

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

**Civil Revision No.7973 of 2013 (O&M)
Date of decision: 24.12.2015**

Swaran Kaur

.....Petitioner

Versus

Dharam Singh and others

.....Respondents

CORAM:HON'BLE MS. JUSTICE RITU BAHRI

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

Present: Mr. H.P.S. Ghuman, Advocate,
for the appellant.

Mr. Mahesh Dhir, Advocate,
for respondent No.1.

Ritu Bahri, J.

Challenge in this petition is to the order dated 29.10.2013 passed by the Additional District Judge, Patiala, whereby application filed by the plaintiff-Dharam Singh (respondent No.1) for withdrawal of the suit has been allowed by giving him liberty to file an appropriate application before the Court, which had passed the compromise decree dated 18.01.1994.

Dharam Singh-plaintiff had filed a suit for declaration and permanent injunction stating therein that he was joined owner in possession of the suit land to the extent of 1/5th share, as detailed in the head note of the plaint. Suit land came to his possession from his father-Kartar Singh along

with his brothers namely Avtar Singh, Surinder Singh, Gursharanjit Singh and Jaswinder Singh. In the year 1997, he had constructed/installed a hand made paper mill in the suit land. Some part of the suit land was being used for agriculture purposes. Swaran Kaur-defendant No.1 (petitioner herein) was claiming ownership over the land in dispute on the basis of judgment and decree dated 18.01.1994. In the suit, plaintiff had challenged the aforesaid judgment and decree being illegal, null and void. The said decree came to the knowledge of the plaintiff-respondent No.1 in July, 2006, when Swaran Kaur-defendant No.1 filed a suit for permanent injunction against the plaintiff and his brother. The suit land had been partitioned between five brothers in May, 2006. The said partition was reduced into writing, which was signed by defendant No.1 (mother of the plaintiff) admitting the ownership and possession of the plaintiff.

On notice, defendant No.1-petitioner appeared and filed written statement denying the fact that the plaintiff was joint owner in possession of the suit land. It was further denied that the plaintiff had constructed/installed a handmade paper mill in the suit land and he is operating the same till today. It was stated that the paper mill was installed by the joint funds of the family and was being run by the family. It was denied that any family settlement had taken place in May, 2006, as alleged by the plaintiff. It was further denied that the partition was acted upon between the parties with the consent of the defendants. It was stated that neither the plaintiff or Avtar Singh and Gursharanjit Singh had any land nor they were in possession over any part of the said land. The signatures of defendant No.1 on the said writing were taken by the plaintiff by saying that they were dividing the house situated within the red line of village Bhadson.

The writing was not binding on the defendants. It was further stated that Gursharanjit Singh had 2 bighas 2 biswas of land, which was purchased by him from defendant No.1. All the other averments were denied with a prayer to dismissed the suit.

From the pleadings of the parties, following issues were framed by the trial Court:-

1. Whether the plaintiff is entitled for declaration as prayed for?
OPP
2. Whether plaintiff is entitled for permanent injunction as prayed for? OPP
3. Whether the suit is not maintainable in the present form? OPD
4. Whether the plaintiff is estopped from filing the present suit by way of his act and conduct? OPD
5. Whether plaintiff has concealed true and material facts, if so, its effect? OPD
6. Whether the plaintiff has not come to Court with clean hands, if so, its effect? OPD
7. Whether the suit is false, frivolous and the defendant is entitled for special costs? OPD
8. Whether the suit is bad for mis-joinder of necessary parties?
OPD
9. Relief.

Grievance of the plaintiff-respondent No.1 before the trial Court was that the alleged partition/compromise dated 07.12.1993, on the basis of which, the impugned decree dated 18.01.1994 was passed, was not equitable settlement and the same was not final because thereafter, another agreement

was executed on 07.05.2006 (Ex.PW3/B), which was signed by defendant No.1-Swaran Kaur implying that the parties had not acted upon compromise dated 07.12.1993. No possession was delivered to Swaran Kaur and Jasbir Kaur and the plaintiff was still in possession of his share of land and even his possession was found by Assistant Collector, IInd Grade. Plaintiff had referred to the documents, Ex.P8 to Ex.P37, to show that he was still running the paper mill under the name and style "Chandi Gram Udyog Samiti." In fact, the plaintiff wanted to go abroad, therefore, he signed some blank papers and handed over the same to his mother-Swaran Kaur, so that she could take care of his property in his absence. But, she misused those papers and obtained a fraudulent decree. Thus, the impugned judgment and decree, Ex.P4 and Ex.P5, were liable to be set aside.

Trial Court, after going through the evidence led by the parties, came to a conclusion that the judgment (Ex.P4) was not obtained on account of any fraud or misrepresentation. As per impugned judgment (Ex.P4), statements of the defendants were recorded in the Court in that suit. Hence, the plea of fraud was not tenable. As per Jamabandi (Ex.P1), entries in the revenue record were incorporated in view of the judgment/decree (Ex.P4). Since, statements of the parties were recorded in the Court, the plaintiff had failed to prove the factum of fraud, as he had himself suffered the impugned decree. Suit challenging the said decree passed in the year 1994, had been filed in the year 2006. Therefore, the same was hopelessly time barred, as limitation to challenge a decree or instrument on the basis of fraud, was three years. Once, the consent decree was passed on the basis of admission, it would not amount to a case of fraud. After the consent decree was passed, it was acted upon. Therefore, the question of re-opening the entire suit by

setting aside the said decree would not arise. Finding on issue Nos. 1 and 2 were decided against the plaintiff and the suit was dismissed on 29.01.2011.

