

(1993) 11 MAD CK 0062

In the Madras High Court

Case No : Civil Revision Petition No. 453 of 1992

Kasim Sait and 2 others

APPELLANT

Vs

Pappamal and 25 Others

RESPONDENT

Date of Decision : 29-11-1993

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 23 Rule 3A, Order 3 Rule 3, Order 9 Rule 9, 151
Land Acquisition Act, 1894 — Section 18, 30, 4

Citation : (1993) 11 MAD CK 0062

Hon'ble Judges : Ratnam, J

Bench : Single Bench

Advocate : V. Krishnan for M/s. K. Raghunathan, V. Prabhakar, for the Appellant; M.V. Venkataseshan, for Respondents 1 to 17 and 19 to 26. Mr. R. Swaminathan, Addl Government Pleader C.S for the 18th Respondent., for the Respondent

Final Decision : Allowed

Judgement

Ratnam, J.—An extent of 11.32 acres of agricultural lands in S. Nos 1106/4, 1106/4B and 1106/4-C belonging to the petitioners was acquired under the provisions of the Land Acquisition Act, hereinafter referred to as the Act pursuant to a notification dated 15.12.1980 under S. 4 (1) of the Act under the Hill Area Development Programme for the Nilgiris District Co-operative Milk Producers Union and possession of the acquired lands was also taken on 5.1.1981. Respondents 1 to 17 and 19 to 26 in this, revision petition and some of their predecessors in interest were stated to be persons interested in the acquired lands as cultivating tenants in respect of small parcels of the acquired lands. They had put forward before the Land Acquisition Officer, a claim for compensation in respect of the standing crops on the lands; acquired and also for the loss of cultivating tenancy rights therein. The Land Acquisition Officer, on 26.8.1981, passed an award fixing the compensation awardable in respect of the acquired lands at Rs. 50,000/- per acre and also determined the value of the crops at Rs. 1,552.50 together with the usual solatium and interest etc., and an

amount of Rs. 6,69,000/-and odd, was also deposited on 24.3.1982. Not satisfied with the award so passed, the petitioners sought a Reference under S.18 of the Act. Likewise, respondents and their predecessors in interest and some other tenants as well sought a Reference under S.30 of the Act. The Reference under S.30of the Act was numbered as O.P.28 of 1981 while the Reference under S. 18 of the Act was numbered as O.P. No. 38 of 1981. In O.P. No. 28 of 1981, on 28.2.1983, a joint memo was filed on behalf of the petitioners and the interested parties, numbering 24, signed by Messrs. T. Dharmaraj and A.R. Maqbool, counsel for the petitioners and Mr. N. Krishnappa, Advocate for interested parties 1 to 24 to the effect that the compensation amount of Rs. 5,59,599-70 may be apportioned between the petitioners herein and the interested parties and that the interested parties-respondents herein or their predecessors-in-interest are entitled to a sum of Rs. 2,00,000/- and the petitioners will be entitled to the balance of the amount, with accrued interest. It was also further provided that the interested parties/respondents or their predecessors-in-interest will not have any more claim against the land-owners (Petitioner herein), present or future, and they will not have any right over the enhanced compensation, if allotted by the court, in O.P. No. 38 of 1981. A prayer was also made that O.P. No. 28 of 1981 may be closed as per the joint memo. On the basis of the memo so filed, the court recorded the joint memo and closed O.P. No. 28 of 1981. When O.P. No. 38 of 1981 under S. 18 of the Act came up on 4-7-83, for hearing, counsel for the respondents/interested parties, endorsed that there was no evidence on their behalf. Thereupon, the court proceeded to dispose of O.P. No. 38 of 1981, arising under S. 18 of the Act, and on 26.9.1983 the court fixed the compensation awardable in respect of the acquired lands at Rs. 5/- lakhs per acre together with the usual solatium and interest etc. Aggrieved by this, the Land Acquisition Officer preferred A.S. No. 388 of 1984 and the interested parties were all shown as party respondents to that appeal, along with the petitioners herein, though the interested parties did not contest the appeal. That appeal was disposed of on 11.8.1988 and the judgment in O.P. No. 38 of 1981 was set aside and the matter was remitted to the court below for fresh consideration.

