
(2015) 07 OHC CK 0009
In the Orissa High Court
Case No : Civil Rev No. 19 of 2013

Kedar Nath Nayak and Others

APPELLANT

Vs

Sisira Dei and Others

RESPONDENT

Date of Decision : 15-07-2015

Acts Referred:

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

Citation : (2015) 2 ILR Ori 504 : (2015) 2 OLR 401

Hon'ble Judges : B.K. Nayak, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

B.K. Nayak, J—Heard learned counsel for the parties.

Perused the records.

Order dated 03.05.2013 passed by the Learned Additional Civil Judge (Sr. Division) 1st Court Cuttack in C.S. No. 373 of 2009 rejecting the petitioner filed by the petitioners, who were defendant Nos. 2, 3, 4, 12, 20(b) and 20(c), under Order 7 Rule 11 of C.P.C. for rejecting the plaint as being barred by the provisions of Order-23 Rule 3-A, C.P.C., is challenged in this revision.

2. The present opposite party had filed T.S. No. 314 of 1998 for partition without making the plaintiff in the present suit (C.S. No. 373 of 2009) a party to that suit. The said earlier suit was disposed of on compromise between the parties thereto. The present plaintiff having come to know about the said compromise decree has filed the present suit claiming share in the property which was partitioned in the earlier suit, on the ground that she is a class-I heir of the original owner and entitled to 1/9th share in the property and that the decree for partition in the earlier suit on the basis of compromise between the parties thereto is not binding on her.

3. The present petitioner filed a petition under Order 7 Rule 11, C.P.C. for

rejection of plaint on the ground that the present suit was barred by law, i.e. under Rule-3-A of Order 23, C.P.C. The Court below has rejected the said petition stating that the present suit was one for declaration that the earlier compromise decree is fraudulent and not binding on the plaintiff, who was not made a party to that suit which was disposed of on compromise.

4. Learned counsel for the petitioners submits that the bar under Order-23, Rule 3-A, C.P.C. operates against a person who was a party to the suit which was compromised as also to a person who was not a party to the said suit, the object being to avoid multiplicity of litigations and to allow the Court which passed the compromise decree to consider the question of correctness or lawfulness of the compromise decree. He relied upon the decision of the Hon'ble Apex Court in *Banwari Lal Vs. Smt. Chando Devi* (through L.R.) and another, AIR 1993 SC 1139 : AIR 1992 SC 1139 : (1992) 1 JT 420 Supp : (1992) 3 SCALE 448 : (1993) 1 SCC 581 : (1992) 3 SCR 524 Supp and the decision of the Calcutta High Court in the case of *Ashis Kumar Ghosh and Others Vs. Gopal Chandra Ghosh, being dead, his heirs Mita Ghosh and Others*, (2004) 3 CHN 146 .

5. Learned counsel appearing for the contesting opposite party on the other hand submits that Order 23, Rule-3-A, C.P.C. is confined only to the parties to the suit in which the compromise was effected, and it has no application to persons who are not parties to the said suit.

6. Order 23, Rule-3 and 3-A are extracted hereunder:

"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 (in writing and signed by the parties), 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."

"3-A: Bar to suit. - No suit shall tie to set aside a decree on the ground that the compromise on which the decree is based was not lawful."

7. The decision in the case of *Banwari Lal* (supra) has no application because in that case the compromise petition had been filed by the appellant, who

subsequently, filed a petition before the Court stating that he had never compromised the case and had not advised his counsel to file the petition for compromise. Similarly the decision in *Ashish Kumar Ghosh And Ors. (supra)* cannot have application as because there the legal representative of a party filed a separate suit challenging the compromise made by his predecessor-in-interest in the previous suit.

8. The language of Rule 3-A read with Rule 3 of Order 23, C.P.C. makes it clear that it is confined to the parties to the compromise and further only with regard to the question of lawfulness of such compromise. But where a third party/stranger was not a party to the suit in which compromise was effected and who claims independent title or interest to himself is the subject matter and seeks certain reliefs with a declaration that he or she was not bound by the previous compromise decree, cannot be prevented to file a separate suit. The reason being that the stranger plaintiff in the subsequent suit who seeks to avoid the earlier compromise decree and claims relief to himself cannot get such relief by merely filing a petition in the previous suit to set aside the compromise decree passed therein. In order to get a relief from the Civil Court a party has to file a suit as plaintiff or raise a counter claim if he is a defendant. Merely filing a petition in terms of Rule-3-A of Order 23, C.P.C. on the ground that the compromise was not lawful would not ipso facto entitle the petitioner to any relief.

9. This Court has held in the case of *Sushila Panda and Others Vs. Lokanath Panda*(2015) 1 ILR 1119 : (2015) 1 OLR 911 as follows:

"The language of Rule-3 of Order 23 makes it clear that the compromise would be only confined to the parties to the suit and it does not bind persons, who are not parties. The Court is bound to record the compromise if the agreement or compromise is lawful. A suit can also be partially compromised between some of the parties or with relation to some of the subject-matter. The explanation to Rule-3 makes it clear that agreement or compromise which was void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of the rule. Therefore, any agreement or transaction, which is declared to be void or voidable or which is barred under any statute shall also be termed as not lawful. While considering a petition for compromise the Court is also to see as to whether the agreement of compromise or adjustment is lawful or not. Persons, who are not parties to the suit, are not bound by the compromise and if they are affected or aggrieved by any compromise decree passed by the Court, it is open to them to challenge the same in a separate suit, as compromise under Order 23 Rule-3 remains confined only to the parties to the compromise."

10. Essentially in the case in hand the plaintiff seeks declaration that she was not bound by the compromise decree passed in the earlier suit to which she was not a party, with further prayer for partition and allotment of 1/9th share to her in the suit property which was the subject matter of the earlier suit. Order-23, Rule-3A shall not operate as a bar for her to file the present suit.

In such view of the matter there is no infirmity in the impugned order passed by the Court below and therefore the revision is dismissed.