

SUPREME COURT OF INDIA

Horil

Vs.

Keshav

C.A.No.776 of 2012

(Aftab Alam and Ranjana Prakash Desai JJ.)

20.01.2012

JUDGMENT

AFTAB ALAM, J.

1. Leave granted.

2. This appeal is directed against the judgment and order dated November 11, 2003 passed by the Allahabad High Court by which it allowed the writ petition filed by respondent nos. 1 and 2, set aside the order passed by the District Judge, affirming the order of the Munsif, and held that the suit filed by the appellant was not maintainable being barred in terms of Order XXIII Rule 3-A of the Code of Civil Procedure.

3. The appellant filed a suit (No. 43 of 1980) in the court of Munsif, Karwi (Banda) seeking a declaration that the decree passed by the Assistant Collector, Class-I, in a suit under sections 176, 178 and 182 of the U.P. Zamindari Abolition Land Reforms Act was fraudulent, inoperative and not binding upon him. According to the appellant, the defendants had instituted the suit before the Assistant Collector in which his father namely Chunkai was made as one of the opposite party. In that suit, a compromise petition was filed on October 7, 1971 with the fake signature of Chunkai and on that basis a compromise decree finally came to be passed on April 25, 1979. It is the case of the appellant that no notice of the suit was ever served upon his father Chunkai. He never appeared in the proceeding and was not even aware of it. He did not sign any compromise petition and his alleged signature on the compromise petition dated October 7, 1971 was faked. He had died much earlier and was not even alive in 1979 when the decree was passed. The appellant,

accordingly, sought a declaration that the decree dated April 25, 1979 passed by the Assistant Collector, Class-I, Karwi, may be cancelled or it may be declared as void ab initio, inoperative and not binding upon him.

4. The defendants (respondents 1 and 2 before this Court) filed a written statement in which they questioned the maintainability of the suit as well. It was contended on their behalf that as the suit related to agricultural lands it was beyond the jurisdiction and competence of the civil court and it could only be tried by the revenue authorities. The Munsif by his order dated October 1, 1985 upheld the defendants' objection and held that the suit was not maintainable before a civil court.

Against the order passed by the Munsif, the appellant preferred an appeal (M.C.A.No.21 of 1985) which was allowed by the judgment and order dated April 14, 1987 passed by the Additional District Judge, Karwi, (Banda). The Additional District Judge rightly pointed out that the suit filed by the appellant was based on the allegation that the decree passed by the Assistant Collector was based on a fraudulent compromise petition and it did not involve any adjudication of rights or interests in the agricultural lands. Hence, the suit was maintainable before a civil court. It, accordingly, set aside the order passed by the Munsif and directed him to proceed with the suit in accordance with law.

5. When the matter came before the Munsif on remand, the defendants once again objected to the maintainability of the suit, this time raising the contention that it was barred under the provisions of Order XXIII Rule 3-A of the Code of Civil Procedure. The Munsif by his order dated January 7, 1988 dismissed the objection and found and held that the suit was maintainable. The defendants- respondents took the matter in revision (Civil Revision No. Nil of 1988) which was dismissed by the District Judge, Banda, by his order dated February 17, 1988. Against the orders passed by the Munsif and the District Judge, the defendants preferred a writ petition before the High Court and the High Court, as noted above, allowed the writ petition holding that the suit was not maintainable. It is a brief order in which the High Court referred to the provisions of Order XXIII Rule 3-A, and relying upon a decision of the Allahabad High Court allowed the writ petition.

6. It is true that a compromise forming the basis of the decree can only be questioned before the same court that recorded the compromise and a fresh suit for setting aside a compromise decree is expressly barred under Order XXIII Rule 3-A. It is equally true the expression not lawful used in Rule 3-A of Order XXIII also

covers a decree based on a fraudulent compromise hence, a challenge to a compromise decree on the ground that it was obtained by fraudulent means would also fall under the provisions of Rule 3-A of Order XXIII.