In the course of the judgment the settlement effected between the petitioners and the respondents/interested parties or their predecessors-in interest had also been referred to. While matters stood thus, the respondents herein filed a petition on 14.9.1989 purporting to be respondents herein filed a petition on 14.9.1989 purporting to be under S. 30 of the Act and O.9, R.9 of the CPC praying that L.A.O.P. No. 28 of 1981 disposed of on 28.2.1983 may be restored to file and tried along with O.P. No. 13 of 1989.(formerly, O.P. No. 38 of 1981) in the affidavit filed by the seventh respondent herein, on behalf of others as well, in support of that application, it was stated that when the Reference in O.P. No. 28 of 1981 was pending, their counsel sent for them and distributed certain amounts, which were earlier refused to be received, but on being assured that their right to obtain compensation in respect of the land will not be affected, the

amounts were received not being aware of the intricacies of legal proceedings and believing the counsel, who represented them. It was further stated that on receipt of notice in 1984, on verification, it was found that L.A.O.P. No. 38 of 1981 had been disposed of and the Land Acquisition Officer had filed A.S. No. 388 of 1984 before this Court, and on further verification, it was found that L.A.O.P. No. 28 of 1981 was disposed of on 28.2.1983 on the strength of a joint memo. It was stated that the respondents had not given any authority whatever to the counsel to file any such memo and that the amounts paid were towards loss of crops and not towards compensation for loss of tenancy rights and the memo filed by counsel on their behalf was without authority, illegal and invalid. Stating that they became aware of this only when the matter was pending before the High Court and the memo earlier filed cannot, in any manner, affect their rights, they prayed that LAOP No. 28 of 1981, earlier disposed of on 28.2.1983, should be restored to file. Even at the time when this application was filed, Pappammal and Thoppan (respondents 1 and 4 in this revision petition) died and no steps were taken to implead their legal representatives, with the result that in the present proceedings, they do not any longer have any interest. The application so filed by only 12 persons out of 24 was rejected in limine and against that order, respondents 2,3 and 5 and the predecessors-in-interest of respondents 15 to 17, one Mallan, respondents 7,9 and the predecessor-in-interest of respondents, 11 to 14 one Chinnasami, and the 10th respondent alone preferred C.R.P. No. 2506 of 1990. By an order dated 5.12.1990 this Court (sic) directed the court below to ascertain whether the petitioners in that Civil Revision Petition viz., CRP 2506/90, were aware of the compromise and whether they had consented for the same and further, whether amounts had been received by the petitioners therein. Ultimately, that Civil Revision Petition was allowed and the order made by the court below in unnumbered I.A.(S.R. 3725 of 1989 as it then was) was set aside and the court below was directed to take on file that application and number the same, and give an opportunity to the same. It was also made clear that the benefit of the order in C.R.P.2506 of 1990 would be available only to the petitioners in that Civil Revision Petition, viz., 9 persons and not others. Pursuant to this order, the application earlier rejected was numbered as I.A.No. 55 of 1991 in L.A.O.P. No. 28 of 1981. To that application the petitioners herein, who were respondents 2 to 4 therein, filed a counter that the application under O. 9, R. 9 of the CPC was not at all maintainable and that it was hopelessly barred by time. It was also further pointed out that the joint memo filed in O.P. No. 28 of 1981, on the basis of which that application was disposed of on 28.2.1983, came into existence as per the settlement arrived at between the petitioners and the respondents as well as their predecessors-in-interest and it was agreed that the interested parties should receive a sum of Rs. 2 lakhs out of the compensation amount and the balance was to be taken by the petitioners. It was also further pointed out that with a view to avoid time-consuming litigation and to minimise the expenditure and secure payment, the petitioner has agreed to the respondents and their predecessors-in-interest taking a sum of Rs. 2 lakhs from out of the amount awarded. It was stated that

