

(2009) 05 DEL CK 0476
In the Delhi High Court
Case No : CS (OS) 904 of 2009

Smt. Rajwanti and Another	Vs	APPELLANT
Sh. Kishan Chand Shehrawat and Others		RESPONDENT

Date of Decision : 20-05-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 23 Rule 3A, 144, 47

Citation : (2010) 7 RCR(Civil) 554

Hon'ble Judges : Rajiv Sahai Endlaw, J

Bench : Single Bench

Advocate : Sudhir Nandrajog and Manish Jain, for Kings and Alliance, for the Appellant; Ex-parte, for the Respondent

Final Decision : Dismissed

Judgement

Rajiv Sahai Endlaw, J.—The suit has been filed for (i) declaration of the consent decree and order dated 7th December, 2004 decreeing the suit in terms thereof, of the court of the Additional District Judge, Delhi as null and void, and for (ii) declaring the agreement to sell and other agreements/rectifications/power of attorney, all with respect to the property, subject matter of the consent decree and in pursuance thereto, as null and void, and for (iii) possession of the property subject matter of the compromise decree, and for (iv) permanent injunction etc. against the defendants.

2. The suit came up first on 18th May, 2009 when doubt was expressed by this Court as to the maintainability of the suit owing to the provisions of Section 47, Order 23 Rule 3A of the CPC as well as on the aspect of limitation. On the request of the senior Counsel for the plaintiff the matter was posted for today.

3. Order 23 Rule 3A of the CPC provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is passed was not lawful.

4. The case of the plaintiffs shorn of details is that the plaintiff No. 1 was allotted

plot No. 85, Block D, admeasuring 350 sq. meters at Rangpuri by the DDA in lieu of her acquired lands; that the plaintiff No. 1 and her daughter plaintiff No. 2 owned other lands also which were subject matter of acquisition proceedings; that the defendant No. 1 is the son of the brother of the husband of the plaintiff No. 1; that the plaintiff No. 1 trusted the defendant No. 1 blindly; that the defendant No. 1 took the responsibility of pursuing the land acquisition compensation case and allotment of alternate plots to the plaintiff No. 1; that in the month of March, 2003 the defendant No. 1 took the plaintiff No. 1 to the residence of his daughter and son-in-law impleaded as defendants No. 2 & 3 respectively; that the defendant No. 3 is a judicial officer in Delhi; on that date thumb impression of the plaintiff No. 1 was obtained on a number of blank as well as written papers; that the plaintiff No. 2 was also brought along with her identity card and the both the plaintiffs were thereafter taken to the Sub Registrar office at Kapashera; that both the plaintiffs were made to put their thumb impressions on certain papers at Kapashera and their photographs were also taken; that the plaintiffs were misled by the defendants No. 1 to 3 into believing that the whole exercise was being done for receiving compensation claim for the acquired lands of the plaintiffs; the defendants No. 1 to 3 also deposited Rs. 2 lacs in the account of the plaintiff No. 1; that the plaintiff No. 1 subsequently learnt that she had been duped by the defendants No. 1 to 3 by getting a GPA and Will executed fraudulently in favour of the defendant No. 2 to usurp the plot aforesaid allotted to the plaintiff No. 1 at Rangpuri; when the plaintiff No. 1 confronted the defendant No. 1 he stated that he had purchased the said plot of the plaintiff No. 1 for a consideration of Rs. 20 lacs and out of which Rs. 2 lacs had been deposited in the account of the plaintiff No. 1; that the plaintiffs took immediate steps for revocation of the Will and the General Power of Attorney and also served a notice of revocation dated 29th September, 2004 and also made a complaint/representation dated 24th September, 2004 to the Lt. Governor of Delhi and Commissioner of Police, Delhi; that the defendants No. 1 to 3 on coming to know of revocation threatened the plaintiff No. 1 and in pursuance to the said threats, on the blank papers got signed from the plaintiff No. 1 fabricated an agreement to sell dated 28th May, 2003 of the aforesaid plot of land by the plaintiff No. 1 in favour of the defendant No. 4 who is stated to be an accomplice of the defendants No. 1 to 3; that the said agreement to sell is also for a consideration of Rs. 20 lacs out of which Rs. 5 lacs were purported to be given in cash as earnest money; that besides the said agreement, another agreement to sell dated 31st March, 2003 in favour of the defendant No. 1 was similarly fabricated; the defendant No. 5 is stated to be an attesting witness to the forged documents and another accomplice of the defendants No. 1 to 3; that the defendant No. 4 filed a false complaint dated 2nd September, 2004 against the plaintiff No. 1; that the plaintiff No. 1 and her relatives were also implicated in another false case before the Court of Metropolitan Magistrate, New Delhi, with the connivance of the defendant No. 3 being a judicial officer; that the plaintiff No. 1 made a complaint dated 5th October, 2004 of the aforesaid acts to the police authorities; yet another FIR was filed against the plaintiff No. 1 by the

