

(1997) 06 AHC CK 0011

In the Allahabad High Court

Case No : Civil Miscellaneous Writ Petition No. it 599 of 1984 connected with
Civil Miscellaneous Writ Petition No. 30068 of 1991

Prem Lata : Chatersen Gupta and Ors.

APPELLANT

Vs

First Civil Judge, Meerut and Ors.: VII Additional Distt. Judge
Ghaziabad and Anr.

RESPONDENT

Date of Decision : 06-06-1997

Acts Referred:

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

Citation : (1997) 06 AHC CK 0011

Hon'ble Judges : S.R. Singh, J

Final Decision : Disposed Of

Judgement

S.R. Singh, J.—Writ petition No. 1 1599 of 1984 has its genesis in original suit No. 608 of 1982 filed by Snj Chatarsen Gupta and others against Smt JPiemJala, Gupta for specific performance of contract of sale dated 18121981. The suit was decreed on 8111982 on the basis of a compromise dated 2210 1982. Smt. Prem Lata (Since dead represented by L.R. Shivang Manohar) filed an application on 1241982 under Section 151, C. P.C with the prayer that the compromise filed on 8111982 as also the decree in Suit No. 608 of 1982 be set aside. "The application came to be rejected, by learned First Civil Judge, Meerut vide order dated 1081984 which is the subject matter of impugment in writ petition No. 11599 of 1984.

2. Connected with petition No". 30068 of 1991 arises out of Civil Suit No. 322 of 1986 filed by Smt. Prem Lata in the Court of 1st Civil Judge, Meerut for declaration that the decree dated 8111982 passed I by jthelst Civil Judge, Meerut in original suit No. 608 of 1982, Chatursen Gupta v. Prem Lata was null and void being based on fraudulent compromise dated 22101982. Further relief claimed in the suit was that the sale deed dated 2711983 executed by the 1st Civil Judge, Meerut pursuant to the. Compromise decree dated 8111982 and which was registered with thejlegistrar, Delhi in 1T2 1983/142 1983 be also declared as null and void and unenforceable. In the suit an "application registered as 7C2 was

filed for staying the operation of the decree dated 8111982 passed in original suit No. 608 of 1982. The said, application was rejected by the trial court vide order dated 1191986 but allowed by the appellate Court vide order dated 691991. The writ petition is directed against the appellate order dated 691991 setting aside the trial Court's order dated 1191986 and staying the operation of the decree dated 8111982 passed in original suit No. 608 of 1982, Chatursen Gupta v. Smt. Prem Lata until the pendency of suit No. 322 of 1986.

3. The writ petition No. 30068 of 1991 was allowed vide judgment and order dated 741992. Shivang Manohar, the adopted, son of Smt. Prem Lata Gupta, filed a special leave petition before the Supreme Court against the judgment dated 741992. The leave was granted and consequential Civil Appeal No. 5135 of 1992 was taken up along with transfer Petitions (T.P.C.) No. 49497 of 1992. The Supreme Court held that the High Court ought to have disposed of both (he writ petitions aforestated together and accordingly the judgment dated 741992 was set aside by the Hon''ble Supreme Court and the matter remitted back to this Court vide judgment and order dated 27111992 for decision afresh of the aforestated petitions within six months from the date of the judgment. The parties were directed by the Hon''ble Supreme Court to maintain statusquo till the final decision of the writ petitions. The transfer petitions whereby the cases pending jit Ghaziabad were sought to be transferred to Delhi were rejected as not pressed.

4. It is indeed regrettable that the petitions could not be disposed of within six months as per judgment of the Hon''ble Supreme Court. Unfortunately the attention of the Chief Justice towards the direction contained in the order of the Hon''ble Supreme Court came to be invited for the first time vide application dated 241997, whereupon the Hon''ble Chief Justice vide order dated 341997, directed the registry to list both the petitions before this Bench on 941997 with a further direction to invite the attention of the Bench concerned towards the judgment of the Supreme Court. It was pursuant to the said direction that the matter came to be listed on 941997 but it could not be heard on that date because of illnesslip of Sri Vinod Sinha appearing for one of the parties. The arguments were ultimately heard on 23rd and 24th April, 1997.

