

(2016) 10 RAJ CK 0114

In the Rajasthan High Court

Case No : Civil Special Appeal (Writ) No. 688 of 2016

Lrs. of Shyonand

APPELLANT

Vs

Lrs. of Duniram

RESPONDENT

Date of Decision : 17-10-2016

Acts Referred:

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

Citation : (2017) 1 RLW 334

Hon'ble Judges : Mr. Navin Sinha, CJ. and Mr. Goverdhan Bardhar, J.

Bench : Division Bench

Advocate : Mr. Vijay Jain, Advocate, for the Appellant

Final Decision : Dismissed

Judgement

Mr. Navin Sinha, J.—The present appeal arises from order dated 4.7.2016 allowing the writ petition setting aside the order of the Board of Revenue dated 13.8.2003 in Case No.140/2001.

2. Learned counsel for the Appellants submits that the learned Single Judge ought not to have interfered with the order of the Board of Revenue. The compromise was virtually final for all practical purposes as it had been read out and explained to the parties, it was duly identified by them and the suit was at the stage of final disposal in terms of the compromise, but for the adjournment granted due to the laches of the State.

3. The learned Single Judge held that Order 23, Rule 3A CPC bars a suit to set aside a decree on the ground that the compromise on basis of which decree was passed was not lawful. The proviso to the explanation itself provides that the Court which entertained the compromise petition has to examine whether the compromise was void or voidable. It was further opined that in view of the fact that no final orders had been passed by the Assistant Collector in terms of the compromise and suit was still pending, withdrawal of the compromise by the respondents was justifiable.

4. The fact that a compromise may have been filed before the Assistant Collector in the suit does not tantamount to a final disposal of the suit in terms of the compromise. Admittedly the matter was being adjourned and no final orders had been passed disposing the Suit in terms of the compromise. In that view of the matter, we find no reason to interfere with the order of the learned Single Judge as it is always open to a party to resile from a compromise before any final order is passed on basis of the same.

5. The appeal is dismissed.