the sum of Rs. 2 lakhs had been distributed to the respondents or their predecessors-in-interest by Sri N. Krishhnappa who was the advocate for them and that nearly a sum of Rs. 21 lakhs had also been paid in terms of the joint memo and the amounts had already been received by the interested parties and it was too late for the respondents or their predecessors in interest as interested parties, to question the correctness of the validity of the settlement and the compromise and re-agitate the issue. It was also further pointed out that the crops were valued at only Rs. 1552/- by the Land Acquisition Officer and the amounts paid were far in excess of the value of the crops and the affidavit had ingeniously stated that the compensation paid was only in respect of the standing crops and not in respect of loss of tenancy rights and that was also not true and acceptable. Referring to the non-participation of the respondents and then-predecessors in interest in O.P. No. 38 of 1981, it was stated that they had not chosen to participate because they had settled the matter. The circumstances under which it was stated by the respondents that they became aware of the disposal of O.P. No. 281 of 1981 were not accepted by the petitioners and the inaction on the part of the respondents and their predecessors in interest for nearly six years established, according to the petitioners, then anxiety to secure, if possible, more compensation pursuant to the remit order, after settling the matter with the petitioners. Adverting to the claim made earlier by 21 interested parties and the filing of the petition only by 12 out of 21, the petitioners stated that the nine others declined to join, for the reason that they did not want to be dishonest, but they wanted to stand by the compromise, already entered into. Stating that the counsel who appeared for the respondents and their predecessor-in-interest had kept in view their interest and had entered into a compromise for their benefit and advantage, the petitioners pleaded that no case was made out for setting aside the order passed on 28.2.1983 in L.A.O.P. No. 28 of 1981 and prayed for the dismissal of Application viz., I.A. 55 of 1991 in L.A.O.P. No. 28 of 1981. Before the court below, on behalf of the respondents, respondents 8 and 7 were examined as P.Ws. 1 and 2 respectively and there was no documentary evidence on their side, while on behalf of the petitioners, Exhibits B1 to B6 were filed and the third petitioner in this revision petition and the advocate, who appeared for the respondents or their predecessors-in-interest in O.P. No. 28 of 1981, gave evidence as R.Ws. 1 and 2 respectively. On a consideration of the oral as well as the documentary evidence, the court below found that there were circumstances which appeared in evidence, which rendered the settlement difficult of acceptance as one having been entered into with the knowledge and consent of the respondents or their predecessors in interest. It was also further stated that the compromise of joint memo had been signed by counsel on both sides and not by the parties and cannot be regarded as a valid or binding compromise. Adverting to the payment, the court below found that the respondents and their predecessors-in-interest had been paid a sum of Rs. 1.99 lakhs and odd. Ultimately, the court below found that the compromise or settlement cannot be stated to have been effected with the knowledge and consent of the respondents and, therefore, the order passed on 28.2.1983, on

the basis of the joint "memo" should be set aside. Referring to the plea of limitation raised by the petitioners, the court pointed out that the compromise was void and, therefore, the application in I.A. No. 55 of 1989 was in time. On the conclusions so arrived at, the court below set aside the order passed on 28.2.1983 in O.P. No. 28 of 1981 and restored that application for being dealt with again. It is the correctness of the order so passed that is questioned in this Civil Revision Petition.

