

HIGH COURT OF JAMMU & KASHMIR AND LADAKH
AT SRINAGAR

RSA 16/2023
CM (7966/2023)

Nazir Ahmad Zarger.

...Appellant(s)

Through: Mr. P. S. Ahmad, Advocate.

Vs.

Mst. Jana and Ors.

...Respondent(s)

Through:

CORAM:

HON'BLE MR. JUSTICE SANJEEV KUMAR, JUDGE.

JUDGMENT

(ORAL)

01. This Civil Second Appeal by the appellant is directed against judgment and decree dated 16th October, 2023 passed by the Court of learned Principal District Judge, Anantnag (First Appellate Court) in an appeal against judgment and decree dated 18th April, 2012 passed by the learned Sub Judge, Anantnag (Trial Court) on the basis of a compromise entered into between the parties.

02. Briefly stated the facts leading to the filing of the instant appeal, are that, in a Suit for Preemption filed by the Respondents 1 to 4 against the appellant titled "*Mst. Jana & Others vs Ghulam Nabi Zargar & Another*", a Compromise Decree dated 18th April, 2012 came to be passed by the Trial Court.

03. As per compromise entered into between the parties, the appellant was to arrange a transfer of 2-kanals of land along with shamilat land and the trees standing thereon, within a period of two weeks, in consideration of Rs. 25,000/- to be paid by the Respondent-Mst. Jana to the appellant herein. The compromise also provided that in case the appellant failed to arrange transfer of 2-kanals of land within the stipulated period as agreed by him, he will surrender suit property in favour of Respondents 1 to 4 (plaintiffs) along with structures raised thereon. There was some discrepancy in the decree and accordingly, on the basis of an application moved by the appellant, the word "Structure" on the land to be transferred by the appellant in favour of the respondents (plaintiffs), was deleted/withdrawn. There was further discrepancy in the decree inasmuch as compromise deed executed by the parties was not registered under the Registration Act and accordingly, the parties were allowed to get the compromise deed registered.

04. Be that as it may, when the appellant failed to transfer 2-kanals of land along with trees standing thereon as was agreed to by him in the compromise deed and reflected in the consequent decree passed by the Trial Court, an execution petition was filed by the Respondents 1 to 4. The decree insofar as it contained a direction to the appellant to arrange transfer of 2-kanals of land along with shamilat land and the trees standing thereon, could not be given effect to, as the appellant failed to execute the transfer because of lack of title to the property, which he had identified for transfer. In view of the failure of the appellant to arrange transfer of 2-kanals of land along with shamilat land and the trees standing thereon, the Trial Court vide Order dated 28th December, 2017 put the alternative part of the decree for execution and called upon the Appellant/Judgment Debtor to surrender the

subject property. It is at this stage, the appellant challenged the Compromise Decree as also the Order passed by the Trial Court dated 28th December, 2017 before the First Appellate Court. The First Appellate Court after hearing the learned counsel appearing on both sides and having perused the record, came to the conclusion that the judgment and decree passed by the Trial Court in terms of compromise was a consent decree and, therefore, not amenable to appeal under Section 96 of the Code of Civil Procedure. The First Appellate Court did not find the compromise unlawful or the one obtained by the Respondents 1 to 4 by practicing any fraud and vide Judgment and Decree dated 16th October, 2023, the Appellate Court dismissed the appeal so filed by the appellant. It is this Judgment and Decree of the First Appellate Court which is called in question by the appellant before this Court in this appeal.

05. Having heard Mr. P.S. Ahmad, learned counsel for the appellant and perused the material on record, I am of the considered opinion that the judgment passed by the Trial Court is perfectly legal and in consonance with law. There is no dispute with regard to the fact that the judgment and decree passed by the Trial Court which was assailed by the appellant before the First Appellate Court, is a consent Decree and, therefore, not appealable in view of the provisions of sub section 3 of Section 96 of the Code of Civil Procedure. For facility of reference, Section 96 is reproduced as under:

“96. Appeal from original decree.---(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction the

Court authorized to hear appeals from the decisions of such Court.

(2) An appeal may lie from an original decree passed ex parte.

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.

[(4) No appeal shall lie, except on a question of law, from a decree in any suit of the nature cognizable by Courts of Small Cause, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees.]”

06. Otherwise also, if the appellant is aggrieved of the passing of the compromise decree on the ground that the Trial Court while passing the decree has not adjusted the suit by any lawful agreement, in such eventuality, the appellant has a remedy under Proviso to Rule 3 of Order 23 of Code of Civil Procedure. Needless to say that in case such remedy is availed and a proper application is filed by the appellant, the Court which has passed the compromise decree is under a bounden duty to adjudicate the same and pass appropriate orders.

07. Since before the First Appellate Court was an appeal against a consent decree, as such, the First Appellate Court committed no illegality in holding that an appeal against a consent decree under Section 96 of the code of Civil Procedure is not maintainable.

08. In view of the aforesaid short controversy involved, I am of the considered opinion that no substantial question of law involves for adjudication in this appeal. Therefore, this Civil Second Appeal is held not maintainable and is accordingly **dismissed**. It is, however, clarified that notwithstanding the judgment and decree passed by the Trial Court and

upheld by the First Appellate Court, it shall remain open to the appellant to workout his remedy as provided in Order 23 Rule 3 of the Civil Procedure Code.

(SANJEEV KUMAR)
JUDGE

SRINAGAR:
22.12.2023
“Hamid”

- i. *Whether the Judgement is Reportable?* Yes/No
- ii. *Whether the Judgment is Speaking?* Yes/No

