
(2001) 08 AP CK 0135

In the Andhra Pradesh High Court

Case No : C.R.P. No"s. 5084, 5170 and 5175 of 1998

Nagarapu Venkata Rama Rao

APPELLANT

Vs

Nagarapu Lakshmipathi Rao and Others

RESPONDENT

Date of Decision : 09-08-2001

Acts Referred:

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

Citation : (2002) 1 ALD 164 Supp : (2002) 3 ALT 96 : (2003) 1 AnWR 704

Hon'ble Judges : P.S. Narayana, J

Bench : Single Bench

Advocate : M.V. Suresh, for the Appellant; T. Veerabhadrayya, for the Respondent

Final Decision : Allowed

Judgement

P.S. Narayana, J.—These three Civil Revision Petitions are filed against the common order made in I.A.Nos.1651/93, 1653/93 and 1655/95 in O.S.Nos.685/91, 687/91 and 99/92, respectively, on the file of Principal Junior Civil Judge, Rajahmundry.

2. The facts in brief are that the parties to the litigation referred supra filed compromise petitions on 21-9-1992 and on 22-9-1992 and all the parties appeared before the Court and their Advocates also appeared and the parties admitted the terms and conditions of the compromise and as per the docket order dated 22-9-1992, the compromise was not recorded on the same day and it was posted for hearing from time to time and the matters were adjourned. While the matters were being adjourned, after some time, the respondents filed I.A.no.1651/93 in O.S.No.685/91, I.A.No.1653/93 I No.s.No.687/91 and I.A.No.1655/95 in O.S.No.99/92, not to record compromise and also I.A.Nos.1652/93 in O.S.No.685/91, I.A.No.1654/93 in O.S.No.684/91 and I.A.No.1656/95 in O.S.No.99/92 to declare that the respondents had played fraud in getting the compromise petitions and the court below by an order dated 16-11-1998 had allowed the applications. But as far as the applications where

the relief was to declare the fraud in getting the compromise petitions which were dismissed, the said orders became final as no separate Revisions had been filed. The evidence of P.W.1 and R.W.1 had been recorded and after detailed discussion the applications not to record compromise were allowed, but however, the court below had observed as follows:-

"It is the burden of the petitioner to show that in what way the respondents are playing fraud in obtaining the signatures of the petitioners in the compromise petitions. It was not explained properly. Even then since the docket order is silent for what purpose the compromise petitions are posted for hearing and it is not explained by the advocate for the respondents who happened to be present at the time of filing the compromise petitions into the court. So, unless the said reason for not recording the compromise was made out, it is not possible for this court to record the compromise. Though, the petitioners failed to prove their contention, since the docket order in the compromise petitions dated 22-9-1992 is silent with regard to what reason the matter is posted for hearing and unless some doubt arises in the mind of the Court for recording the compromise it need not be posted for hearing. Under the said circumstances, it shows that a doubt arises in the mind of the Court at the time of recording the compromise, as such, it could not be recorded."

3. The Revision Petitioners aggrieved by the said common order had preferred the present Civil Revision Petitions.

4. Sri Ramana Murthy, learned counsel representing Sri M.V. Suresh, counsel appearing on behalf of the Revision Petitioners in all these matters made the following submissions. The learned counsel submitted that the Court had recorded that the compromise was signed by the parties and the Court had also recorded a finding that there is no element of fraud and the mere fact that certain other properties were included, may not be relevant since as far as the suit lands are concerned, there is complete settlement and even otherwise, the compromise will be insofar as it relates to the subject matter of the suit and the ground of adjournment and non-recording of compromise by the Court, at the best can be termed as mistake of the Court and a party to the litigation cannot be penalized. The learned counsel also had drawn my attention to the provisions of Order 23 Rule 3 C.P.C. and also had strongly placed reliance on M/s. SILVER SCREEN ENTERPRISES Vs. DEVKI NANDAN NAGPAL¹.

5. Sri Anand, learned counsel representing Sri T. Veerabhadrayya, counsel appearing on behalf of the respondents had contended that the compromise arrived at by the parties must be a free compromise at the volition of the parties and there must be consensus ad idem and further while recording the compromise it must be to the satisfaction of the Court and the court below had not recorded the compromise though on the aspect of element of fraud a negative finding had been recorded. The learned counsel also had submitted that the dismissal of other applications is of no consequence since even in the impugned order there is a finding recorded that fraud had not been established.

Even otherwise, if the compromise is not recorded, at best, the suits will be decided on merits and the non-recording of compromise will not cause any prejudice as far as the rights of the parties to the litigation are concerned.

