
(1974) 11 OHC CK 0008
In the Orissa High Court
Case No : A.H.O. No. 25 of 1973

Rama Krushna Swain

APPELLANT

Vs

Smt. Fulamani Kamila and Another

RESPONDENT

Date of Decision : 18-11-1974

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, 100

Citation : AIR 1975 Ori 166

Hon'ble Judges : R.N. Misra, J;P.K. Mohanti, J

Bench : Division Bench

Advocate : R. Mohanty, for the Appellant; P.C. Mohapatra, D. Mohanty and G. Sahu, for the Respondent

Judgement

R.N. Misra, J.—Baina and Banamali were two brothers. Baina died in the year 1950 leaving behind his widow Fulamani (Plaintiff). Banamali started oppressing the plaintiff with a view to grabbing the properties. Plaintiff, therefore, sought protection of defendant No. 1. Defendant No. 1 taking advantage of the fact that plaintiff was a pardanasin and illiterate lady had an eye on her properties. He got a sale deed executed by plaintiff, but she having come to know of the evil designs of defendant No. 1 objected before the Sub-Registrar. After enquiry, an order was duly made under the Registration Act for registration of the document. The plaintiff, therefore, instituted Title Suit No. 16 of 1966 for a declaration that defendant No. 1 acquired no title under the sale deed dated 15-2-1966. She impleaded an alienee from her as second defendant.

The suit was posted for trial to 28-2-68. On 24-2-1968, plaintiff and defendant No. 1 filed a petition of compromise. Plaintiff applied for expunging the name of the second defendant from the record and parties asked for advancing the date of the trial to 24-2-1968 so that the suit could be disposed of in terms of the compromise. On 24-2-1968, the Court made the following order :--

"Plaintiff and defendant No. 1, file a compromise petition and two more petitions, one for putting up the record today for recording the compromise and another to

expunge defendant No. 2 from record since the plaintiff seeks no relief against defendant No. 2. Learned Advocate for defendant No. 2 appears and prays to postpone the recording of compromise till the date fixed since he wants to cite some rulings against such compromise between plaintiff and defendant No. 1 Heard Advocates of both parties. I find no valid ground to postpone the recording of compromise but the final order on the suit will be passed later on. The compromise is read over and explained to plaintiff and defendant No. 1 and they admit the same to be correct.

Put up on the date fixed." On 28-2-1968, defendant No. 2 filed a petition for being transposed as plaintiff. On 9-3-1968, to which date the matter was posted inviting objections against defendant No. 2's application, plaintiff filed an application saying that the compromise placed before the court was not in accordance with the terms agreed upon.

2. The learned Subordinate Judge entered into an enquiry purporting to be under Order 23, Rule 3 of the CPC and after hearing parties rejected the applications of the plaintiff and defendant No. 2 on a finding that the compromise dated February 24, 1968, was lawful and should, therefore, be recorded.

3. Against this decision of the learned Subordinate Judge, Miscellaneous appeal No. 158 of 1969 was carried to this court under Order 43, Rule 1 (m) of the CPC and came to be disposed of by our learned brother B.K. Ray, J. on 26th October, 1973. The learned Single Judge came to hold that the plaintiff had not signed the compromise deed after understanding its items and, therefore, there was no agreement as set up by defendant No. 1 for adjustment of the suit. The stand taken by defendant No. 1 that the question of undue influence and fraud pleaded by plaintiff must be left to be disposed of by an independent suit was negatived. The order disposing of the suit in terms of the compromise was thus vacated. Defendant No. 1 challenges the appellate decision of the learned Single Judge.

4. Plaintiff's stand in her objection to the compromise was that it was the outcome of fraud practised on her. Defendant No. 1 had taken the stand both before the learned Trial Judge as also the learned Single Judge of this court that an enquiry on the ground of fraud did not come within the ambit of Order 23, Rule 3 of the CPC and, therefore, she should have been left to an independent suit. Order 23, Rule 3 of the Code is to the following effect:--

"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, 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 suit."