Mr. V. Krishnan, learned counsel for the petitioners contended relying on the decision in *Byram Pestonji Gariwala Vs. Union Bank of India and others*, that the joint memo filed in O.P.28 of 1981 signed by counsel for the petitioners and the respondents and their predecessors-in-interest was valid and binding on the respondents and the court below fell into an error in setting aside that order recording the compromise and restoring O.P. No. 28 of 1981. In addition, it was pointed out that having regard to O. 43, Rr. (1) and (2) of the Code of Civil Procedure, the proper remedy of the respondents, if any, was to file an appeal against the order dated 28.2.1983, and not an application under O. 9, R.9 as there was no disposal of O.P. No. 28 of 1981 for default. Attention in this connection was also drawn to the decision reported in *Janab S.K. Kalalullah Sheriff Vs. Janab S.K. and Others*, It was also further pointed out that even on the footing that the order dated 28.2.1983 in O.P. No. 28 of 1981 could be regarded as one falling under O. 9, R. 9, C.P.C. yet, the application filed by the respondents on 14.9.1989 six years and more after passing of the order was clearly barred by limitation. On the other hand, learned counsel for the respondents submitted that the compromise on the basis of the available evidence, was found to have been entered into without the consent or knowledge of the respondents and had not been signed by the parties and, therefore, no validity could attach to the same. In addition, learned counsel submitted that such a compromise could be ignored by the respondents and an application for restoration of O.P. No. 28 of 1981 could also be filed. Reference in this connection was made to the decision reported in *Dadu Dayal Mahasabha Vs. Sukhdev Arya and Another*, and *Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another*, to contend that the application under S. 151 C.P.C. could also be maintained for the purpose of seeking restoration and, therefore, there was no need for the filing of an appeal and there was no question of limitation whatever.

2. Before proceeding to consider the rival contentions thus advanced, it would be first necessary to ascertain whether the respondents were aware of the compromise and its terms, and the compromise would also be binding on them.

3. Regarding the compromise, there is the evidence of P.Ws. 1 and 2. and R.Ws. 1 and 2. P.W.1 is the 8th respondent herein. In the course of his evidence in chief examination he referred to extent of the land cultivated by him and to the area (sic), since, before the Land Acquisition Officer in respect of the acquisition of that land and stated that in O.P. No. 28 of 1981 he and other cultivating tenants got notice from the court and they had engaged R.12 to appear on their behalf.

P.W.1 had also accepted that in 1983, about three years after taking of possession, R.W.2 sent for him and other tenants and paid him a sum of Rs. 21,000/- for which he had issued a receipt. P.W.1 had further added that for other cultivating tenants, compensation had been paid in respect of the loss of standing crops. P.W.1 categorically stated in chief examination that he and other persons had authorised R.W.2 to settle the matter and he reiterated this by saying that they had given such authority to Krishnappa (R.W. 2). In his cross examination P.W.2 stated that R.W. 2 had been his lawyer for a long time and that even at the time of his examination in 1991, he had approached him for purchasing properties, entering into agreements, execution of wills, etc. P.W.1 admitted that he did not appear in O.P. No. 38 1981. Though P.W.1 stated that he was enquiring as to what happened to O.P. No. 38 of 1981 he added he was informed that he should engage another advocate, but that he did not remember the year when he was asked to secure the services of another advocate and that the reason for securing the services of another advocate would be known only to R.W.2. Referring to the closure of O.P. No. 28 of 1981 on 28.2.1983 P.W.1 stated that he had known it 2 or 3 years to enquire (sic). Admitting that he had received a sum of Rs. 23,232/- from R.W.2, P.W.1 stated that in the appeal, A.S. 388 of 1984, he and other tenants received notices and that had engaged a counsel to conduct the case on their behalf, though he pleaded ignorance regarding the name of the counsel. P.W.2 who is the 7th respondent herein in his evidence in chief examination stated that R.W.2 appeared for him and others and that he sent for him and others and informed that Rs. 2 lakhs had been received from court and that he and others should receive the same, and that he took his signature in a book and other tenants had also put their signature in that book P.W.2 also stated that it was not correct to say that R.W.2 had obtained the authority from him and others for filing the joint memo and as they did not know the details, the joint memo was invalid.

