

Neutral Citation No. - 2024:AHC-LKO:48557

Court No. - 6

Case :- SECOND APPEAL No. - 330 of 2014

Appellant :- Amit Arora

Respondent :- Sushil Kumar Arora And Ors.

Counsel for Appellant :- R.R.Upadhyay,Sajjad Husain,Shobhit
Nigam

Counsel for Respondent :- Vimal Mishra,Ambrish Srivastava,Km.
Vishwa Mohini,Surendra Yadav,Vimal Kumar,Vimal Mishra

Hon'ble Rajnish Kumar,J.

1. Heard Sri R.R. Upadhyaya, learned counsel for the appellant and Km. Vishwamohini, learned counsel for the respondent.

2. This second appeal has been filed assailing the judgment and decree dated 17.07.2014 passed by Additional District Judge, Court No.1, District Faizabad in Civil Appeal No.48 of 2014(Amit Arora versus Sushil Kumar Arora and others) and judgment and decree dated 21.12.2013 passed by Ist Additional Civil Judge(S.D.), Faizabad in Regular Suit No.168 of 2008(Amit Arora versus Sushil Kumar Arora and others).

3. Learned counsel for the appellant submits that the mental condition of the father of the appellant was not good. Regular Suit No.25 of 1987 for partition was filed by Sunil Kumar Arora arraying the father of the appellant and others as respondent, which was decreed on the basis of the fraudulent compromise entered into between the parties by means of the judgment and decree dated 24.08.1987 passed by Civil Judge(S.D.), Faizabad because the mental condition of the father

of the appellant was not good and he was under influence of Sunil Kumar Arora as he used to look after him. The appellant after coming to know about the same, filed suit for cancellation of the aforesaid judgment and decree but the trial court without considering the pleadings and evidence adduced before it dismissed the suit. The appeal filed by the appellant has also been dismissed without considering the mental condition of the father of the appellant at the time of compromise and that he had died on account of cancer in November 1996. Therefore it cannot be said that the compromise was made by the father of the appellant with his free Will. He further submits that the distribution of share was also not proper because the father of the appellant and Sunil Kumar Arora had got shares in a small house, whereas rest of the four persons got shares in big house in the market place of the city. He also submits that the share of the father of the appellant was sold by him and Sunil Kumar Arora immediately after passing of the decree showing that he is exclusive owner of the same, whereas he had no other house to live therefore he could not have sold his share. Thus, the submission of learned counsel for the appellant is that the judgment and decree passed by the courts below are not sustainable and liable to be set aside.

4. On the other hand, learned counsel for the respondents submits that the partition suit was filed by Sunil Kumar Arora arraying the father of the appellant as defendant no.1 who had entered into compromise with his free Will and also appeared before the Civil Judge for verification of compromise, who was identified by his counsel and after verification of compromise, the compromise decree was passed, on the basis of which the father of the appellant had also got share and he had sold his share in the house. Therefore now after availing the benefits of the compromise decree, the appellant cannot challenge the same. She further submits that the suit was decreed in the year 1987 on the basis of compromise and the father of the appellant had died in

the year 1996 but he had never challenged the same and the suit for cancellation of the decree has been filed in the year 2008 which was highly time barred. Therefore it was liable to be dismissed on this ground alone. She further submits that challenge to decree passed on the basis of compromise can be made before the same Court under Order 23 Rule 3-A CPC and no separate suit is maintainable for the same. She relies on ***Smt. Ramwati versus Smt. Shakuntala; 2022 (40) LCD 1158***. Thus the submission is that learned trial court as well as first appellate court have rightly and in accordance with law after considering the pleadings of the parties and the evidence adduced before it has decided the suit and the appeal, which does not call for any interference by this Court and the appeal has been filed on misconceived and baseless grounds, which is liable to be dismissed.

5. Learned counsel for the appellant in regard to the maintainability of the suit under Order 23 Rule 3-A CPC submits that decree was challenged on the ground that the compromise was got made fraudulently and he has not challenged on the ground that it is not lawful. Therefore the suit was not time barred and it was rightly filed. He further submits that even otherwise this plea has not been raised before the courts below therefore the respondents cannot raise this plea before this Court. He relies on ***Deepak Tandon and another versus Rajesh Kumar Gupta; (2019) 5 SCC 537 and A.V. Papayya Sastry & Ors. Versus Government of A.P. & Ors.;*(2007) 4 SCC 221**.

6. I have considered the submissions of learned counsel for the parties and perused the records.

7. The suit for cancellation of compromise decree dated 24.08.1987 passed in Regular Suit No.25 of 1987 was challenged by the appellant on the ground that the mental condition of the father of the appellant was not good and by playing fraud upon him, the compromise was got executed and the disproportionate partition was made. The trial court after considering the pleadings of the parties and evidence adduced

before it, found that the appellant has failed to prove that mental condition of the father of the appellant was not good or he was mentally disturbed at the time of compromise. The father of the appellant had executed compromise and had also verified the same before the trial court, on the basis of which the compromise decree was passed. No proof of mental condition of the father of the appellant or treatment of his mental condition at the relevant point of time were placed on record and proved. No prescription in this regard was also filed. The father of the appellant had died on 15.11.1996 on account of cancer after a long time after executing the compromise in the year 1987 but no objection in this regard was raised. He had also executed a sale deed of his portion which he got through the compromise decree. Therefore once he had availed the benefits of the compromise decree, he could not have challenged the same.

8. The trial court has also recorded finding in regard to the mental condition of the father of the appellant giving several instances such as he had filed written statement in the case filed by the Bank against him and executed the sale deed of his portion after two days of decree of compromise and had not raised any objection during his lifetime. Therefore even if the suit could have been filed by the appellant for cancellation of compromise decree on the ground of fraud, the appellant has failed to prove the plea by any cogent evidence. However, if the fraud has been played by the court concerned then the plea should have been raised before the concerned court first, who could have considered the same appropriately. In the present case the appellant has failed to prove by any cogent evidence that the mental condition of the father of the appellant was not good or he was mentally disturbed at the time of compromise or that any fraud was played with him. The father of the appellant had also not challenged the compromise decree during his lifetime, whereas he was alive for a period of about 9 years after the decree and it was only after about 21

years, the decree has been challenged by the appellant without any cogent evidence. The learned trial court as well as the appellate court have considered and decided the suit after considering the pleadings of the parties and evidence adduced before it and concurrent findings of fact have been recorded by the two courts below, which does not suffer from any illegality, error or perversity. Thus, no substantial question of law arises in this Appeal. The appeal is misconceived and lacks merit.

9. The appeal is accordingly **dismissed**. No order as to costs.

(Rajnish Kumar,J.)

Order Date :- 09.07.2024

Akanksha