6. After hearing both the counsel, the question that has to be decided in these Civil Revision Petitions is whether the compromise petitions filed by the parties in the Court are to be recorded or not.

7. In this context, it may be relevant to note Order 23 Rule 3 C.P.C. which reads as follows:-

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 satisfied 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.

8. 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.

9. As can be seen, the opening words of Order 23 Rule 3 are "Where it is proved to the satisfaction of the Court". The explanation to Order 23 Rule 3 specifies that an agreement or compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of this Rule. It is no doubt true that in the present case, an element of fraud had been alleged, but a finding had been recorded by the court below negating the said plea. Since on appreciation of evidence, the court below held that the element of fraud was not established, I am not inclined to disturb such a finding while exercising the revisional powers. Apart from it, the other applications alleging fraud had been dismissed and as against those orders, it is stated that no Revisions had been filed and to that extent the orders became final. Be that as it may, the question now is whether the court below is justified in allowing the applications requesting for the relief not to record compromise in the facts and circumstances of the case. No doubt, oral evidence had been let in and certain allegations had been made how certain properties not the subject matter of the suit also were sought to be introduced. It is pertinent to note that the very

foundation of a compromise is a voluntary agreement between the parties to settle the dispute. It is no doubt true that there are certain provisions under the Indian Contract Act by virtue of which certain contracts may fall under the category of "void" or "voidable" as the case may be. Since the element of fraud had been negated by the court below, Section 17 of the Indian Contract Act defining "fraud" may not be relevant for deciding these Civil Revision Petitions. But, however for the validity of a contract or an agreement, the consensus ad idem is an essential ingredient. It is pertinent to note that whatever the reasons may be, these applications were made even before the court recording the compromise. However, it is not clear from the record why a particular Presiding Officer had not recorded the compromise and why the matter was being adjourned. As I can see from the evidence adduced except the evidence of PW-1 and RW-1, absolutely there is no independent evidence to prove several of the factual aspects involved in the matter. In the case cited (1) supra, the Apex Court in a slightly different context said that the provision of Order 23 Rule 3 C.P.C. is mandatory. In *B.D. MOHAN RAO Vs. COOPERATIVE INDUSTRIES ESTATES (Ltd)* 2, on the aspect of recording of compromise it was observed:-

"The recording of compromise is not purely a formal matter, but a question of substance. Under Order 23, Rule 3 the court has to find out if there is any agreement between the parties for compromise. The terms of settlement must be examined with care and caution and see that the parties understood the terms of the compromise and there is no fraud or misrepresentation. A court making a decree by consent would be performing a judicial and not a ministerial act."

10. Thus, the act of recording of compromise is a judicial act and the Court is expected to apply the mind while recording a compromise. In the present matter, the reasons are not known why the compromise was not recorded on the particular day. It may also be relevant to note that the first proviso to Order 23 Rule 3 C.P.C. specifies 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. As I can see from the material available on record except the observations made by the court below, under what circumstances the matter was adjourned and the compromise had not been recorded, the parties had not adduced the necessary relevant evidence in this regard. However, when the parties are not interested in finalizing the settlement by way of compromise, always the better course will be to proceed with the matter further. But in the present case, it appears that the parties and the Advocates were present and had admitted the terms of compromise and it is not known why the matter had been adjourned and under what circumstances and there is no independent evidence forthcoming in this regard. It is no doubt true that the parties must not suffer because of the mistake of the Court if really such mistake had been committed by the Court in not recording the compromise on a particular day. It

may be that the parties having entered into the compromise on the matter being adjourned and subsequently also for so many reasons may change their minds on the aspect of compromise. Whatever the reasons may be, I am satisfied that the material available on record in the present case is not sufficient to arrive at a conclusion either way. In view of the peculiar facts and circumstances, I feel it just and convenient to remit the matter back to the court below to enable the parties to adduce further evidence on all the aspects, which I had discussed supra.

11. In the light of the foregoing discussion, the impugned orders made in I.A.Nos.1651/93, 1653/93 and 1655/93 in O.S.Nos.685/91, 687/91 and 99/92, respectively, on the file of Principal Junior Civil Judge, Rajahmundry dated 16-11-1998 are hereby set aside and the matters are remitted back to the Principal Junior Civil Judge, Rajahmundry to decide the matters afresh after giving opportunity to both the parties to adduce further evidence on all the aspects stated supra. The Civil Revision Petitions are accordingly allowed to the extent indicated above. However, in view of the relationship between the parties, there shall be no order as to costs.