5. Since writ petition No. 11599 of 1984, Prem Lata Gupta (dead) by L.R. v. fst Civil Judge, Meerut and others is the main petition, it would be appropriate to take it up first. As noticed above, the said writ petition arises out of original suit No. 368 of 1982 filed by Chatarsen Gupta and others against Smt. Prem Lata Gupta for specific performance of contract of sale dated 18121981. The plaint was presented on 19101982 in the Court of 1st Civil Judge, Meerut, who ordered the suit to be registered and put it up after receipt of the transfer order by the District Judge and on 22121982, the compromise (Paper 12A) was filed on which the learned 1st Civil Judge, Meerut passed the following order:

"12A1 compromise filed in the open Court today put up when transfer list is received.

Sd/

Saroj Bala

1st Civil Judge, Meerut."

6. The compromise purports to bear the signature of Prem "Lata in English besides SriTridra Mani Gupta as her Advocate and on the side of the plaintiffs it purports to have been signed by Chatursen Gupta and Advocate Sri Mahendra Pal Singh. Endorsement of presentation and verification as noted on the back of the compromise read as below.

7. The suit was decreed on 8111982 on the basis of compromise dated 22101982 and the decree was prepared on 10111982. The order dated 8111982 as transcribed on the order sheet reads as under:

"ORDER

Suit is decided in terms of the compromise Paper No. 124 which shall form part of the decree.

Sd/

Ist Civil Judge, Meerut."

8. The compromise dated 22101982 which was filed on 8l 11982 and the decree passed in suit No. 608 of 1982 were sought to be set aside by means of the application dated 241983, inter alia, on the grounds that (i) the applicant Smt. Prem Lata who was the defendant in the suit did not receive any notice of the suit nor did she file any compromise nor the vakalatnama in favour of Sri Indramani Gupta; (ii) the compromise as well as Vakalatnamadid not bear her signatures; (iii) the applicant never engaged Sri Indramani Gupta Advocate as her counsel in the suit; (iv) Sri Chatursen Gupta Advocate taking advantage of his position as an advocate got the suit decreed on the basis of compromise by misrepresenting the Court that the compromise had been signed and verified by the applicant; (v)the applicant came to know of the decree obtained by fraud, forgery and misrepresentation only on March 26, 1983 when one Suraj Bhan went on the spot to sell the "Bagh Bahar" to some persons and on being questioned by the applicant told that he had purchased the property through Court and as such had a right to sell the "Bagh Bahar" and it was thereafter that she got the file inspected on 841983 and moved the application; and (vi) the suit property was subjectmatter of another suit filed against the applicant by her husband's nephew Ravi Kumar in the Court of 2nd Additional Civil Judge, Meerut being suit No. 395 of 1982 in which she was being represented by Sri Narendra Pal Singh Advocate.

9. Sri Vinod Sinha appearing for Shivan Manohar, the heir and legal representative of Smt. Prem Lata, vehemently urged that the circumstances in which compromise was filed in the case even before issue of summons coupled with other attending circumstances clearly indicate that prepared for the purpose

of suit. The judgment dated 8111982 based on the compromise, urged the counsel, was obtained by Puffing fraud upon the Court. The counsel urged that if at all the defendant had to file compromise in the suit, she would naturally have had consulted and engaged her counsel Sri Narendra Pal Singh instead of jSri Indra ManiGupja. It was also urged that albeit the compromise was hot signed by all the parties to the, suit, even then it was recorded by the learned First Civil Judge, Meerut in utter disregard of the provisions contained in Order 23 Rule 3 of the Code of Civil Procedure. Sarv Sri P.K. Jain and Sri W.H. Khan, learned Advocates appearing on behalf of Sri Chatursen Gupta and others refuted the submissions made by Sri Vinod Sinha and urged that Smt. Prem Lata admitted not only the execution of the agreement dated 18121981 but also the receipt of consideration in part to the extent of Rs. 2, 41, 000/ put of the total sale consideration of Rs. 4, 62, 000/ which fact, urged the counsel, would go a longway to show that the compromise was genuine and no fraud was played upon the Court.

