

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

Civil Revision No.591 of 2013 (O&M)

Date of decision: 24.03.2015

Babli Devi alias Pataso Devi daughter of late Shri Pala Ram,
resident of Village Ballah, Tehsil and District Karnal, and others.

... Petitioners

versus

Sunil son of Shri Tejbir Singh, resident of Gali No.15, Karan Vihar,
Karnal.

.... Respondent

CORAM: HON'BLE MR. JUSTICE K. KANNAN

Present: Mr. S.S. Momi, Advocate,
for Mr. Baldev Singh, Advocate,
for the petitioners.

Mr. Rahul Deswal, Advocate,
for the respondent.

1. Whether reporters of local papers may be allowed to see the judgment ? **Yes.**
2. To be referred to the reporters or not ? **Yes.**
3. Whether the judgment should be reported in the digest ? **Yes.**

K.Kannan, J. (Oral)

1. The order impugned is passed by the trial Judge on an application filed by the defendant that the compromise cannot be accepted. It was an admitted case that in the suit for declaration of title to the suit properties, a Will propounded by Pala Ram whose widow and daughters were the plaintiffs was the subject of dispute. The Will had been propounded by the defendant, who was Pala Ram's brother's son and the plaintiffs were, therefore, interested in

securing the right to the property on the basis that Pala Ram did not execute the Will. Though there was a prayer that the Will was a forgery, the defendant, as a propounder alone, had to take the burden of proving the same.

2. In the compromise entered between parties and signed by both of them, the defendant had admitted that the Will was not true and there were 4 clauses in the compromise which admitted the plaintiffs as being entitled to the share of Pala Ram and there was also a recital about the existence of a dera and factory said to have been constructed by the defendant and the same was required to be allotted only to the defendant and none of the plaintiffs will have any right in the property. The parties appeared in court and gave a statement on 27.09.2011 that the decree could be passed in terms of the compromise. The court should have under normal circumstances granted a decree on the same day on 27.09.2011 on the basis of the statement made. Instead, the court took on board an application filed by the defendant on 12.10.2011 that the compromise cannot be received setting out reasons, inter alia, that the plaintiffs had offered to pay ₹ 10 lakhs but the same had not been paid. The plaintiffs were attempting to deceive the defendant and, therefore, the court shall not allow the compromise to be recorded.

3. The Court, while allowing the application, has passed the impugned order, holding that the compromise decree had not

been passed and there was a mandate that the court should be satisfied that there was a lawful adjustment between parties on the basis of which a decree could be passed. The court observed as follows:-

“.... So, the compromise had not yet attained the finality. Moreover, the court is not bound to grant declaration prayed for on the mere admission of the claim/compromise by the defendant if the court has reason to insist upon a clear proof apart from admissions. The result of a declaratory decree confers status not only on the parties but for the generations to come and so it cannot be granted on a rule of admissions and court can always insist upon adducing evidence independent of admission/compromise. Hence, this court is of the considered opinion that in the present case evidence be led and case be decided on the merits since the compromise has not yet attained finality and rather has been prayed to be reconsidered by the defendant-applicant.”

All the observations made by the learned Judge are erroneous and against law. The enquiry that is contemplated under Order 23 Rule 3 CPC shall be only the validity of the compromise, if a party to the compromise denies the same. If the court finds that the compromise

has been signed by both parties and one of the parties was resiling from the same, he shall set out the legal justification for the same and the court is bound to record the finding whether the compromise was true or not. If the compromise was true, there is no way a party can resile from the same by picking up some points which are not part of the record. If the defendant was contending that there was an agreement by the plaintiff to pay ₹10 lakhs, he was setting up a case which was barred by law in that Section 91 of the Evidence Act excludes parole evidence in respect of terms of a written contract. The exception which is brought out under Section 92 of the Act would only to exclude situations which will vitiate the contract, namely, of certain facts which would show that the terms were either illegal *per se* or untenable for enforcement or that it was brought by fraud or coercion. A party who pleads for an enforcement of a term which was not included in the contract, such as an alleged undertaking to pay additional amount of ₹10 lakhs, the court ought to have simply concluded the same by observing that the plea taken by the defendant for rejecting the compromise was not tenable and that the power of the Court under Order 23 Rule 3 CPC did not extend to allowing for a suit to be tried without finding that the compromise was not enforceable for some justifiable reasons. The Court appears to have believed that since it had a mandate to declare whether there was a lawful adjustment between parties, it was not

compelled to pass a decree. Verily so, only if the court found the compromise terms were invalid or against public policy or found to be brought about by fraud. The court found no ground to assail it.

4. There was no justification in allowing the objection to the compromise to be brought without any reason and to allow for trial of the suit. The court was exercising the jurisdiction, which it did not have. The petition filed by the defendant is to be dismissed and the decree should have been passed in terms of the compromise. I dismiss the petition filed by the defendant and grant a decree to the plaintiffs in terms of the compromise. The trial Court is directed to draw up a decree in terms of the compromise in accordance with law.

5. The civil revision is allowed on the above terms.

(K.KANNAN)
JUDGE

24.03.2015
sanjeev