In his cross examination P.W.2 accepted that in the register maintained by R.W.2 he had signed for having received Rs. 5280/- but that he had not stated so in this affidavit. P.W.2 claimed that he became aware of the disposal of O.P. No. 28 of 1981 only after the remit order dated 11.8.1988. Accepting that he received notice in A.S. No. 388 of 1984, P.W.2 stated that he engaged another advocate for himself and also for other tenants and that at that time they did not know about the disposal of O.P. 28 of 1981. The reason for filing the application in 1989, six years after the disposal of the said petition, was stated by P.W. 2 to be owing to R.W.2 informing that the case was pending. A suggestion that P.W.2 and others had not appeared through counsel in A.S. 388/84 was denied by him. P.W.2 also admitted that he did not meet R.W.2 and ask him anything. He also denied that a sum of Rs. 2 lakhs was fixed as compensation in respect of the loss of crops and also tenancy rights. R.W.1 in his evidence stated that his advocate Dharamaraj and Mahbool informed him that R.W.2 enquired whether there was a possibility of a settlement and in response to that the matter was discussed on more occasions than one, in the presence of some of the cultivating tenants and

the counsel for both sides, and after 2 or 3 sittings, it was agreed that a sum of Rs. 2 lakhs should be made available to the respondents in respect of their claim for compensation regarding the crops and also loss of tenancy rights. R.W.1 in his cross examination referred to the payment of Rs. 2 lakhs and the distribution thereof by R.W.2 and his obtaining the signatures in the register. R.W.2 in his chief examination stated that he had been practising the legal profession since 1956 and had also been the President of the Nilgiris Bar Association for several years and that on behalf of the respondents and their predecessors in interest, he had signed the memo of compromise after ascertaining their wishes. R.W.2 has also referred to the fact that two or more of the tenants were his own relations and that with view to cut short the process of litigation and to secure a reasonable amount, he suggested the settlements by which the tenants agreed to received Rs. 3 lakhs which, however was not accepted by the land owners. R.W.2 had also referred to the discussions that took place on 2 or 3 occasions in his office, as a result of which, ultimately the amount was arrived at Rs. 2 lakhs to be made available to the respondents and their predecessors-in-interest. He had also referred to the payment of Rs. 2 lakhs and the distribution thereof to the different interested parties/tenants. Referring to the payment of Rs. 2 lakhs by R.W.1 he stated that a cheque had been issued in respect of the acquired lands and that the amount had been distributed. R.W.2 denied that discussions did not take place on 2 or 3 occasions. He also added that after receiving the amount, the tenants did not get in touch with him at all.

4. The aforesaid evidence with reference to the discussions relating to the compromise and the arriving at of the compromise as well as the authority for entering into a compromise and the payment of the amount by R.W.2 to different tenants, has also to be considered in the light of certain other features, referred to by the court below. It is not in dispute that the joint memo had been signed by counsel appearing for the owners of the lands and also the interested parties. P.W.1 had categorically admitted that R.W.2 was authorised and empowered to enter into the compromise. However, the court below brushed aside this evidence by stating that this should be regarded as conferment of a general authority and not an authority to give up all rights on receipt of Rs. 2 lakhs. Even as per the reasoning of the court below, if the authority was general, then, it would follow that even such an authority would include the right to give up all rights on receipt of compensation. Further, even as per the evidence of P.W.1 the relationship between him and R.W.2 still continued to be cordial and P.W.1 even now sought the advice of R.W.2. P.W.2 however, has not categorically stated that he had not authorised R.W.2. On the evidence of P.W.1 it is clearly established that R.W.2 was authorised to enter into a joint memo on behalf of the respondents and their predecessors-in-interest. R.W.2 had also given evidence to the effect that on 2/3 occasions, discussions were held and ultimately, the terms were settled and a compromise was arrived at, and that some of the tenants were his relations also. It is, therefore, difficult to believe that R.W.2 would have acted against the interests of his own relations by entering into the compromise.