Where one party alleges that the suit has been adjusted by a lawful agreement and applies to the court to record the agreement and to pass a decree in accordance therewith, but the other party denies the agreement, a situation

arises where the party claiming adjustment has to prove to the satisfaction of the court that the suit has been adjusted. Two aspects would be relevant to such an enquiry, namely, (i) whether there has been an adjustment and (ii) whether such adjustment is by a lawful agreement or compromise. Satisfaction of the court can be reached only when the party asking the court to record the compromise satisfies it on both these counts. On both these aspects the findings of the learned Single Judge are against defendant No. 1. Mr. Ranjit Mohanty on behalf of defendant No. 1 challenges both the findings. It is not disputed at the Bar that while disposing of a Letters Patent Appeal, the court has not the fetters of Section 110 of the Code of Civil Procedure.

5. The petition of compromise between plaintiff and defendant No. 1 was presented in court on 24-2-1968. Plaintiff's stand is that she happens to be a pardanashin and illiterate lady, the contents of the document had not been read over to her and she was made to sign the document without understanding its contents. Even if there be truth in such stand, plaintiff must have come to know the terms of the compromise when the same were read over and explained to her in court. The last part of order No. 43 dated 24-2-1968 in the suit is as follows :--

".....The compromise is read over and explained to plaintiff and defendant No. 1 and they admit the same to be correct."

The order recorded by the learned Subordinate Judge goes a long way against plaintiff's stand. Heavy burden lay on her to show that the aforesaid order was erroneous, that is, as a fact, the compromise was not read over and explained to the parties and they had not admitted the same to be correct. Court's proceedings are sacrosanct and when the Presiding officer of a Court records an order particularly as to what happened in the proceeding before him, due sanctity has to be attached thereto. Thus apart from the burden lying on a party who wants to negative the presumptions arising under Sec. 114 of the Evidence Act, heavier burden lies when an order of the Court recording the proceedings is challenged on the ground that it does not reflect the true position. Plaintiff has rested content by examining herself alone to discharge this heavy burden. She made no statement about it in her evidence-in-chief. In cross-examination by defendant No. 1, the following has been brought out from her:--

"It is not a fact that the Court read over and explained the contents of the compromise. We all admitted its terms I have come to Court on 24-2-1968 along with defendant No. 1. It is not a fact that the Presiding officer of the Court read out the terms of the compromise to us in our presence and we admitted the correctness of the same."

Plaintiff did file an objection before the learned Subordinate Judge against the compromise on 9-3-1968. Therein no whisper was made that an erroneous order had been recorded by the learned Subordinate Judge on 24-2-1968. Ordinarily in a situation like this, a party is required to approach the very court for

rectification of an error of this type. Nothing was, however, done in the trial court to have alteration of the order dated 24-2-1968. The learned Single Judge has drawn adverse inference against defendant No. 1 for non-examination of the Peskar. We do not think, defendant No. 1 had any burden to discharge. It was open to him to remain content by placing reliance on the order of the court. The order of the court by itself was sufficient protection so far as he was concerned and he had no necessity to lead evidence in support of the order for its reinforcement. We would accordingly hold that even if plaintiff had not been explained the contents of the compromise at the time she signed the same, the terms of the compromise were read over and explained to her in Court and after due understanding thereof, she admitted the terms to be correct.

6. Next comes the question as to whether the agreement was lawful. There seems to be some dispute about the meaning of the term "lawful." We shall now proceed to examine this aspect. In the case of Qadri Jahan Begam Vs. Fazal Ahmad , the Court indicated that the word "lawful" refers to agreements which in their very terms or nature are voidable at the option of one of the parties thereto, because they have been brought about by undue influence, coercion or fraud.

In the case of Mirza Husain Yar Beg Vs. Radha Kishan and Others, , the same view was reiterated and it was further indicated that a party alleging fraud cannot be allowed to avoid the compromise admittedly executed by it in proceedings started by an application under Order 23, Rule 3 of the Code. Rule 3 is mandatory in its terms and provides that if it is proved to the satisfaction of the Court that a suit has been adjusted by a lawful compromise, the court has no option but to order such compromise to be recorded and pass a decree in accordance thereof.