10.I have given my anxious consideration to the submissions made at the Bar. The suit, it is not disputed, was registered on 19101982 and the compromise filed therein on 22101982 even though the summons had not been issued to the defendant Smt. Prem Lata nor was any notice given to her before institution of the suit. The signature of Smt. Prem Lata on the compromise purports to have been made in English. In her statement on oath Smt. Prem Lata has specifically denied having engaged Sri Indramani Gupta Advocate and having filed any compromise in the suit. The saledeed executed by the Court pursuant to the decree was not presented for registration at Meerut, rather it was got registered at Delhi. These circumstances reasonably indicate that the compromise decree was obtained in a clandestine manner within four days of the institution of suit. Presentation of the saledeed for registration at Delhi coupled with the fact that no notice was given to the defendant under Order 21 Rule 34, C.P.G. is suggestive of surreptitious and secretive manner in which the things were done. The finding given by the 1st Civil Judge in its order dated 1081984 that the applicant had knowledge of the filing of suit prior to 2631983 is perverse and based on no evidence worth the name. Mere fact that there was some discrepancy in her statement made in the application filed in the Court for setting aside the compromise decree and those made in the Court on one hand and her statement made in the application moved before the Bar Council about the fact of getting the knowledge of the suit on the other was no ground to hold that she had the knowledge of the suit in which even summons were not issued and the compromise decree was obtained within four days of the institution of the suit. I am of the view that it was for the plaintiffs, in the circumstances of the case, to prove that the defendant had the knowledge of the suit. \\ The burden was upon the plaintiffs to prove that the defendant had due notice and knowledge of the suit which burden they I failed to discharge. .Finding on this score ? recorded by the 1st Civil Judge, Meerut is illegal and perverse and since it is an integral part of the finding that the compromise and vakalatnama were signed and executed

by Smt. Prem Lata, it would have the effect of vitiating the impugned order refusing to set aside the compromise decree. The opinion of the handwriting expert was only an opinion evidence and the finding that the vakalatnama (Paper No. 13C) in favour of Sri Indramani Gupta Advocate and the compromise (paper No. 12A) filed in the suit were duly executed and signed by Prem Lata, recorded by the Court below sans proper self direction to surreptitious and clandestine manner in which the compromise was filed and decree obtained, vitiates the finding which would otherwise have been binding on the Court being a finding of fact. The view of the Court below that "the execution of the agreement of sale in favour of the opposite parties having been admitted by the applicant, no substantial injustice has been caused to the applicant by the compromise decree" is unsustainable for, the defendant could still successfully contest the suit for specific performance of agreement of sale on pleas open to her in law notwithstanding the facts that the execution of Disagreement of sale and receipt of sale consideration in part were admitted to her.

11. It is true that particulars of fraud were not specifically stated in the application filed for setting aside the compromise decree but that by itself would not lead to the conclusion that the compromise and vakalatnama were duly signed and executed by Smt. Prem Lata.

12. The next question that arises for consideration is whether the compromise decree has been passed in due compliance of the provisions contained in Order 23 Rule 3 C.P.C. The compromise, as noticed above, was admittedly not signed by all the plaintiffs. Only Chatersen Gupta plaintiff No. 1 had signed the compromise and on behalf of other plaintiffs it purports to have been signed by the counsel. Rule 3 of Order XIII of the Code of Civil Procedure, as amended by the Code of Civil Procedure (Amendment) Act, 1976 clearly stipulates a lawful agreement or compromise in writing and signed by the parties. "Signature by counsel "would not meet the requirement of compromise being in writing and signed by the parties" as comprehended by Rule 3 of Order XIII of the Code of Civil Procedure. Such a compromise not signed by the parties ought not to have been recorded by the learned 1st Civil Judge, Meerut except after proper scrutiny as to the compromise being lawful. It may be observed that the "whole object of the amendment by adding the words "in "handwriting and signed by the parties" is to prevent false and frivolous pleas that suit had not been adjusted, wholly or, in part, by any lawful agreement or compromise with a view to protect order lay the proceeding in the suit See Gurpreet Singh v. Chaturbhuj Goel, AIR 1988 SC 400, wherein it has been ruled by the Supreme Court as under:

"Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the

requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with."

