

KARNATAKA HIGH COURT

Tara Bai

Vs.

V.S. Krishnaswamy Rao

Civil Revn. Petn. No. 1777 of 1982

(P.A. Kulkarni, J.)

04.06.1985

ORDER

P.A. Kulkarni, J.

1. This is a revision by defendant 2 against the order dated 19-3-1982 passed by the I Additional Civil Judge, Mysore, in F.D.P. No. 18/80 (O.S. No. 192/77) dismissing I. A. Nos. 3 and 5.
2. This is an unfortunate litigation between the brother and the sister over a piece of property left by their father.
3. One Srinivasarao died leaving behind him his widow defendant 1 and two daughters defendant 2 Tara Bai and defendant 3 Shanta Bai and a son Krishnaswamy Rao plaintiff. The plaintiff filed a suit - O.S. No. 192/77 - for partition and possession of his 5/8th share in the suit property. Later on a joint Memo signed by all the parties and their advocates was filed in the suit on 21-9-1979 stating that the plaintiff Krishnaswamy Rao was entitled to 5/8th share and each of defendants 1 to 3 was entitled to 1/8th share. Accordingly, a preliminary decree in terms of the joint Memo was ordered to be drawn up on 21-9-1979. Thereafter an application for final decree in F.D.P. No. 18/80 was filed by the plaintiff on 16-8-1980. The present revision petitioner-defendant 2 appeared in the decree final proceedings and consented on 13-2-1981 to the appointment of a Commissioner. The Court fixed 18-2-1981 for inspection of the property by the Commissioner. The Commissioner thereafter submitted his report. The Court fixed 6-4-1981 for the objections of the parties, if any, to the Commissioner's report. On that day i.e. 6-4-1981, defendant 2 Tara Bai filed the present Memo/application under Section 151 Civil Procedure Code alleging that the said joint Memo in terms of which a preliminary decree was passed, was vitiated by fraud and that her signature was obtained to that joint Memo by practicing fraud or misrepresentation.
4. The plaintiff resisted the petition.
5. The Court below dismissed the petition IA. No. 3 filed under Section 151 Civil Procedure

Code. The trial Court also dismissed I. A. No. 5 for amendment.

6. The trial Court dismissed I. A. No. 3 mainly on the ground that a suit to question a compromise decree was now barred by Order 23 Rule 3A Civil Procedure Code and therefore the only remedy open to the party was to file a review application under Order 47 Civil Procedure Code Order 23 Rule 3A Civil Procedure Code reads as:-

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

The explanation to Order 23 Rule 3 Civil Procedure Code reads as :-

"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."

An agreement which is vitiated by fraud or misrepresentation is a voidable one. So if any agreement is vitiated by fraud or misrepresentation, such an agreement or compromise shall not be lawful within the meaning of Order 23 Rule 3A C.P.C.

7. It thus becomes crystal clear that now a suit to question the compromise decree on the ground that it is unlawful is barred. If a suit is barred, can it be said that the party has no right to question the compromise decree either on the ground of fraud or misrepresentation. Order 47 Rule 1 Civil Procedure Code reads as :-

"Application for review of judgment :-

(1) Any person considering himself aggrieved -

(a) by a decree or order from which an appeal is allowed, but from which no appeal has been preferred,

(b) by a decree or order from which no appeal is allowed, or

(c) by a decision on a reference from a Court of Small Causes, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or on account of some mistake or error apparent on the face of the record, or for any other sufficient reason, desires to obtain a review of the decree passed or order made against him, may apply for a review of judgment to the Court which passed the decree or made the order."

Therefore in order to invoke the review jurisdiction the following circumstances must exist:-

1) there should be discovery of new and important matter or evidence which was not within his knowledge or could not be produced by him at the time when the decree was passed;

- 2) some mistake or error apparent on the face of the record;
- 3) for any other sufficient reason;

The fraud now alleged by the revision petitioner will not come under any one of these three categories. Therefore, the review jurisdiction on the ground of fraud or mis-representation so far as the compromise is concerned, cannot be invoked under Order 47 Civil Procedure Code at all. Therefore the Court below, in my opinion, committed an error in holding that the only remedy available to the revision petitioner was to file an application for review.

8. Then the next question is what is the remedy to a party complaining of fraud or misrepresentation being perpetrated on her. Section 151 Civil Procedure Code reads as: -

"Nothing in this Code shall be deemed to limit or otherwise affect the inherent power of the Court to make such orders as may be necessary for the ends of justice or to prevent abuse of the process of the Court."

The learned author Shri Mulla has enumerated a list of various cases in which the Court would be justified in invoking the inherent jurisdiction under Section 151 Civil Procedure Code. The learned author Shri Mulla has stated in his Civil Procedure Code 14th Edn. Vol. I, page 792 at Sl. No. 29 as :-

"to set aside an order recording compromise obtained by fraud."

