also wrongly described, sought for declaration of their title in respect of said land bearing Sy. No. 704/2 measuring 10 acres 20 guntas and consequential relief of permanent injunction to restrain the defendants therein not to obstruct in their lawful possession and enjoyment of said land. They also sought for rectification of revenue entries in respect of Sy. Nos. 703, 704, 704/2 and 695 of Athani by contending inter-alia that the opponent Nos. 4 and 5 (defendants 1 and 2 of that suit) are the owners of land bearing Sy. No. 704/1 measuring 10 acre with the boundaries described there, but in the ROR their survey number is wrongly shown as 703/1. It has also further recorded a finding that, now the court is seized with the veracity of the claim made by the opponents 1 to 11, who sails in one boat by engaging one advocate. He has referred to three certified copies of sale-deed produced at Ex. P.8 to P.10. Ex. P.8 is the sale deed dated 12.7.1978 executed by Habibulla and Hashim sons of Hamajz Nalaband in favour of opponent No. 12 and fathers of the applicants 1 and 2 viz., Kallappa and Vithappa Lendyagol alienating land bearing Sy. Nos. 695 measuring 27 acres 08 gunta for Rs. 4,000/-. On the very same day the said vendors sold another land bearing Sy. No. 704 measuring 21 acres 16 guntas to Devanna and Dhareppa Son Of Ammanna Kurubar as well as to opponent No. 11 for Rs. 3000/-. It is evident from sale deeds Ex. P.8 and P.9 were executed on the very same day. Whereas sale deed Ex. P.10 was executed long after the first two sale deeds. It is least to say that when an immovable property comprises larger extent it would be sold for higher price than an immovable property which consists of lesser extent. It has further recorded that it is undisputed that all these lands are dry lands more so Sy. No. 695 and 704 which were sold on the same day by very same vendors to different vendees. Naturally Sy. No. 695 was sold for Rs. 4,000/- as it measured 27 acres 18 guntas, whereas 21 acres 16 guntas of Sy. No. 704 was sold for Rs. 3,000/-. This is a clinching factor to show that how fraud was played in entering compromise by duping the applicants and opponent No. 12,

who were aged 80, 70 and 80 years respectively then. It is also categorically recorded by the trial court, that it is material to note that description of the age of applicants and opponent No. 12 in this application is not in dispute. The certified copy of the compromise petition produced at Ex. P.1 shows that these two applicants as well as opponent No. 12 put their LTM's to the same suggesting that they were totally illiterate. When the parties to the compromise are such aged persons and illiterate court ought to have exercised more care before accepting the compromise by explaining the each and every term of settlement so as to be audible and understandable by them. Hence, there is lack of minimum requirements while accepting the compromise and therefore the compromise is bad in law. It has also recorded a finding that there is no iota of evidence to show that survey numbers are wrongfully mentioned in the Ex. P.8 to P.10. To confirm their contentions opponents have not produced any revenue record nor made attempts by examining the revenue officials on their behalf or by producing the village map of Athani. The documents relied by them are the order passed in W.P. No. 63347/09, RTCs of Sy. No. 14/1A, 14/3C, 15/2C, 19/2 and 723 which are produced at Ex. R.1 to R.6. The Ex. R.2 to R.6 have nothing to do with the case in hand.

11. Therefore, in view of the aforesaid reasons the Trial Court held that the impugned order of compromise is unsustainable in law and it is an outcome of sheer fraud and misrepresentation committed by the appellant Nos. 1 to 11 together on applicants as well as appellant No. 12 including the Court. Therefore, the application was allowed. The Hon'ble Supreme Court while considering compromise decree under the provisions of Order XXIII Rule 3 of Code of Civil Procedure in the case of R. Rajanna Vs. S.R. Venkataswamy, (2015) 1 RCR(Civil) 96 : (2014) 10 SCJ 315 , at paragraph No. 10 held as under:

"10. It is manifest from a plain reading of the above that in terms of the proviso to Order XXIII, Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the Court before whom such question is raised, shall decide the same. What is important is that in terms of Explanation to Order XXIII, Rule 3, the agreement or compromise shall not be deemed to be lawful within meaning of the said rule if the same is void or voidable under Indian Contract Act, 1872. It follows that in every year case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the Court concerned. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree that would make the same void or voidable under the Contract Act. More importantly, Order XXIII, Rule 3A clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. This implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the Court that passed the decree on the basis of any such agreement or compromise, it is that Court and that Court

alone who can examine and determine that question. The Court cannot direct the parties to file a separate suit on the subject for no such suit will lie in view of the provisions of Order XXIII Rule 3A of CPC. That is precisely what has happened in case at hand. When the appellant filed O.S. No. 5326 of 2005 to challenge validity of the compromise decree, the Court before whom the suit came up rejected the plaint under Order VII, Rule 11, CPC on the application made by the respondents holding that such a suit was barred by the provisions of Order XXIII, Rule 3A of the CPC. Having thus got the plaint rejected, the defendants (respondents herein) could hardly be heard to argue that the plaintiff (appellant herein) ought to pursue his remedy against the compromise decree in pursuance of O.S. No. 5326 of 2005 and if the plaint in the suit has been rejected to pursue his remedy against such rejection before a higher Court."

12. In view of the allegations made that the parties obtained compromise decree by playing fraud on the applicants and therefore they invoke the provisions of Order XXIII Rule 3 of CPC. Accordingly, the trial Court has passed the impugned order. The same is in accordance with law and in accordance with the law declared by the Hon'ble Supreme Court stated supra and the petitioner has not made out any ground to interfere with the impugned order passed by the trial Court. Accordingly, the writ petition is dismissed.