13. In *K. Raghuram v. N. Vasundra*, AIR 1983 AP 32, a compromise was signed by both the advocates of the parties concerned without being signed by the parties, the question was whether the decree could be passed on the basis of the said compromise under Order 23 Rule 3 of the Code of Civil Procedure. It was held as under.

"Apart from the conspectus of case law cited above, it is quite manifest from the provisions enacted under Order 23 Rule 3 and in particular the words added to Rule 3 by virtue of an amendment brought in by the Act 104 of 1976 with effect from 12/1/1977 in writing and signed by the parties, any lawful agreement or compromise before it is given effect to by the Court by way of recording the memo must be initiated by the parties and thereafter decree follows."

14. The requirement of the memo of the compromise being "in writing and signed by the parties" was held to be mandatory by the Andhra Pradesh High Court in the above case and I respectfully agree with the view expressed in the said case.

15. In *Jamttabai.v. Shankar Lai*, AIR 1975 SC 2202, the Supreme Court has no doubt maintained the authority of a pleader to act by way of compromising a case in which he is engaged even without specific consent from his client, but it was a case before amendment of Rule 3 of Order 23 of the Code of Civil Procedure was brought in by Act 104 of 1976.

16. It was, however observed in *Jamilabai's* case (*supra*) that the authority of pleader to act by way compromising a case even without specific consent from his client has two overriding conditions; firstly, that the pleader must act in good faith and for the benefit of his client otherwise the power fails; and secondly, that it is prudent to consult his client and take his consent if there is time and opportunity. In the instant case *Sri Indramani Gupta* while purporting to act on behalf of *Smt. Prem Lata* seems to have acted with imprudence in not ensuring the presence of *Smt. Prem Lata* at the time of presentation and verification of the compromise if at all it was signed by her. It must be remembered that a compromise decree is nothing but an agreement between the parties with the command of the court added to it. Therefore, it has to satisfy the test of a valid agreement and the Court while recording compromise is under an obligation to address itself to the basic questions whether the agreement is lawful and whether it has been signed by the parties. It may not be necessary for the Court to say in express terms in the order that it was satisfied that the compromise was lawful one, for it may be presumed to have done so but at the same time it may be observed that recording of compromise under Rule 3 of Order 23 of the Code of Civil Procedure is not a mere matter of form but is one of substance and therefore, the circumstances of a given case, like the one on hand may lead to a legitimate inference that the Court did not satisfy itself before recording the

compromise that it was lawful one. Learned First Civil Judge, Meerut does not appear, in the instant case, appear to have adverted herself to the question whether the compromise was duly arrived at and for this reason also the compromise decree was liable to be set aside and the learned 1st Civil Judge, Meerut has acted illegally in refusing to set it aside.

17. Having regard to the circumstances of the case and the nature of allegations made against Sarv Sri Indramani Gupta and Chatersen Gupta, I am of the view that it would circumvent the course of law and defeat the ends of justice if the impugned order and the compromise decree are allowed to stand.

18. Before parting with the writ petition No. 11599 of 1984, it may be observed that on behalf of plaintiffs Chatersen Gupta and others it was sought to be urged that the writ petition was not maintainable, as the petitioner had an alternative remedy by way of revision under Section 115 C.P.C. but having regard to the fact that the writ petition was admitted in 1984, the Court is not inclined to dismiss the writ petition on the ground of alternative remedy even if it be held that revision against the impugned order could have been filed for it cannot be gainsaid that the alternative remedy is not an absolute bar. It would not be fair and just to dismiss the writ petition on the ground of alternative remedy at the stage of final hearing and relegate the petitioner to avail of the alternative remedy after about 13 years of the impugned order. In the result the writ petition No. 11599 of 1984 deserves to be allowed.

19. So far as writ petition No. 30068 of 1991 is concerned, it has already been noticed that it arises out of suit No. 322 of 1986 instituted by Smt. Prem Lata against Sri Chatersen Gupta and others on the following amongst other reliefs:

"A. That through declaratory decree of the Court the decree dated 8/11/1982 passed by the 1st Civil Judge Meerut on O.S. No. 608 of 1982 Chatersen Gupta and others v. Smt. Prem Lata be declared null and void being based on fraudulent compromise dated 22/10/1982.