defendant No. 1; that the plaintiffs filed a Criminal Writ Petition No. 1302/2004 before this Court inter alia for quashing all the FIRs against the plaintiff No. 1 and for registering FIR against the defendants; that during the pendency of the said writ petition the defendants No. 1 to 3 approached the plaintiff No. 1 for settlement with the promise to withdraw all the FIRs if the plaintiffs No. 1 & 2 give a statement in the Court with regard to the plot at Rangpuri in favour of the defendants in a suit filed by the defendants; that the plaintiffs under coercion signed several papers as asked by the defendants and also went to Tis Hazari Court and made statement to the satisfaction of the defendants in the suit filed by the defendants qua the plaintiffs. It is the case of the plaintiffs that on the statement being made by them that suit was decreed pursuant to the alleged compromise recorded in the suit. The plaintiffs however claim that they could not come to know the Court in which their statements were recorded.

5. It is further the case of the plaintiffs that the defendant No. 1 forcibly handed over Rs. 30 lacs towards the aforesaid plot of land to the plaintiff No. 1 and which the plaintiff No. 1 had no choice but to retain under the threat and intimidation from the defendants. The plaintiffs have further pleaded that the defendants No. 1 to 4 made a statement before this Court in the writ petition aforesaid of the matter having been settled and accordingly the said writ petition was disposed of by order dated 2nd May, 2005 whereby both the FIRs against the plaintiff No. 1 were also quashed.

6. The plaintiffs have further pleaded that thereafter in the month of October, 2005 the defendants No. 1 to 3 again forcibly took the plaintiff No. 1 to the office of the Sub-Registrar Kapashera and got some papers signed and registered in respect of the aforesaid plot of land.

7. Pursuant to the allotment of the plot aforesaid, the possession of the plot is stated to have been delivered in October, 2005 and it is pleaded that the same was illegally taken over by the defendants No. 1 to 3 on the pretext of the forged and fabricated documents and consent decree aforesaid. The defendant No. 1 to 3 are also stated to have commenced raising constructions thereon.

8. The relative of the plaintiffs who is also stated to have also been named in the FIR at the instance of the defendants against the plaintiff No. 1 and which relative is also stated to have remained in judicial custody without any fault is stated to have filed a complaint/representation before the Chief Justice of this Court against the defendants No. 1 to 3 for their illegal actions.

9. The plaintiffs claim to have learnt that this Court took cognizance of the aforesaid complaint and initiated an enquiry against the defendant No. 3 being a judicial officer. The plaintiff No. 1 is stated to have been summoned to appear in the said enquiry.

10. The plaintiffs plead that knowledge of the aforesaid enquiry against the defendant No. 3 by this Court gave hope to the plaintiffs of getting justice and led the plaintiffs to institute the present suit. The plaintiffs claim to have

thereafter traced the records of the suit wherein the consent of the plaintiff No. 1 was obtained by force, fraud, coercion and undue influence and upon learning of the particulars of the said suit instituted this suit. The plaintiffs also claim to have learnt of a sale deed dated 20th October, 2005, Rectification Deed and Special Power of Attorney got registered by the defendants No. 1 to 3 forcibly from the plaintiff No. 1.

