

IN THE HIGH COURT OF JUDICATURE AT BOMBAY,
NAGPUR BENCH : NAGPUR

Second Appeal No. 208 of 2015

Appellant : Ramchandra Narsingrao Dhande

versus

Respondents : Sk Hasan Sk Chand, since deceased, through
his legal representatives -
Hasinabano and ors

Mr R. D. Dhande, Advocate for appellant

Mr S. V. Sohoni, Advocate for respondents

Coram : A. P. Bhangale, J

Dated : 18th June 2015

P. C.

1. Heard learned counsel for the parties. Suit for eviction bearing Regular Civil Suit No. 12 of 2003 was filed by respondent Sk Hasan (since deceased) against the present appellant. Learned Civil Judge, JD, Pulgaon decreed the suit directing appellant to vacate suit block and hand over possession thereof to respondent within three

months.

2. Appellant filed Regular Civil Appeal No. 104 of 2008. During the pendency of appeal, original plaintiff died and his legal representatives were brought on record. Parties entered into compromise on the following terms :

(1) Appellant shall vacate suit house upto 31.5.2014 and hand over vacant possession thereof to respondent and if he fails to do so, respondent will be at liberty to execute decree passed by the Court.

(2) Respondent shall pay damages of Rs. 1,50,000/- to the appellant by depositing such amount in the Civil Court upto 31.5.2014 and after such deposit is made, respondent shall be able to obtain possession of suit block.

(3) Besides above, parties shall not be entitled to recover any amount from each other and that they will bear their own costs.

3. That pursis (Exhibit 27) was presented before the Court on 22.1.2014 which was signed by appellant, respondent no. 6, counsel for appellant and counsel for respondent. The appellate court disposed of appeal by consent of parties in terms of the compromise pursis.

4. Appellant then filed application before the District Judge for recalling of order of consent decree dated 21.2.2004 on the ground that

all of the respondents were not signatories to the pursis. That application was opposed by present respondents on the ground that the application for recall of compromise was not maintainable in view of the provisions of Section 96 (3) of the Code of Civil Procedure. All other non-applicants ratified the act of non-applicant no. 8 who was signatory to the pursis, stating that he had signed for and on their behalf also.

5. Learned District Judge held that in view of ratio laid down by the Apex Court in **Pushpa Devi Bhagat and ors v. Rajinder Singh and ors** reported in **2006 (5) SCC 566** wherein it is held that the only remedy available to a party to a consent decree to avoid such consent decree is to approach the Court which recorded the settlement, application as filed by appellant was maintainable. Learned District Judge, however, rejected the application on the ground that the compromise had taken place in presence by appellant, by his consent, under his signature and other legal representatives have ratified the act of non-applicant no. 8.

4. Appellant has filed present appeal challenging consent decree on the ground that all the legal representatives of original plaintiff had not signed the compromise pursis as is contemplated under Order 23, rule 3 of the Code of Civil Procedure. He contends that all legal representatives of deceased respondent should have been the signatories to the pursis and

since only one of them has signed, consent decree is bad in law and it is non-est. He relied on the judgment of the Supreme Court in **Purhpa Devi v. Rajinder Singh & ors** reported in 2006 AIR (SC) 2628; **Sneha Gupta v. Devi Sarup & ors** reported in 2010 (1) Mh. L. J. 293 and **Dalji Kaur & anr v. Muktar Steels and ors** reported in 2013 (16) SCC 607.

5. I have perused judgments of the Apex Court pressed into service by learned counsel for appellant. In **Daljit Kaur's** case (supra) there was a contest on the question whether there was a compromise or not and, therefore, the Apex Court held that a decree accepting the compromise on resolution of that controversy, cannot be said to be a decree passed with the consent of parties. In **Pushpa Devi's** case, the Apex Court held, *inter alia*, that a consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to rule 3 of Order 23 of the Code of Civil Procedure.

6. What is most relevant case law applicable hereto is the judgment of the Apex Court in **Sneha Gupta's** case (supra). The Supreme Court has held that if a compromise is to be held to be binding, as is well known, must be signed either by the parties or by their counsel or both, failing which Order XXIII, rule 3 of the Code of Civil Procedure would not

be applicable. In this case, the compromise pursis was signed by appellant and non-applicant no. 8 and by the counsel for both sides. Later on, other non-applicants also ratified the compromise signed by non-applicant no. 8 before the Court in the proceedings for recall of the consent decree. A consent decree is an agreement between the parties with the seal of the court superadded to it, which is binding on all fours. Hence, appellant cannot be allowed to pull out later from compromise at his whims and on the ground which is non-est and non-existent.

7. In the result, no substantial question of law arose for my consideration in this appeal. Appeal is dismissed in limine with costs.

A. P. BHANGALE, J

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