Aggrieved by the aforesaid judgment, the plaintiff (respondent No.1) filed an appeal before the lower appellate Court. During the pendency of the appeal, the plaintiff moved an application for grant of permission for withdrawal of the suit on the ground that as per Order 23 Rule 3-A CPC, an application has to be moved before the Court, which passed the compromise decree and a separate suit was not maintainable. The lower appellate Court, allowed the application of the plaintiff and he was granted liberty to file an appropriate application before the Court, which had passed the compromise decree dated 18.01.1994.

Learned counsel for the petitioner (defendant No.1) has argued that the application under Order 23 Rule 1 CPC would be maintainable at the stage of the trial when the suit was pending for final decision. Once the trial Court had dismissed the suit, this application was not maintainable before the lower appellate Court as vested rights have improved in favour of the second party. He has referred to some judgments passed by the Hon'ble Supreme Court as well as by this Court in **R. Tahinavel Chettiar Vs. V. Sivaraman**, 1999 (2) RCR (Civil) 447, **Sh. Guru Maharaj Anandpur Ashram Trust, Guna Vs. Chander Parkash**, 1986 PLJ 137 and **Smt. Kamlesh alias Meena Vs. Smt. Santosh Mohindroo**, 2015 (1) PLR 82.

Learned counsel for respondent No.1, on the other hand, has argued that application under Order 23 Rule 3 CPC can be entertained even at the appellate stage. Reference has been made to a judgment passed by this Court in **Lachhi Ram Vs. Sukhmal Chand and others**, 2011 (3) Civil Court Cases 98 (P&H). He has further referred to the judgment passed by a

Division Bench of this Court in Wassan Singh and others Vs. Lakha Singh and another, 2005 (2) RCR (Civil) 791 and argued that a separate suit challenging the decree passed on the basis of compromise is not maintainable. An application can be made before the same Court, which had passed the decree and no separate civil suit was required to be filed for that purpose.

The judgments cited by learned counsel for the petitioner would not be applicable to the facts of the present case, as in those cases, the application had been made under Order 23 Rule 1 CPC. As per this Rule, an application for withdrawal or amendment of part of the claim can be made after the institution of the suit. In the present case, the trial Court vide judgment and decree dated 29.01.2011, had dismissed the suit filed by plaintiff-respondent No.1 seeking declaration that the judgment and decree dated 18.01.1994 was illegal, null and void. While dismissing the suit, findings on issue Nos. 1 and 2 were given against the plaintiff that the allegations of fraud had not been pleaded and proved. During the pendency of appeal before the lower appellate Court, plaintiff-respondent No.1 filed an application for grant of permission for withdrawal of suit on the ground that as per Order 23 Rule 3-A CPC, an appropriate application has to be made before the Court, which had passed the compromise decree and a separate suit was not maintainable. For reference, Order 23 Rule 3-A is reproduced as under:-

“3-A. **Bar to suit.**- No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”

In view of the above said Rule, the application of the plaintiff has been allowed subject to payment of Rs.3000/- as costs, to enable him to file

dated 18.01.1994. A Division Bench of this Court in Wassan Singh's case (supra) has examined the above said Rule in the context of a civil suit to be filed for recalling a compromise between the parties and observed as under:-

“11. It is thus apparent that in view of introduction of Rule 3A in the year 1976, the challenge to the compromise can be entertained by the Court passing the aforesaid compromise order and not through separate proceedings in a civil suit. The various judgments relied upon by the learned counsel for the applicants are prior to the aforesaid amendment.

12. To be fair to the learned counsel, we may notice a judgment relied upon by him in *Ram Kishan and others v. Sardari Devi and others, 2003 (1) Civil Court Cases 11*. In the aforesaid judgment, it was noticed by this Court that the suit challenging a compromise decree on the ground that it was obtained by misrepresentation and fraud was maintainable. However, the said judgment has nowhere laid down that the court is debarred from exercising its inherent jurisdiction to set aside a compromise decree obtained by a party by playing fraud, coercion or undue influence. In fact, the learned Single Judge in Ram Kishan's case (supra) has relied upon the observations made by a Division Bench of this Court to hold that a separate suit was maintainable. The aforesaid observation of Division bench may be noticed as follows:

“The words “not lawful” occurring in Rule 3-A of Order 23 of the Code have wider content than similar words in the Explanation to Rule 3. The Explanation to Rule 3 deals with agreements or compromises which are not to be deemed to be lawful if they are void or avoidable under the Indian Contract Act, 1972, but the agreements or compromises which are not lawful as referred to in Rule 3-A are more general in terms and are not engrafted by the limitations as inserted in the Explanation appended to Rule 3. If the agreement or compromise is not the result of consensus of mind of two persons in regard to certain matters, viz. when the consent of one of them to the terms is obtained by the other by some illegal means, namely, by fraud, coercion or undue influence, there is in fact no compromise. Rule 3-A does not bar the maintainability of the suit challenging the compromise on these grounds. **However, the court can in exercise of its inherent jurisdiction also relieve the party alleging fraud coercion or undue influence of the agreement. Question No.1 is answered accordingly.”**

The ratio of aforesaid judgment is applicable to the facts of the

present case. The application filed by plaintiff-respondent No.1 under Order 23 Rule 3-A CPC has been rightly allowed by the lower appellate Court.

In view of the above, no ground is made out to interfere in the impugned order.

Dismissed.

24.12.2015
ajp

(RITU BAHRI)
JUDGE