11. The certified copy of the plaint in the suit in which the consent decree sought to be set aside was passed shows that the same was by the defendant No. 1 herein against the plaintiffs No. 1 & 2 and the defendant No. 4 herein and certain other persons who are not parties to this suit. The claim of the defendant No. 1 herein as plaintiff in that suit for declaration and permanent injunction was that the plaintiff No. 1 herein had agreed to sell the alternate plot to be then still allotted to her for a consideration of Rs. 10 lacs and had executed an irrevocable General Power of Attorney and a Will with respect thereto in favour of the defendant No. 2 herein. The plaintiff No. 1 was also alleged to have executed an agreement to sell dated 31st March, 2003 in favour of the defendant No. 1 for Rs. 10 lacs and out of which Rs. 2 lacs had been received by the plaintiff No. 1 herein with the balance Rs. 8 lacs being payable at the time of delivery of possession; it was further a term of the said agreement that upon failure of the plaintiff No. 1 herein to execute the transfer document, the defendant No. 2 herein as the attorney of the plaintiff No. 1 will be entitled to execute the sale deed in favour of the defendant No. 1 and the balance sale consideration of Rs. 8 lacs will be paid to the plaintiff No. 2 herein. It was further pleaded therein that the plaintiff No. 1 herein became dishonest and started demanding additional consideration of Rs. 10 lacs from the defendant No. 1 herein; that ultimately the sale consideration was agreed to be enhanced to Rs. 15 lacs and the defendant No. 1 herein paid another sum of Rs. 3 lacs in cash to the plaintiff No. 1 and the balance Rs. 10 lacs was adjusted by execution of a General Power of Attorney by defendant No. 1 with respect to another plot (Parnala Plot) in favour of the plaintiff No. 2 herein. It was further pleaded that a fresh agreement to sell dated 22nd July, 2003 was executed by the plaintiff No. 1 in favour of the defendant No. 1 and the original sale deed of Parnala plot was delivered by the defendant No. 1 to the plaintiff No. 2. The defendant No. 1 pleaded to have, in pursuance to the said agreement also executed and got registered a GPA, agreement to sell and Will in favour of the plaintiff No. 2 with respect to the Parnala plot of land in adjustment of the balance sale consideration of Rs. 10 lacs.

12. A registered agreement to sell dated 25th August, 2004 also executed by the defendant No. 2 as the attorney of the plaintiff No. 1 in favour of the defendant No. 1 with respect to the Rangpuri plot.

13. The defendant No. 1 in his suit aforesaid further pleaded that the plaintiffs herein had however thereafter turned dishonest and lodged complaints and got issued notices leading the defendant No. 1 to institute that suit for declaration that the agreement to sell dated 31st March, 2003 and 22nd July, 2003 executed

by the plaintiff No. 1 in person and registered agreement to sell dated 25th August, 2004 executed by the defendant No. 2 herein as attorney of the plaintiff No. 1 in favour of the defendant No. 1 with respect to Rangpuri plot were legal, valid and for consideration and the subsequent agreement dated 25th August, 2003 executed by the plaintiff No. 1 herein in favour of the defendant No. 4 herein was null and void and for permanent injunction restraining the plaintiffs from entering into any agreement with respect to the aforesaid plot and from transferring the possession thereof to any other person.

14. The application under Order 23 Rule 3 of the CPC filed by the plaintiff and the defendants in that suit inter alia records:

(i) That the plaintiff No. 1 admitted the claim of the defendant No. 1 with respect to the plot aforesaid and admitted execution of the agreements to sell and other documents with respect thereto in favour of the defendants No. 1 to 2 herein.

(ii) The plaintiffs further admitted having received Rs. 5 lacs by way of cheque and cash and the remaining consideration of Rs. 10 lacs with respect to the Rangpuri plot by adjustment in the price of Parnala plot transferred by the defendant No. 1 to the plaintiffs.

(iii) The deed of revocation of the General Power of Attorney and Will with respect to Rangpuri Plot in favour of the defendant No. 2 was admitted to be bad and the said documents were agreed to be irrevocable.

(iv) plaintiff No. 1 admitted to execution and registration of a fresh Will with respect to the Rangpuri plot in favour of the defendant No. 2.

(v) The plaintiff No. 1 undertook to deliver vacant possession of the Rangpuri plot as and when the possession thereof was delivered by the DDA and also authorized defendant No. 1 to approach the DDA directly for taking possession of the said plot.

(vi) That the subsequent agreements admitted to have been executed by the plaintiff No. 1 in favour of the other defendants in the suit with respect to the said plot were set aside.

(vii) The parties also agreed to withdrawal of the Criminal Writ Petition and other appeals/complaints.

(viii) The plaintiffs herein undertook not to enter into any agreement in future with respect to the aforesaid plot.

15. The court of the Additional District Judge where the suit aforesaid was pending after recording the statement of the parties allowed the compromise application and decreed the suit in terms thereof.

16. I have also perused the documents with respect to the plot executed subsequent to the aforesaid compromise and relief of setting aside whereof is also claimed in this suit. They are in pursuance to the compromise decree

aforesaid and not in pursuance to any independent right created thereunder even though reference to the compromise decree is not made therein. Suffice it is to state that the said documents have no independent legs and if the compromise decree aforesaid is to be set aside, the said documents would ipso facto stand annulled/cancelled.