The court below appears to have been influenced by what has been called a discrepancy in the matter of payment of Rs. 2 lakhs. Though in the evidence of R.W.1 in one place, it has been stated that there was cash payment of Rs. 2 lakhs for the purpose of being distributed, even in paragraph 18 of the judgment, the court below had found that a sum of Rs. 2 lakhs had been paid out of the amount in court deposit. Obviously therefore, the so-called discrepancy between the cash payment and the cheque payment has no significance. The cheque had been drawn from court and the payments have been entered in Exhibits B4 and B5 and the court below had accepted the truth of the payments as per the entries found therein. From these entries, it is seen that cheque was issued and amounts were withdrawn on 2.5.1993 and the distribution of the amounts had been made. In view of this, the so called discrepancy between cash payment and cheque payment in respect of 2 lakhs of rupees is of no consequence.

5. Yet another reason given by the court below for discrediting the compromise is, that the compromise did not indicate any payment to be made by the land owners to the interested parties. Though it may be that there is no reference to any payment as such, it is seen that the parties had agreed to make available to the respondents and their predecessors in interest a sum of Rs. 2 lakhs from out of the total amount of compensation. So long as the amount of Rs. 2 lakhs was made available, it is really immaterial from which source it was to be so made available. Regarding the meeting preceding the arriving at of this settlement, there is absolutely no reason whatever to discredit R.W.2's evidence. He had been a respectable member of the Bar for a long number of years and some of the persons, on whose behalf he was acting were his own relations, and it is difficult to believe that he had acted detrimental to their interests. The court below had also referred to the non-availability of the affidavit for payment out as one of the reasons which would improbabilise the compromise. From paragraph 18 of the order, it is seen that the affidavit filed in support of the payment out petition had been indexed and was not traceable. From this, it is difficult to draw the inference that the compromise was either not true or probable. Even the court below was obliged to find that a sum of Rs. 1,99,153/- had been paid as per the entries found in Exhibits B4 and B5. It is in this connection, that a reference to Exhibit B6, becomes necessary. There from it is seen that all the interested persons in their common claim statement have prayed for the award of compensation in respect of loss of crops in a sum of Rs. 35,000/- only. Admittedly, amounts 5 times and more in excess of this amount, had been paid and it is difficult to accept the case of the respondents that such payments, far in excess of their claims in respect of the loss of crops, were paid only under that account and not in respect of compensation for loss of tenancy rights. This would also clearly establish that the respondents and their predecessors-in-interest had received amounts far higher than what they would have been entitled to by way of compensation in respect of the standing crops and such excess payments could have been only towards loss of tenancy rights and not crop loss alone. This apart, the natural conduct of the respondents is also consistent with the

compromise having been entered into and amounts received there under. When O.P. No. 38 of 1981 was taken up on 4.7.1983 it was reported on their behalf that there was no evidence. This would not have been their attitude, had they not agreed to a compromise and received amounts there under as per the entries in Exs.B4 and B5 even on 2.5.1983. That P.W. 2's evidence cannot be relied upon is evident from the fact that he had falsely stated that he and others have contested A.S.388 of 1984. The court below also had been influenced by the fact that it was not known whether the respondents and their predecessors-in-interest were parties to the appeal. A reference to the cause title in Exhibit B3, the judgment in A.S.388 of 1984 shows that all the interested parties were impleaded as respondents to the appeal. A further reference to the decree available in this Court shows that all of them had remained ex parte. P.W.2, on the contrary, had said that he and others had engaged counsel to contest the appeal which, on the face of it, cannot be accepted. On a careful consideration of the circumstances, which have been put against the petitioners by the court below and also the evidence relating to the arriving at, signing and acting upon of the compromise, it is clear on the basis of the evidence of R.W.2 that the compromise had been entered into after full deliberations and discussions. It is also significant that out of 21 persons, who had entered into a compromise, nine have not chosen to challenge the same, obviously because, they had accepted the compromise as well as its terms and also the payment there under and did not have any reason whatever to impeach the same. Further, in paragraph 26 of Ex.B3, there had been a reference to the settlement having been effected between the petitioners and the respondents and their predecessors in interest and the respondents were all parties to A.S. 388 of 1984, but they had not chosen to question the compromise, which if untrue, they might and ought to have so done. P.W.2's evidence that he engaged a counsel to contest the appeal, is not borne out by the decree in A.S. No. 388 of 1984 referred to earlier. The inaction on the part of the respondents to contest the appeal can be attributed only to the settlement based on the memo and the order passed on 28.2.1983 in O.P. No. 28 of 1981. The evidence of R.W.2 clearly shows that the compromise was arrived at only after prolonged and protracted discussions and after serious deliberations. There is no reason to discredit the evidence of R.W. 2 in this regard. The compromise had also been acted upon, in that the respondents and their predecessors-in-interest have received payments far in excess of what they would otherwise be entitled in relation to loss of crops and this would also show that the compensation received was not only in respect of the loss of crops but also in full quit of their claims including the loss of tenancy rights. Though the respondents had, as spoken to by P.W.1 knowledge of the passing of the order in O.P.28 of 1981, some years earlier, till 14.9.1989, they had kept quiet. Till the disposal of the appeal, A.S. No. 388 of 1984 on 11.8.1988 the respondents were satisfied and content with whatever they had received and only on realising that the appeal had been allowed and O.P. No. 38 of 1981 had been remitted, they realised that there was a possibility of the compensation in respect of the acquired lands being fixed at higher figures, which may result in some additional