In the case of Mst. Shujarat and Another Vs. Mohammad Raza, , the Court pointed out that the rule required a Court, when it was pointed out to it that the suit has in the whole or in part been adjusted by a lawful agreement, to record that agreement, and to pass a decree accordingly. The court, before it will proceed to record the agreement, or pass a decree in accordance therewith, will require to be satisfied that the agreement pleaded by any party has in fact been reached. Whether the agreement so reached between the parties is voidable or can otherwise be avoided by, any party thereto on any other ground, is a different matter from the fact whether the agreement itself has been reached between them. Similar view was taken in a later decision in the case of Ram Asrey Vs. Rameshwar Prasad and Others, . In the case of Syed Liakat Hussain v. Syed Khasim Hussain ILR (1961) A P 302, the Andhra Pradesh High Court has also taken the same view.

In the case of The Western Electric Company, Limited Vs. Kailas Chand, , Kama, J. (as the learned Judge then was) held that the term "lawful agreement" excludes not only unlawful agreements the object or consideration for which is unlawful as defined in the Contract Act, but all agreements which on the face of

them are void and, therefore, will not be enforced by the court. For this purpose- no inquiry is necessary because the terms of the agreement themselves will show the defect. The Court, therefore, has to consider whether on the face of the agreement it is lawful or not. The word "lawful" cannot be construed as wide enough to include an inquiry whether the agreement is voidable or not.

In the case of Harbans Singh Chauhan Vs. Bawa Singh Chauhan and Others, , the view indicated in the earlier decisions of the Allahabad High Court and the aforesaid Bombay decision was approved and the learned Judge stated :--

"Under the provisions of Rule 3 of Order 23 the Court must order a compromise to be recorded where it is proved to its satisfaction that a suit had been adjusted wholly or in part by any "lawful agreement or compromise". Fraud, undue influence or coercion make a contract voidable and not void. The question arises whether in an application under Order 23, Rule 3 the Court must consider the contract as not a lawful agreement or compromise because one party seeks to avoid it on the ground of fraud, undue influence or coercion,"

After referring to the decisions indicated above, the learned Judge came to hold that the enquiry on the ground of fraud was beyond the scope of Rule 3.

A Bench of the Hyderabad High Court in the case of A. Mohiuddin v. Abdurrahman AIR 1953 P & H 62 held that the words of Order 23, Rule 3 of the CPC signify that where a suit has been adjusted by lawful agreement, it is obligatory on the court to order such agreement or compromise to be recorded. Where, therefore, one of the parties applies for setting aside a compromise petition filed by both the parties on the ground that his signature on the petition was obtained by undue influence, his remedy is to file a regular suit for avoiding the compromise which is voidable at his option. He cannot move the court to set it aside in the same proceedings.

Dealing with the question in issue, a Bench of the Kerala High Court in the case of Krishnan Nair Vs. Rayarappan Nair and Others, stated that the word "lawful" in Order 23, Rule 3 refers to agreements which in their very terms or nature are not "unlawful" and may, therefore, include agreements which are voidable at the option of one of the parties thereto, because they have been brought about by undue influence, coercion or fraud. A contract which is brought about either by undue influence, misrepresentation or fraud is u/s 19(a) of the Contract Act, merely voidable and not absolutely illegal or unlawful.

A Bench of the Madras High Court in the case of Kuppuswami Reddi and Another Vs. Pavanambal, , dealing with the matter stated :

".....It has been held that under Order 23, Rule 3, Civil P. C., a compromise cannot be attacked by allegations that it is a voidable compromise brought about by fraud, undue influence and duress. Provided the compromise is lawful, that is, not contrary to law, the court is obliged to record it. The mere fact that it may be voidable is no reason for a court refusing to record it....."