17. The senior Counsel for the plaintiff to meet the bar of Order 23 Rule 3A of the CPC referred to:

(A) Dadu Dayal Mahasabha Vs. Sukhdev Arya and Another, . In this case the suit had been dismissed as withdrawn on the application of the plaintiff. Subsequently an application was filed for recalling of the said order. It was contended that the person who had represented to be the secretary of the plaintiff/appellant in that case and withdrawn the suit was in fact not the secretary and was thus not competent to withdraw the suit. In that context, the Apex Court drew a distinction between the fraud practised on a party and the fraud practised on the court and in the facts of that case having found a fraud to have been practised on the court, held that such fraudulent act can be recalled by the court at any time. It was held that if a consent decree is challenged on the ground that the party did not give the consent, then the court has duty to set aside the decree if finds that the court was induced into passing the decree on a fraudulent representation; however if the case of the party challenging the consent decree is that he was in fact a party to the compromise but his consent had been procured by fraud, the court passing the consent decree has no inherent power to investigate the matter and the only remedy is to institute a suit. The provision of Order 23 Rule 3 or Rule 3A introduced by the 1976 amendment of CPC were not for discussion in that judgment and in fact the withdrawal of suit and application for restoration were both of prior to the coming into force of 1976 amendment.

(B) URI Civil Contractor AB Vs. Pampa Mukherjee, . In this case the Court passing the compromise decree had on an application for setting aside the same, framed issues. Revision was preferred to this court against that order. This Court found that on averments in the application, no case of fraud practised on Court was made out and thus the Court passing the compromise decree had no power to entertain an application for setting aside the compromise decree.

The senior Counsel for the plaintiff has contended that where a fraud has been practised on the court, the bar of Rule 3A will not come in the way and a independent suit would be maintainable to set aside a compromise decree on the said ground. However, I am unable to find the said proposition flowing from this judgment. On the contrary, this judgment expressly notices Rule 3A of Order 23 and reiterates that the only remedy for seeking setting aside of the compromise judgment is by applying to the court which had passed the judgment. In fact, this judgment purports to narrow down the scope of inquiry in the said application also only to the cases where a case of fraud practised on the court is made out and the application to the same court also being not maintainable

where the case is of a fraud practised on the other party.

(C) Ram Kishan and Others Vs. Smt. Sardari Devi and Others where a single judge of the Punjab High Court following a Division Bench of that court held an independent suit to be maintainable. It must however be noticed that the single judge while holding so expressed reservations about the correctness of the law laid down by the Division Bench of Punjab High Court, in view of Order 23 Rule 3A CPC.

With respect, I am unable to follow the dicta in view of express provision of law

(D) Pushpa Devi Bhagat (D) th. LR. Smt. Sadhna Rai Vs. Rajinder Singh and Others, only for the purposes of reference thereto being made in the next judgment cited below. This judgment otherwise is concerned with nature of consent decree and appealability thereof and not with Order 23 Rule 3A.

(E) Shri Gopal Mohan Vadhera Vs. Shri Jagdish Rai Vadhera and Others, . In this case an application was filed for setting aside of a consent decree passed by this Court. A Single Judge of this Court noticed the observations of the Apex Court in Dadu Dayal Mahasabha (supra) that where there was no fraud on the court, the remedy of party challenging the consent decree was to institute a suit; and also the observations of Apex Court in Pushpa Devi Bhagat (supra) that only remedy of challenge to the consent decree was by filing an application to the court passing the compromise decree, under the proviso to Order 23; it was observed by the Court that there was an apparent conflict between the two decisions of the Apex Court.

I may however, with respect, observe that there is no conflict. As held by me above, Dadu Dayal Mahasabha was not a case of consent decree, further that related to a case of prior to induction of Rule 3A in Order 23 by the 1976 amendment. Then, an independent suit was of course possible. However, after the said amendment it is barred, as held in Pushpa Devi Bhagat.

18. Thus, none of the judgments cited by senior Counsel for the plaintiff are found to be laying down that an independent suit lies to set aside a compromise decree. Rule 3A of Order 23 is unequivocal in this regard and does not permit any distinction to be made between suits where challenge to compromise decree is on the plea of fraud having been played on the Court as distinct from cases where plea is of fraud having been played by one party on the other. The law is, no independent suit lies and the only remedy is by way of an application before Court passing the consent decree.

19. I find that a Single Judge of this court in Uttam Chand Bhatia v. Amir Chand Bhatia Suit No. 284/1984 decided on 6th December, 1984 and which was followed in Joginder Singh Bedi Vs. Bawa Darbara Singh and Others, has unequivocally laid down that bar of Rule 3A is a complete bar and no suit lies for setting aside compromise decree on any ground. I also find that the Apex court in Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, has also held

that the only remedy of a party which is the party to a compromise decree and challenging the same, is to apply to the same court and no independent suit lies.