7. In *Banwari Lal Vs. Chando Devi* (1993) 1 SCC 581, this Court examined the provisions of Order XXIII Rule 3-A in some detail and in light of the amendments introduced in the Code and in paragraph 7 of the judgment came to hold as follows: 7. By adding the proviso along with an explanation the purpose and the object of the amending Act appears to be to compel the party challenging the compromise to question the same before the court which had recorded the compromise in question. That court was enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner. The explanation made it clear that an agreement or a compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of the said rule. Having introduced the proviso along with the explanation in Rule 3 in order to avoid multiplicity of suit and prolonged litigation, a specific bar was prescribed by Rule 3-A in respect of institution of a separate suit for setting aside a decree on basis of a compromise saying:

3-A. Bar to suit.- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.

It further held in paragraphs 13 and 14 as follows:-

13. When the amending Act introduced a proviso along with an explanation to Rule 3 of Order 23 saying 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, the Court before which a petition of compromise is filed and which has recorded such compromise, has to decide the question whether an adjustment or satisfaction had been arrived at on basis of any lawful agreement. To make the enquiry in respect of validity of the agreement or the compromise more comprehensive, the explanation to the proviso says that an agreement or compromise which is void or voidable under the Indian Contract Act... shall not be deemed to be lawful within the meaning of the said Rule. In view of the proviso read with the explanation, a Court which had entertained the petition of compromise has to examine whether the compromise was void or voidable under the Indian Contract Act. Even Rule 1(m) of Order 43 has been deleted under which an appeal was maintainable against an order recording a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of

Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1-A of Order 43 of the Code.

14.The court before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that court has to decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3 and as such not lawful. The learned Subordinate Judge was perfectly justified in entertaining the application filed on behalf of the appellant and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the court could have recorded such agreement or compromise on February 27, 1991. Having come to the conclusion on the material produced that the compromise was not lawful within the meaning of Rule 3, there was no option left except to recall that order.

8. In light of the decision in Banwari Lal it would prima facie appear that the High Court was right in holding that the appellant's suit was hit by the provisions of Order XXIII Rule 3-A and was not maintainable. But the significant distinguishing feature in this case is that the compromise decree which is alleged to be fraudulent and which is sought to be declared as nullity was passed not by a civil court but by a revenue court in a suit under section 176 of the U.P. Zamindari Abolition Land Reforms Act, 1950 (hereinafter the Act).

9. Section 331 of the Act bars the jurisdiction of the civil court and provides that a suit under the Act can be entertained by no court other than that the courts specified in Schedule II to the Act. A reference to Schedule II would show that the court of original jurisdiction for a suit under section 176 of the Act for division of a holding of a Bhumidhar is Assistant Collector, First Class and the courts of First Appeal and Second Appeal are Commissioner and the Board of revenue respectively. Section 341 of the Act, of course, provides that unless otherwise expressly provided by or under the Act, the provisions of the Indian Court Fee Act, 1870, the Code Of Civil Procedure, 1908 and the Limitation Act, 1963, including section 5 thereof would apply to the proceedings under the Act.

10. Though the provisions of the Code Of Civil Procedure have been made applicable to the proceedings under the Act but that would not make the authorities

specified under Schedule II to the Act as 'court' under the Code and those authorities shall continue to be courts of limited and restricted jurisdiction.

11. We are of the view that Revenue courts are neither equipped nor competent to effectively adjudicate on allegations of fraud that has overtones of criminality and the courts really skilled and experienced to try such issues are the courts constituted under the Code of Civil Procedure.

12. It is also well settled that under section 9 of the Civil Procedure Code, the civil court has inherent jurisdiction to try all types of civil disputes unless its jurisdiction is barred expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority. We find nothing in Order XXIII Rule 3-A to bar the institution of a suit before the civil court even in regard to decrees or orders passed in suits and/or proceedings under different statutes before a court, tribunal or authority of limited and restricted jurisdiction.

13. In our view in the facts of the case the provision of Order XXIII shall not act as a bar against the suit filed by the appellant. We, accordingly set aside the order of the High Court. As a consequence, the suit will be restored before the Munsif who is directed to accord it priority having regard to the fact that for the last 31 years it is stuck up on the issue of maintainability. The trial court should try to dispose of the suit without any delay, and in any case, not later than one year from the date of receipt/production of a copy of this order.

14. In the result, the appeal is allowed but with no order as to costs.