
(2013) 03 MP CK 0018
In the Madhya Pradesh High Court
Case No : Civil Rev. No. 44 of 2007

Jeevanlal	Vs	APPELLANT
Deepchand and Others		RESPONDENT

Date of Decision : 01-03-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 115, 96(3)

Citation : (2013) 3 MPLJ 150

Hon'ble Judges : A.K. Shrivastava, J

Bench : Single Bench

Advocate : R.K. Verma, for the Appellant; Akhilesh Singh, Panel Lawyer, for the Respondent

Judgement

A.K. Shrivastava, J.—This revision has been filed by the applicant-plaintiff u/s 115, CPC against the order dated 22-2-2006 passed by learned 1st Additional District Judge, Daman in Civil Suit No. 32-A/2003 whereby the suit of plaintiff has been disposed of on compromise basis. The contention of learned counsel for the applicant-plaintiff is that earlier an appeal was filed before this Court which was registered as F.A. No. 319/2006 but it was disposed of by giving direction to the applicant-plaintiff to file civil revision since against the compromise decree an appeal is specifically barred u/s 96(3), Civil Procedure Code. Hence the said appeal was permitted to be withdrawn with liberty to file this revision application. Eventually, this revision application has been filed.

2. Indeed, a suit for declaration that plaintiff-applicant is the owner of the suit house (the description whereof is mentioned in the plaint) and for injunction that first and second defendants namely Deepchand and Smt. Alka Jain may not interfere in the possession of the plaintiff has been filed by the applicant-plaintiff. During the pendency of the civil suit good sense prevailed in the minds of the parties as a result of which compromise application was submitted to get the suit decided on compromise basis. On bare perusal of the said application for compromise, this Court finds that it was agreed upon between the parties that

the defendant No. 1 Deepchand shall be the owner of smaller house, the description whereof is mentioned in the compromise application. However, the bigger house shall be owned and possessed by the plaintiff-applicant with a further stipulation that he will pay a sum of Rs. 3,00,000/- to defendant No. 2 Smt. Alka Jain. According to the compromise application, a sum of Rs. 35,000/- shall be paid within a period of one month and the balance amount of Rs. 2,65,000/- shall be paid within a period of one year. Further it has been averred in the application that if the plaintiff fails to pay a sum of Rs. 3,00,000/- as per the aforesaid arrangement, the defendant No. 2 Smt. Alka Jain shall be entitled to recover possession of the bigger house from plaintiff. However, in case plaintiff pays the said amount of Rs. 3,00,000/- to the defendant No. 2, his possession shall be continued in that house.

3. In support of compromise application the parties examined themselves in the trial Court and the learned trial Court has decreed the suit in terms of the compromise mentioned in para 13 of the impugned order.

4. The contention of learned counsel for the applicant is that learned trial Court has acted illegally with material irregularity in exercise of its jurisdiction by not passing a decree in respect to the bigger house which is in possession of the plaintiff. Learned counsel submits that the only reason which has been assigned by learned trial Court is that it is not the subject-matter of the suit. However, by hammering the finding of the learned trial Court, learned counsel submits that the said finding is totally in derogation to provisions of Order 23, Rule 3, CPC because with effect from 1-2-1977 the scope of Order 23, Rule 3 has been widened and accordingly now even the property which is not the subject-matter of the suit if by a lawful agreement a compromise has been arrived at between the parties 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 parties to the suit. Hence it has been submitted that on the basis of such provision the lawful compromise which was arrived at between the parties should have been allowed by the trial Court. Learned counsel further propounded that although entire description has been stated in the plaint in regard to the bigger house but unfortunately in the relief clause nothing has been stated for this house but the relief should be taken into account on the basis of the allegations made in the plaint which is also in respect of the bigger house and, therefore, it cannot be said that the bigger house is not the subject-matter of the suit.

5. In the present case despite defendants-respondents have been served they have not appeared. This Court directed to issue notice to the State of M.P. since learned trial Court has directed the plaintiff to pay the Court fee in regard to cancellation of sale deed of smaller house.

6. Having heard learned counsel for the applicant-plaintiff and State and after perusal of the record and by paying heed to the impugned order, this Court finds that this revision deserves to be allowed.

7. According to me, learned trial Court while rejecting the compromise application in respect of the bigger house of which the plaintiff-applicant is in possession has failed to take into account the provisions of Order 23, Rule 3, CPC which in its amended form came into force with effect from 1-2-1977. For ready reference, it would be condign to quote Order 23, Rule 3, CPC in its entirety:--

3. Compromise of suit.--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 parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit);

(Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.)

(Explanation.--An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.).

8. According to me, by amending Rule 3 of Order 23, the legislature has deliberately used the word "whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit". If this provision is applied in its stricto sensu, it would reveal that the property which is not the subject-matter of the suit but related to the parties to the suit, for that property also compromise may be arrived at in the Court and a compromise decree can be passed if it is arrived at by a lawful agreement. Hence, I am of the view that learned trial Court has acted illegally with material irregularity in exercise of its jurisdiction while rejecting the compromise application and by not passing the compromise decree in regard to the bigger house, the description whereof is mentioned in the compromise application as well as in the plaint. The compromise application is thus allowed in toto and the decree passed by the learned trial Court is hereby modified.

9. So far as payment of Court fee in respect to smaller house which has been compromised is concerned, since plaintiff has filed the suit that the sale deed is not binding on him, I am of the view that plaintiff is challenging the transaction which is voidable and in this regard the decision of Partap and Another Vs. Smt. Puniya Bai and Others, is quite relevant and, therefore, plaintiff is required to pay ad valorem Court fee upon it. However, the respondent/State is only having a right to recover the amount of Court fee from the plaintiff. The State Govt. is free to recover the Court fee from the plaintiff as land revenue if it is not paid.

This revision succeeds and is hereby allowed and the suit of plaintiff is hereby decreed in toto in terms of the compromise which is recorded in para 13 of the impugned order. The compromise application filed in the trial Court shall be the part of decree. Registry is hereby directed to draw a decree accordingly. No costs.