

**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

CR No.3039 of 2011

Date of Decision:-21.12.2015

Raghubir Singh & Ors.

...Petitioners

Versus

Om Dutt Sharma & Ors.

...Respondents

CORAM: HON'BLE MR. JUSTICE AMIT RAWAL

Present:- Mr.Rajesh Punj, Advocate for the petitioners.

Mr.Anil Chawla, Advocate for respondent No.1.

Amit Rawal, J. (Oral)

The petitioners-plaintiffs aggrieved of the order dated 12.2.2011 (Annexure P9) whereby the lower Appellate Court accepted the appeal filed by the respondent-defendants, which was filed against the judgment and decree dated 28.4.2009 of trial Court.

Mr.Rajesh Punj, learned counsel appearing on behalf of petitioner-plaintiffs submits that the civil suit, for permanent injunction, was filed on 16.4.1998. The contesting parties i.e. defendant Nos.1, 3 and 4 filed the written statement and accordingly a compromise dated 9.6.2005 was entered into, vide which, the contesting defendant Nos.1, 3 and 4 agreed that the decree passed by Sh.M.L.Mirchia, District Judge as well as the sale deed executed in favour of plaintiffs was correct and the possession of the same is also with the plaintiffs. After entering into the aforementioned compromise, the parties suffered statements on 9.6.2005 and the matter was adjourned to 14.6.2005. On 18.7.2005, an application was filed for

withdrawal of the said compromise. It came to be dismissed, vide order dated 28.4.2009 and judgment & decree in terms of compromise were passed. The lower Appellate Court has committed illegality in remitting back the matter to the trial Court by accepting the appeal on the ground that the trial Court did not record a finding that the compromise is lawful. In support of his submissions, he has relied upon the judgment of Hon'ble Supreme Court in case Amteshwar Anand Vs. Virender Mohan Singh and others **2005(4) RCR (Civil) 485** to contend that it is not necessary for the Court to infer or record that the compromise was a lawful one and there is a presumption that the Court was so satisfied, unless the contrary is proved. He further submits that the defendants, who had accepted the terms, have acknowledged the compromise.

Mr. Anil Chawla, learned counsel appearing on behalf of respondent No.1 submits that the application for withdrawal of compromise was filed as it was obtained with fraudulent intention and the site plan attached with the compromise is not relevant and there were certain other reasons so as to grab the property. Plaintiffs wanted to encroach upon more land as the suit property is a temple. There is no illegality or perversity in the judgment of lower Appellate Court, which is based upon the judgment of Hon'ble Supreme Court in case Banwari Lal Vs. Smt. Chando Devi (through LR) and another **AIR 1993 Supreme Court 1139**. Thus, he prayed for dismissal of the revision petition.

I have heard the learned counsel for the parties and have gone through the file very carefully.

Having noticed the facts and rival contentions of the parties, it would be apt to reproduce the compromise dated 9.6.2005 and statements of

the parties (Annexures P3 & P4):-

*“In the Court of Shri Daljit Singh Ralhan, Civil Judge, Junior Division,
Amritsar.*

*Ujjagar Singh Versus Om Dutt and others
Compromise*

Sir,

The above parties submit as under:-

- 1. The above noted suit is pending in this court and fixed for today.*
- 2. That the plaintiff filed present suit against the defendants and during the pendency of the case the defendants No.1, 3 and 4 entered into compromise with the plaintiff in order to stop the litigations. The plaintiff Ujjagar Singh had purchased the property, fully shown as yellow in the site plan attached with compromise, which was obtained from the court file of court of Sh.R.L.Anand, Sub Judge, Amritsar. That vide court of Sh.M.L.Mirhcia, DJ, decree registered sale deed was executed and is in possession of the same since its purchase, while adjacent to this property there is property of Amit (not legible) son of Gopal Krishan, which is shown as Blue in the site plan attached, and he is in possession of the same and there is common gali, as shown red from point AB, CD, EF between the property of Amit Kumar and Mandir. The parties have accepted the claim of each other party and defendants have no objection if decree is passed in favour of the plaintiff Ujjagar Singh.*
- 3. In the light of above compromise the suit of the plaintiff be decreed as prayed for in plaint without any cost.*

Sd/- Plaintiff

Defendants

Sd/- through counsel

Sd/- through counsel

Sd/- Sher Singh

Sd/-

Dated: 9.6.05

Sd/- In Urdu

Sd/- In Urdu

LTJ Madan Lal”

Annexure P4

Ujjagar Singh Vs. Om Dutt

*Statement of defendants No.1,3 and 4 namely Om Dutt Sharma,
Manohar Lal Khanna and Madan Lal respectively.*

Compromise Ex.C1 bears our signatures and also bears the

signatures of our counsel, this compromise also (not legible) the signatures of Raghbir Singh, Ranjit Singh, Sher Singh, grandson of Ujjagar Singh and also LR of Ujjagar Singh (not legible) brought on record as per orders of the court, and bears the signatures of counsel of said L/R. Ex.C2 in the plan duly attached with this compromise Ex.C1. Contents of Ex.C1 are correct and there is a compromise between the aforesaid parties as per Ex.C1 and Ex.C2 plan referred in Ex.C1. Suit of plaintiff be decreed as per Ex.C1 in which Ex.C2 plan is also referred.

RO&AC

Sd/- CJJD 9.6.2005

Nand Kishore

Statement of Raghbir Singh, Ranjit Singh and Sher Singh plaintiff/LR of Ujjagar Singh deceased.

We have heard the statement of defendants No.1, 3,4. Same is correct. Suit of plaintiff may be decreed as per Ex.C1 and plan Ex.C2 referred in Ex.C1. Ex.C1 is duly signed by us and our counsel. The contents of same are correct. Plan Ex.C2 is also signed by us and same is signed by defendants No.1, 3 & 4 also.

RO&AC

Sd/- CJJD 9.6.2005”

Sd/-

The pith and substance of the application seeking withdrawal of the compromise has not been explained. No complaint in this regard was made to the police by the respondent-defendants that the compromise is on account of fraud, mis-representation, undue influence and coercion. Even the contents of the application do not reveal that the compromise is lawful and site plan attached with it is not similar one as has been referred in the compromise. It is a matter of fact that during the pendency of the revision, defendant no.1 had died and nothing survive on his behalf. I am of the view that the application has been filed with malafide intention by taking a vague plea. The trial Court has rightly dismissed the application, vide order dated 28.4.2009. The lower appellate Court did not record the finding that the compromise was lawful and in this respect relied upon the observations of

Hon'ble Court in Banwari Lal's case (supra). As per the facts and

circumstances in Banwari Lal's case (supra), the contents of the compromise itself show that it was a fraudulent one. However, there is a presumption that the compromise is most innocuous as the defendants have acknowledged the possession of plaintiffs, muchless decree passed in their favour. I am in agreement with the judgment of Hon'ble Supreme Court in Amteshwar Anand's case (supra) wherein it was held that it is not necessary for the Court to say in express terms that it was satisfied that the compromise was a lawful one and there is a presumption that the court was so satisfied unless the contrary is proved.

In view of the above, the present revision petition is allowed. The matter is remitted back to the lower appellate Court for deciding the appeal on merits keeping in view the compromise entered into between the parties.

(Amit Rawal)
Judge

21.12.2015
AS