advantage or benefit to them, and it is only thereafter, the respondents had come forward with application purporting to be under O.9. R.9 CPC to set aside the order dated 28.2.1983. Thus on a due consideration of the evidence of P.Ws. 1 and 2 and R.Ws. 1 and 2 and also the entries in Exhibits B4, B5, and the claim made in B6, the conclusion is inescapable that the compromise was arrived at after holding talks on several occasions and the terms were settled to the knowledge of both parties and the petitioners and respondents had agreed for a sum of Rs. 2 lakhs to be made available to the respondents in respect of all their claims in relation to the acquired lands.

6. Now, the question is, whether the compromise or joint memo signed by counsel on both sides would be valid and binding. It is in this connection, that the decision reported in *Byram Pestonji Gariwala Vs. Union Bank of India and others*, is relevant. In that case, the terms of the compromise were not signed by the parties but only by counsel representing the parties and the question arose whether the defendant could resist the execution on the ground that the decree passed against him in terms of the compromise, was invalid and not binding. On a consideration of the relevant provisions of O. 23, O. 33, C.P.C., as amended by Act 104 of 1976 and the decisions of several High Courts on the subject, the Supreme Court pointed out that a party can always act by his duly authorised representative and the words, "in writing and signed by the parties" introduced in O. 23, R. 3, C.P.C. must be so interpreted as to include a writing signed by a recognised agent of the party or by a pleader, and the compromise could not therefore, be questioned on the ground of want of authority. In this case, when it is not in dispute that the compromise had been signed by counsel on both sides, the principle of the aforesaid decision would be applicable rendering the compromise valid and binding on the parties. The decisions relied on by learned counsel for the respondents in *Dadu Dayal Mahasabha Vs. Sukhdev Arya and Another*, and *Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another*, do not have any application whatever on the facts of this case. In the first decision, a person who was not the Secretary, purported to withdraw a suit instituted on behalf of a Society and this was sought to be rectified by the properly elected secretary, by a petition for recalling the order of withdrawal of the suit and its restoration to file. Though the trial court and also the High Court rejected the application, the Supreme Court pointed out that the withdrawal was on the basis of a prayer purported to have been made on behalf of the plaintiff by a person, who was not the elected Secretary of the Society and therefore not authorised to withdraw the suit and the prayer for withdrawal was not made on behalf of the plaintiff at all, though the order was passed as a result of the court being misled. Such is not the situation in this case and the decision in *Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another*, is also not of any assistance to the respondents, for in that case, the compromise was not signed by one of the contesting parties or his counsel and the question whether a compromise signed only by the counsel on both sides and not by the parties was valid or not could not have arisen for consideration. This is also made clear by the observations