The learned author Shri Mulla has referred to *Bindeswari Prasad v. Debendra Prasad*¹, It has been laid down in *Bindeswari Prasad v. Debendra Prasad*², as :-

"Where fraud is practised on the Court in obtaining an order recording the compromise, the Court is perfectly justified in setting aside the same under its inherent powers."

The learned author Shri Mulla has further stated on page 793 at Sl. No. 49 as :-

"to vacate an order obtained by fraud, as where an order is made recording the adjustment of a decree (Order 21 Rule 2), and the adjustment has been brought about by fraud practiced by one party upon another."

The learned author Shri Mulla has referred to *Paranjpe v. Kanade*³ Thus it becomes crystal clear that the Court is not helpless even in cases where the compromise has been recorded by the Court when fraud has been perpetrated by either of the parties. Thus, it appears to me, that Section 151 Civil Procedure Code is the only Section that is applicable to such cases. Otherwise, the Court will have to shut its eyes against fraud or misrepresentation which might have vitiated the compromise.

9. The learned counsel Shri Babu urged that when a serious question of fraud or misrepresentation vitiating the compromise had been alleged by the revision petitioner, the Court ought to have given an opportunity to the revision petitioner to lead evidence. It is not for the Court to ask the parties whether they have got any evidence to lead or not. It is for the parties to tell to the Court that they have got evidence to lead and the Court should record the same. When the revision petitioner himself has not chosen to lead evidence on this point, it would be too much to say that the Court did not give an opportunity to the revision petitioner to lead evidence. Therefore the said argument

¹ AIR 1958 Pat 618

³(1882) ILR 6 Bom 148

² AIR 1958 Pat 618

advanced by the learned counsel Sri Babu is rejected.

10. The suit O.S. No. 192/77 for partition and separate possession was filed in 1977. A joint Memo signed by the present revision petitioner and all other parties and their respective advocates was presented in the Court on 21-9-1979. It was recorded by the Court. A preliminary decree in terms of the compromise was prepared on 21-9-1979. An application in final decree F.D.P. No. 18/80 was presented in Court on 16-9-1980 i.e. nearly one year after the compromise preliminary decree was drawn. On 13-2-1981 the present revision petitioner-defendant-2 who had appeared in the decree final proceedings consented to the appointment of a Commissioner for partition and possession. The Court fixed 18-2-1981 for inspection of the property by the Commissioner. The Commissioner inspected the property in the presence of the parties and submitted his report. The Court fixed 6-4-1981 for the objections of the parties if they had any to the Commissioner's report. It is on that day the present petition I. A. No. 3 has been filed. Thus it goes to show that the present revision petitioner had not complained about the fraud or misrepresentation till 6-4-1981. It is only after the Commissioner's report went against her, she concocted the theory or story of fraud and misrepresentation. Therefore the narration of these events would only go to show that fraud or misrepresentation has been concocted by the plaintiff in order to stick on to the property for as long a time as possible. Therefore the said story of fraud and misrepresentation is bereft of any force. I have no hesitation in my mind to hold that it is absolutely *mala fide* plea. A simple assertion that her signature was taken to the compromise petition without enabling her to know the contents is rather extremely hard to believe. When the Court recorded the compromise, it would have read out the petition and it would have told the parties that it bears their signatures and the signatures of their lawyers. It is not the case of the revision petitioner that she is deaf or dumb and that she did not hear when the Court read out the same to her. Therefore, under these circumstances, the Court below rightly held that the plea of fraud and misrepresentation is not at all supported by any circumstances, much less, by any evidence on record. Therefore, the lower Court was justified in dismissing I. A. No. 3.

11. Further it can be seen with advantage that before the suit was instituted, the plaintiff had

given a notice to his sister defendant 2 informing that it was the ancestral property left by their father and that he had got 5/8th share and that the present revision petitioner had got 1/8th share and the other sister had got 1/8th share and the mother had got 1/8th share. In the reply to that notice, the revision petitioner admitted that it is the ancestral property which was in the hands of her father. She had also admitted in that reply that the plaintiff had got 5/8th share. Even in the written statement, she had admitted that the plaintiff has got 5/8th share and that it was the ancestral property belonging to the joint family of their father and other members of the family. Now, therefore, it is too much to say that the property in question was the separate property of Srinivasa Rao. Therefore, the amendment application I. A. No. 5 filed by the revision petitioner to amend the written statement alleging that the property in question was the separate property of her father, is rather extremely belated and runs contrary to the various admissions made by her. Therefore, the trial Court rightly rejected I. A. No. 5 also.

12. Thus, in the result, there is no substance in the revision. It is accordingly dismissed. No costs in this revision.

Revision dismissed.