

RAJASTHAN HIGH COURT

GopalLal

Vs.

BabuLal

D.B. Civil Special Appeal No. 80/1995
(Anil Dev Singh, C.J. and K.K. Acharya, J.)

09.03.2004

JUDGMENT

Anil Dev Singh, C.J.

1. This appeal is directed against the judgment and order of the learned Single Judge dated 6th December, 1995 in S.B. Civil Regular First Appeal No. 17 of 1989. The facts lie in a narrow compass.

2. The appellant GopalLal and respondents BabuLal, Moda Ram and KishanLal are sons of Tola Ram. The first respondent BabuLal instituted a partition suit, being Civil Original Suit No. 28 of 1980, in the Court of District Judge, Bikaner against the appellant and the second the third respondents. A compromise was entered into by and between the parties and consequently, a compromise decree was drawn by the trial Court on 31st October, 1981. It is significant to note that several years later, the appellant filed a civil suit, being Civil Original Suit No. 49 of 1987 for declaring the compromise decree to be vitiated by fraud. The respondents herein in the written statement *inter alia* pleaded that the suit was barred in view of the provisions of Order 23 Rule 3A, of the Civil Procedure Code. The trial Court struck number of issues including issue No. 4 relating to the maintainability of the suit in view of Order 23 Rule 3A, C.P.C., 1908. The issue was decided in favor of the respondents and the suit of the appellant was dismissed.

3. Aggrieved by the dismissal of the suit by the trial Court the appellant filed S.B. Civil Regular First Appeal No. 17 of 1989. The learned Single Judge affirming the order of the trial court, dismissed the appeal by his judgment and order dated December 6, 1995 on the ground that a party to a compromise decree can question the same only by filing a petition under proviso to Rule 3 of Order 23, C.P.C. before the

trial Court decreeing the suit or by means of an appeal under Section 96(1), C.P.C.; but he cannot file a suit to set aside a compromise decree on the a ground that the compromise was not lawful. Not satisfied, the appellant has filed the instant special appeal against the order of the learned Single Judge dated December 6, 1995.

4. We have heard learned counsel for the parties.

5. The learned counsel for the appellant submitted that the compromise was arrived by practicing fraud on the appellant. According to him, the trial Court as well as the learned Single Judge were not right in holding that no suit could be filed to set aside the compromise decree. He contended that where a compromise decree is obtained by exercising fraud on a party the same can be challenged by means of a civil suit.

6. On the other hand, the learned Counsel appearing for the respondents submitted that Rule 3A of Order 23, C.P.C. bars a suit to set aside a compromise decree.

7. We have considered the submission of the learned counsel for the parties.

8. Rule 3A was added to Order 23, C.P.C. by Act No. 104 of 1976. The amendment was introduced with a view to prevent challenge to compromise decrees by means of civil suits as the courts were burdened with suits challenging compromise decrees on one ground or the other. This also resulted in burdening the judicial system with appeals. Besides it led to delay in resolution of the disputes.

9. At this stage we may notice Rule 3A of Order 23, C.P.C. which reads as follows:-

"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."

The words "not lawful" are of a wide amplitude and include all sorts of illegalities.

10. A compromise between the parties is nothing but an agreement. According to Section 23 of the Contract Act 1872, the consideration or object of an agreement is lawful unless it 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 to another, or the Court regards it as immoral, or opposed to public policy.

In other words, the object or condition of a contract is unlawful or not lawful in the following contingencies:

1. It is forbidden by law;

2. It defeats the provision of any law;
3. It is fraudulent;
4. It involves or implies injury to the person or property of another;
5. It is immoral or opposed to public policy in the view of the Court.

12. Section 23 also provides that every agreement of which the consideration or object is unlawful is void. Thus an agreement which is obtained by exercising fraud on a party to the agreement will be void being an unlawful or not a lawful agreement. As a corollary, where a compromise, which is nothing but an agreement, is secured by exercising fraud on a party it will not only be unlawful or not lawful compromise but would also be void. Order 23 Rule 3A, C.P.C., as already pointed out, postulates that no suit shall lie to set aside a decree grounded on an unlawful or not lawful compromise. Therefore, where a decree is being questioned in a suit on the ground that the compromise on which it was based was secured by fraud the bar of Rule 3A would operate since a compromise secured by fraud is not lawful and would be covered by the provisions of Order 23 Rule 3A, C.P.C.

13. A reference also need to be made to Order 23 Rule 3 Civil Procedure Code. It deals with a situation where the parties have adjusted a suit wholly or in part by any lawful agreement or compromise, the same shall be recorded and the Court shall pass a decree thereon in accordance therewith. As per proviso to Order 23 Rule 3, C.P.C. any question relating to adjustment or satisfaction must be arrived at by the Court passing the compromise decree. The explanation to Rule 3 clarifies that an agreement or a compromise which is void or voidable under the Contract Act, 1872 shall not be deemed to be lawful within the meaning of this Rule. Therefore, it is clear from the explanation that void or voidable agreement or compromise under the Contract Act is not to be considered lawful. As already pointed out, under Section 23 of the Contract Act an agreement secured by exercising fraud is unlawful and void.

14. Thus a suit challenging the compromise decree is completely barred under Order 23 Rule 3A, read with explanation to Order 23 Rule 3, Civil Procedure Code. The law, however, provides two modes to challenge a compromise decree to a party to the compromise. The first remedy is under proviso to Rule 3 of Order 23 of the Civil Procedure Code. According to the proviso, a party can question the compromise before the Court which has recorded the same and has passed the decree in accordance therewith. The second remedy lies in filing an appeal under Section 96(1) of the Civil

Procedure Code against the compromise decree. This view finds support from the decision of the Supreme Court in *BanwariLal v. Smt. Chando Devi*,¹The Supreme Court, in this regard, observed as follows :

"When the amending Act introduces a proviso along with an explanation to Rule 3 of Order 23 saying that where it is alleged by one party and denied by 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 1A of Order 43 of the Code."

15. In *Ruby Sales & Services (P) Ltd. & Another v. State of Maharashtra & Others*,², it was held that merely because an agreement is in a shape of a consent decree it does not change the contents of a document. It remains an agreement and is subject to all rights and liabilities which any agreement may suffer. A compromise decree does not stand on a higher footing than the agreement which precedes it. A consent decree is merely creature of the agreement on which it is founded.

16. In *Bachan Singh v. Kartar Singh & Others*,³, it was held that where a party is not satisfied with the compromise decree, either he can file an appeal or move an application for setting aside of the decree alleged to have been obtained by fraud. In this regard, the Supreme Court observed as follows:

"In case the present appellant was not satisfied with the decree, either he could have filed an appeal or moved an application for setting aside the decree alleged to have been obtained by fraud."

17. In the circumstances, therefore, the learned Single Judge was entirely justified in taking the view that the suit filed by the appellant questioning the compromise decree was not competent and was barred by Order 23 Rule 3A, C.P.C.

18. Accordingly, the special appeal fails and is hereby dismissed.

Appeal dismissed.

Cases Referred.

1. 1993(3) RRR 685 (SC): AIR 1993 SC 1139
2. 1994(1) RRR 551 (SC): (1994)1 SCC 531
3. 2002(3) RCR (Civil) 495 (SC) : 2002 WLC (SC) Civil 51