occurring at page 587 of that judgment to the effect that admittedly the petition of compromise had not been signed either by the respondent or his counsel. It also becomes necessary to make a brief reference to the decisions in *Guroreet Gingh v. Chatur Bhuj Geel* (AIR 1981 SC 400) referred to at page 587 in *Banwari Lal Vs. Smt. Chando Devi* (through L.R.) and another, and the observations to the effect that attention to this judgment was not drawn to the learned judges who decided *Byram Pestonji's* case (AIR 1991 S.C. 223) (supra). In that case the question that arose for consideration was whether the first part of O. 23, O. 3, C.P.C is confined in its application to a compromise effected out of court. In holding that a construction is not warranted by the language used in R.3 of O. 23, C.P. Code, the Supreme Court pointed out that the word "satisfies" denotes satisfaction of the claim of the plaintiff wholly or in part, and for this there need not be an agreement in writing signed by the parties, and it is open to the defendant to prove such satisfaction by the production of a receipt or payment through bank or otherwise, which would also be established by tendering of evidence. This decision also cannot have any application on the facts of this case. When the joint memo in this case had been signed by counsel on both sides, the decision of the Supreme Court reported in *Byram Pestonji Gariwala Vs. Union Bank of India and others*, would apply to render it valid and binding on the parties. Earlier, it had been found that the compromise was arrived at after full discussion and deliberation and amounts have also been paid there under to the respondents or their predecessors-in-interest in relation to loss of standing crops and the compensation in respect of loss of tenancy rights and under these circumstances, the compromise cannot be in any manner assailed by the respondents.

7. Even on the footing that the respondents can be permitted to question the compromise dated 28.2.1983, the further question is whether that could be done so by means of an application filed under O. 9, R. 9, C.P. Code, and that too, without reference to any period of limitation. Admittedly, on 28.2.1983 (sic) when O.P. 28 of 1981 was closed on the basis of the joint compromise memo filed by counsel on both sides, there was no question of its dismissal for default. In that view, the application under O. 9, R. 9, C.P. Code, filed by the respondents was not in order, as there was no question of the dismissal of any proceedings for default and its restoration back to file. It is also significant that in this case the respondents have not invoked S.151 C.P. Code. If according to the respondents, the joint memo should not have been recorded by the court and an order passed thereon, then their remedy was different. On a consideration of the relevant provisions of CPC as they stood prior to the amendments introduced by Act 104 of 1976, and after the introduction of the amendments by Act 104 of 1976, it is seen that though under S. 96(3) of Civil Procedure Code, a consent decree is not appealable and a second suit challenging the validity of the compromise is also barred under O. 23, Rule 3-A, yet, a remedy is provided under O. 43, R. (1A) and (2) by way of an appeal against the decree by the party aggrieved, and in such an appeal, it shall be open to the party against whom the

judgment is pronounced after an order is made under the provisions of the CPC or on the basis of either recording or refusing to record a compromise, to challenge the decree passed. This is the view that has been taken in Janab S.K. Kalalullah Sheriff Vs. Janab S.K. and Others, and the remedy of the respondents would, therefore, be not an application under O. 9, R. 9, C.P. Code. In addition, even if the application filed by the respondent be regarded as one filed under O. 9, R. 9 C.P.C., such an application should have been filed within thirty days from 28.2.1983 and this is not in dispute. Earlier, it had been held that the compromise is valid and binding and in that view, it follows that even if the application is construed to be one falling under O. 9, R. 9, C.P. Code, I.A. No. 55 of 1991 should have been filed within thirty days from 28.2.1983 and the application filed on 14.9.1989, was clearly barred by time. For the foregoing reasons, the order of the court below in I.A. No. 55 of 1991 in O.P. No. 28 of 1981 cannot be upheld. The Civil Revision Petition is allowed setting aside the order of the court below and I.A. No. 55 of 1991 in O.P. No. 28 of 1981 will stand dismissed. There will be no order as to costs.