B. That through a declaratory decree of the Court the sale deed dated 27/11/1983 executed by the then 1st Civil Judge, Meerut in the execution case No. 42 of 1982 Chatersen Gupta and others v. Smt. Prem Lata registered with the Registrar, Delhi on 11/2/1983/14/2/1983 and registered as case No. 199 in additional book No. 1, Volume No. 388 on page No. 157 to 172 on 14th day of February 1983 be declared to be null and void and unenforceable."

20. Obviously the suit in so far as it relates to relief "A" would become redundant in view of what I have said above while discussing the connected writ petition. The suit in relation to relief "B" would certainly survive for the allegations if proved would vitiate the very Agreement of sale itself. The allegations in the plaint stated briefly are that the plaintiff (Smt. Prem Lata) and her husband late Prem Manohar adopted a girl named "Saguna" while Sri Prem Manohar was posted at Bareilly; Prem Manohar died on 15/5/1978, thereafter the plaintiff succeeded to the entire property of her husband which is situated in village

Riasana, Tehsil and district Meerut which consists of grove, tubewell, residential building, farm house situate on a land measuring about .17 bigha 9 biswa 4 biswansi; after the death "of Prem Manohar his relatives tried to grab the ancestral property inherited by the plaintiff as widow; her husband"s elder brother Sri Moti Manohar took the plaintiff into confidence and persuaded her to enter into an agreement dated 191978 with him to sell the old farm house in his favour with a view to avoid complication in ceiling proceeding; and after execution of the said agreement, Sri Moti Manohar and other relatives started pressing the plaintiff to transfer other properties in their name and on her refusal to do so started harassing her in all possible and indignified manner and tried to do her away with the help of their associates, and after the birth of a child to her adopted daughter "Saguna", the relatives of the plaintiff"s husband became desperate and started frivolous litigation regarding the plaintiffs property and the plaintiff in order to save her property consulted the defendant No. 1 Sri Chatersen Gupta a leading advocate and the then District Government Counsel (Civil) and requested him to help her in the litigation started against her by the relatives of her husband; Sri Chatersen Gupta assured to extend all possible help to the plaintiff in the litigation and started handling the cases on her behalf but being D.G.C. (Civil), he did not file any vakalatnama in the case and instead he got engaged his own closed friend on behalf of the plaintiff to conduct the cases and in course of time by misusing his position and taking undue advantage of the helplessness and mental condition of the plaintiff, got a fictitious agreement of sale prepared on 18121981 and without the consent or knowledge of the plaintiff mentioned all her immovable property in the alleged agreement dated 18121981. It is further alleged that Sri Chatersen Gupta who was in a position to dominate the will of the plaintiff obtained the agreement of sale dated 18121.981 by playing deception, misrepresentation and fraud and by taking undue advantage of his professional position as legal advisor of the plaintiff. These allegations, if proved at the trial of the suit, would certainly entitled the plaintiff to relief "B" claimed in the suit. It is not for this Court to express any opinion on the merits of the allegations made in the plaint for it would be within the domain of the trial Court to go over the matter after the evidence is recorded and take one view or the other and decide the suit giving or refusing the relief claimed as it may deem fit and proper in the circumstances of the case. Suffice it to say that since the compromise decree is being set aside by means of this judgment, the impugned order passed by the trial Court staying operation of the compromise decree becomes redundant and the writ petition is, therefore, liable to be dismissed as having become infructuous.

22. In the result the writ petition No. 11599 of 1984 succeeds and is allowed in part. The impugned order dated 1284 and the dated 8111992 are quashed liberty reserved to the plaintiff to pursue their suit No. 608. The writ petition No. 31)068 of 1991 fails and is dismissed as having become in fructuous. In the circumstances of the case, however, the parties are directed to maintain statusquo as on today until the termination of the two suits referred to herein

above which shall be consolidated, heard and disposed of by a common judgment by the trial Court expeditiously, if possible, within a period of six months from the date of production of a certified copy of this judgment. The parties shall bear their own costs.

Petition No. 11599/84 allowed in part; Petition No. 30068/91 dismissed.