20. The senior Counsel for the plaintiff has contended that the suit qua the other reliefs i.e. of declaration qua the documents executed subsequent to the compromise decree and for the relief of possession of the property which was the subject matter of the agreement with respect to which the compromise decree was passed is maintainable. However, I do not find any merit in the said contention also. The plaintiff is not entitled to the said reliefs without the first relief. Moreover, if the plaintiff is found entitled to the first relief, the provisions of Section 144 of the CPC would come into play in as much as in that situation the compromise decree would be set aside and under the said provision, upon the same happening, the court on an application is empowered to undo all that had been done in pursuance to the said compromise decree. Rule 3A of Order 23 cannot be permitted to be defeated by pleading that the suit is for setting aside/challenging acts done in pursuance to compromise decree and not for setting aside the compromise decree.

21. I have enquired whether the defendants are claiming any title in the documents executed consequent to the compromise decree or in the property possession whereof the defendants are pleaded to have taken directly from the DDA, independently of the compromise decree. Nothing is pointed out. There is no pleading to that effect nor does it flow from any of the documents. Of course, the documents do not mention the compromise decree but the rights thereunder are found to be flowing from the compromise decree itself. Moreover, the case of the plaintiff for declaration of the said documents as bad and for possession is only on the basis of invalidity of the compromise decree. Thus I do not find the other reliefs also to be outside the ambit of Rule 3A of the CPC. The factum of defendant No. 2 & 3 herein being not parties to suit in which compromise decree was passed also does not come in the way. They are not claiming any right in the plot. The Power of Attorney in favour of defendant No. 2 is stated to be executed in consideration of agreement to sell in favour of defendant No. 1

22. The senior Counsel for the plaintiff has on the aspect of Section 47 of the CPC referred to Addison Paints and Chemicals Ltd. Vs. Santram Parmanand, inter-alia holding that Section 47 is not intended to be used for the purposes of investigating matters relating to the validity of the decree itself, when on the face of it there is nothing illegal about the decree and that the court executing the decree is not competent to embark on an inquiry into facts which if established will tend to show that the court passing the decree had no jurisdiction to do so. However since the suit has been found to be not maintainable under Rule 3A of Order 23, it is not deemed necessary to deal with the aspects of Section 47 of the CPC and of the limitation.

23. The suit is thus not found to be maintainable. The plaintiff shall of course have the liberty to take appropriate proceedings in law if any available to them for setting aside of the compromise decree. The suit is dismissed.

24. The senior Counsel for the plaintiff has requested for refund of the Court fee of about Rs. 1,00,000/- paid on the plaint. Reliance is placed on Aya Singh Tirlok Singh Vs. Munshi Ram Amta Ram, . It is argued that the courts have inherent powers to refund the court fees. The Division Bench in this case was concerned with excess court fee paid under a mistake; the Counsel was found to be not regularly practicing at the bar of this Court; though merely for the reason of array of authorities, the inherent power of Court to refund, was upheld but it was further laid down that the power is not to be exercised in every case but dependent on facts of each case. The senior Counsel for the plaintiff has urged that the plaintiff No. 1 is a widow and has already suffered and inherent power be exercised in her favour. I am unable to at this stage hold the equities in favour of plaintiffs. The plaintiffs have admittedly received sale consideration as noticed above. The pleas of plaintiffs of circumstances in which it was received have not been adjudicated. The transaction impugned is stale. The cause of action for the suit was pleaded as the enquiry initiated by this court on its administrative side against defendant No. 3. The plaintiff being possessed of monies received against the transaction impugned can spend some money out of it in court fees. No case of mistake is made out. The suit has been filed by seasoned advocates. The plaintiff was represented in this Court by senior Counsel of this Court. Even after the Court had expressed reservation about maintainability, full hearing has been availed. A growing tendency has been observed. The litigants feel their court fee is justified only when court's time is taken over years. Whenever the courts endeavour to dispose of lis early, demands for refund of court fees are made. This cannot be permitted. Rates of court fees were not prescribed on presumption of proceedings pending for years. The legislature has not provided for refund of court fees on rejection of plaint. In this present case, had this suit not been dismissed at threshold, if the view expressed by me above is correct, it would have been dismissed later; by that time other remedies may/may not have been available to plaintiff. In that sense early dismissal has done more good than harm to the plaintiff. I am in the circumstances not inclined to order immediate refund of court fee to the plaintiff. However, in the event of plaintiff making an application before the Court passing the decree and further in the event of plaintiff succeeding in establishing a case of fraud as pleaded, the plaintiff shall be entitled to refund of court fees. In the event of plaintiff filing certified copy of judgment setting aside the compromise decree impugned in this suit, the necessary certificate of refund of court fees be issued.