In the case of *Putto Lal Vs. His Highness Maharaja Dhiraj Sumersinghji of Kishengarh*, , a Division Bench examined the legal position at length and came to hold :--

"The meaning of the word "lawful" in the phrase "any lawful agreement or compromise occurring in Order 23, Rule 3 is that the agreement or compromise must not be unlawful by the nature of its terms or on the face of it. In other words, it would be unlawful if the consideration or the object of the agreement is forbidden by law, or is of such a nature that if permitted It would defeat the provision of any law, or is fraudulent, or involves or implies injury to the person or property of another, or the Court regards it as immoral or opposed to public policy as provided by Section 23 of the Contract Act. Again, the agreement would be unlawful, if it is void on the very face of it at law such as where it may be by way of wager or in restraint of the marriage of any person or for any other similar reason. Thus it would certainly be the duty of the Court where it is asked to record a compromise under this provision to see that the compromise is or is not lawful in this sense; and if it is not so lawful it must refuse to record it. But where the contention is not that the object or the consideration of the agreement was unlawful in the sense indicated above, or that it was void on the face of it, but that it was brought about by undue influence or fraud or coercion, then such an agreement, provided of course it is proved to have been made, should not be condemned as unlawful within the meaning of this provision for it is only voidable and not void. And being voidable it could be avoided and displaced only after proper investigation and adjudication in a proceeding appropriate for the purpose, that is a suit; and until that is done, such agreements should be accepted to be lawful for the limited purposes of Order 23, Rule 3. The reason is that any full-fledged investigation in this regard in what after all is said and done in an interlocutory proceeding would be highly inconvenient and the result thereof could by no means be properly accepted as conclusive for all purposes. Therefore, the courts have heavily leaned towards the view that a party disputing the compromise on any such ground should be left free to seek its remedy in this behalf by means of a separate suit with the result that the compromise should not be refused to be recorded on any such grounds as last-mentioned; and the court should nevertheless record the compromise and pass a decree in accordance with it provided of course the other requirements of the rule are satisfied."

7. Our learned brother has placed reliance on a Single Bench decision of the Bombay High Court taking a contrary view in the case of *Misrilal Jalamchand and Another Vs. Sobhachand Jalamchand and Others*, . This Bombay decision has not been accepted as laying down good law by two other High Courts, namely, Kerala High Court and Rajasthan High Court in the two decisions referred to above. That apart the learned Single Judge deciding the case reported in *Misrilal Jalamchand and Another Vs. Sobhachand Jalamchand and Others*, was bound by the earlier Single Bench decision of the same court in the case of *The Western Electric Company, Limited Vs. Kailas Chand*, and could not have taken a different view.

Some of these decisions which we have cited above were noticed by our learned brother, but he is of the view that they do not lay down the correct law. Our learned brother also relied upon a decision of the Privy Council in the case of AIR 1930 158 (Privy Council) As we find, the Judicial Committee nowhere took a view different from what has been laid down as the law by various High Courts in India. The main question for consideration was as to whether an Advocate had the authority to compromise which bound his client. Therefore, the question of the meaning of the word "lawful" occurring in Rule 3 of Order 23 of the Code was not under consideration. On the other hand, the learned Law Lords indicated that the words of Rule 3 do not in terms appear to confer a discretion in the Court in the matter of recording a compromise and passing a decree according to it and once it is established that the suit has been adjusted wholly or in part by a lawful compromise, it is the duty of the Court to record the same.

8. We have not been shown any decision of this Court though we called upon counsel for parties to cite such precedents, if any. There is, in our opinion, consensus in the judicial opinion on the interpretation of Rule 3 of Order 23 of the Code, namely, the enquiry envisaged under the Rule admits of two questions being examined, that is :--

(1) (a) whether there has been an adjustment or compromise;

(b) whether such adjustment or compromise is lawful and

(2) challenge on ground of undue influence, fraud, or misrepresentation make an agreement voidable and not void and when a compromise is challenged on such ground, the matter is not within the ambit of Rule 3 and must be left to be decided by an independent suit.

9. We would accordingly hold that the conclusion reached by our learned brother on the question of the scope of the enquiry is contrary to law even if the facts found by him with regard to the nature of the compromise were correct, namely that the plaintiff had been defrauded; it was a matter which could be only gone into in an independent suit and not in the enquiry under Order 23, Rule 3 of the Code of Civil Procedure. In that view of the matter, the appeal has to succeed. We would set aside the decision of the learned Single Judge and restore that of the learned Subordinate Judge. We direct parties to bear their own costs of this appeal,

10. We must make it clear that if an independent suit on the ground of fraud, undue influence or misrepresentation is filed, our decision will not operate as res judicata as we have reached no decision on such score.

Mohanti, J.

11. I agree.