

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

Regular Second Appeal No.1976 of 1986 (O&M)

Date of decision: 1.4.2015

Jasbir Singh and others

... Appellants

Versus

Babu Singh and others

... Respondents

CORAM: HON'BLE MR. JUSTICE RAJIV NARAIN RAINA

Present: Mr.Ashok Jindal, Advocate,
for the appellants.

Mr.Kashmir Singh, Advocate,
for respondents No.1 to 10.

1. To be referred to the Reporters or not?
2. Whether the judgment should be reported in the Digest?

RAJIV NARAIN RAINA, J.

The substantial questions of law which arise in this appeal are -

1. Whether a compromise can be effected by the counsel for the appellants without instructions or a written compromise and in the absence of the parties?
2. Whether the compromise can be effected on behalf of the minor without obtaining the permission of the Court?
2. These two questions are so fundamental to justice in adjudicating the rights of minors with pre-existing rights in joint Hindu family co-parcenary property against which rights alienations were made of

property by Teja Singh father of the two minor children for legal necessity cannot be down played.

3. After hearing Mr. Jindal appearing for the appellants and Mr. Kashmir Singh appearing for respondents No. 1 to 10, I have no reason decline this appeal as the answers to the above two questions are in the affirmative in favour of the minors.

4. It was during the appeal proceedings that the counsel for the minors through the guardian mother entered into a compromise on 15th January, 1986 admitting the claim of the respondents without valid instructions. The appellants assert that they were neither present in Court nor was a written compromise effected between the parties. No written compromise was produced in Court and the compromise was thus not binding on the rights of the minors affected by transfer of suit land by their father as per their share in ancestral property. The counsel for the appellants entered into a compromise at his own level which is improper. It is thus not binding on the appellants who were minor at the time of institution of the suits brought to challenge the sale deeds and mortgage deeds as not binding on the rights of the minors. The minors were arrayed in the appeal as appellants No.2 and 3-Gurdev Singh and Roop Singh sons of Teja Singh son of Bhan Singh litigating through their mother Surjit Kaur since there was conflict of interest between the minors and their father. Respondents No.11 to 16 in the appeal represent persons with interest under the mortgage deeds. On 15th January, 1986, the statement of Buta Singh son of Mukhtiar Singh respondent No.6 was recorded as follows : -

“Statement of Buta Singh respondent on S.A.

Compromise has been affected between the parties. The suit of the plaintiff be decreed and appeal be accepted. But if the respondents pay Rs.7000/- in lum sum to the appellant by 15.2.86 or deposit in the Court. The decree will be considered nullity and suit and appeal will considered as dismissed. In case of deposit of money appellants will have no connection with the land.

R.O. & A.C.

Sd/-
I.C.Aggarwal
Addl. Distt. Judge (II)
Bhatinda.
15.1.86

Sd/- Buta Singh
Sd/- Advocate”

5. Then the statement of the learned counsel for the appellants was recorded as follows :

“Statement of Shri Nahar Singh Advocate-Appellant.

I have heard the statement of Buta Singh respondent. It is correct. I accept it. The case be decided accordingly to it.

R.O. & A.C.

Sd/-
I.C.Aggarwal
Addl. Distt. Judge (II)
Bhatinda.
15.1.86

Sd/- Nahar Singh
Advocate
Bhatinda 15.1.86”

6. The third order passed on the same day reads as follows : -

“15.1.1986 For the appellant : Mr.Nahar Singh, Advocate.
For the respondents : Mr.S.M.Nayyar & Mr.I.J.
Singla, Advocates.

The matter has been amicably settled and the statement of the parties and their counsel have been recorded.

In view of the statements, therefore, which shall from part of this order, this appeal succeeds, the judgment and decree of the court below are set aside and the suit of the plaintiff/appellant stands decreed as prayed for. In case,

however, the respondents pay a sum of Rs.7000/- in all to the plaintiff/appellant on or before 15.2.86, or deposit in Court, the appeal shall be deemed to have been dismissed and in that event the judgment of the court below shall stand affirmed. No order as to costs. Decree sheet be prepared.

Announced. File be consigned.

Dated 15.1.1986

Sd/-

I.C.Aggarwal
Addl. District Judge (II)
Bhatinda.”

7. Resultantly, the appeal was put to an end on the same day by passing the following order : -

“ The appellants above named appeal to the Court of Addl. District Judge, Bhatinda from the decree of Sh.Harbans Lal, PCS, Sub Judge Ist Class, Phul, in the above suit dated the 6th day of March, 1984, for the reasons set out in the grounds of appeal.

This appeal coming on for hearing on the 15th day of 1986, before Sh.I.C.Aggarwal, Addl. District Judge, Bhatinda, in the presence of Shri Nahar Singh Advocate, Counsel for the appellant and Shri S.M.Nayyar & Sh.I.J.Singla, Adv. counsel for the respondents, it is ordered that in view of statements which shall form put of this order this appeal succeeds, the judgment and decree of court below are set aside, and the suit of the plaintiff/appellant stands deceased as prayed for. In case however the respondents pay a sum of Rs.7000/- in all to the plaintiff/appellant on or before 15.2.86 or deposit in court, the appeal shall be deemed to have been dismissed and in that event the judgment of court below shall affirm. No order as to costs.”

8. Mr.Ashok Jindal complains that counsel exceeded his brief by entering into a compromise in the appeal with the respondents on behalf of the minors without the consent of their next friend and guardian, the natural

mother. The interest of the minors are to be kept uppermost in mind and the Court itself should have called upon the parties to strictly comply with the procedure laid down in Order 23 Rule 3 of the Code which provides a compromise to be in writing and signed by the parties. It reads : -

“3.Compromise of suit-- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit].

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

[*Explanation*—An agreement or compromise which is void or voidable under the Indian Contract act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule]”

9. I am convinced that the interest of the minors has been seriously jeopardized and they have been put to unwarranted disadvantage. Without making any further comment on the manner in which the compromise was effected without there being anything in writing supporting the compromise and on an oral statement of the Advocate, I would think that the above two questions are substantial questions of law affecting the rights of the minors. The Court is the guardian of the minor

and is in *loco parentis* and is enjoined to remain vigilant to pass such orders as protect their rights till they reach the age of discretion.

10. For the foregoing reasons, this appeal is allowed. The compromise decree is set aside qua the appellants. All statements made by counsel before the lower appellate court leading to the compromise are nullified. The case is remanded to the first appellate court to enable a decision on merits. However, nothing said in this order will be taken as an expression of opinion on the merits of the case as this Court was concerned only with the capacity or incapacity of the counsel to enter into a valid compromise with the opposite party on behalf of the minors he represented in Court through their guardian and next friend. Parties are left to bear their own costs.

(RAJIV NARAIN RAINA)
JUDGE

April 1, 2015
Paritosh Kumar