

HIGH COURT OF CHHATTISGARH, BILASPUR**Civil Revision No.60 of 2016**

1. Angad Ram Yadav, S/o. Late Laxman Ram Yadav, aged about 50 years,
2. Krishna Ram Yadav, S/o. Late Laxman Ram Yadav, aged about 48 years,

Both are R/o Mayapur, (Near Kotwali Thana), Chandni Chowk Road, Tahsil Ambikapur, Civil and Revenue District Surguja (CG)

----Applicants

Versus

1. Rampatiya D/o. Devchand Yadav, W/o. Dhirsai Yadav, aged about 38 years, R/o Village Unechdeeh, Post Basdehi, Tehsil Surajpur, Civil & Revenue District Surajpur (CG)
2. Ramkumar Yadav S/o. Devchand Yadav, aged about 41 years,
3. Avdhesh Kumar Yadav, S/o. Devchand Yadav, aged about 36 years,

Respondents No.2 and 3 are R/o. Village Khairbar (Khodipara), Tahsil Ambikapur, Civil and Revenue District Surguja (CG)

4. Devchand Yadav S/o. Late Gulali, aged about 75 years, R/o. Village Khairbar (Khodipara), Tahsil Ambikapur, Civil and Revenue District Surguja (CG)

---- Respondents

For Applicants : Mr.Manoj Paranjape, Advocate

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board

30/06/2016

1. First civil suit filed by Krishna Ram Yadav and Angad Ram Yadav being Civil Suit No.287A/2009 against Devchand was compromised in Lok Adalat and compromise decree was passed on 29.11.2009. Thereafter, daughter and sons of Devchand filed the suit being Civil Suit No.215A/14 before the 1st Civil Judge Class-I, Ambikapur for declaration of their 1/3rd share in the suit property by partition and for declaring the judgment and decree dated 29.11.2009 passed by the 3rd Civil Judge Class-II, Ambikapur in Civil Suit No.287A/09 as

null and void to the extent of 3/4rd share.

2. In that suit, the present applicants are defendants and after appearance they have filed an application under Order 7 Rule 11 of the CPC, which has been rejected by the trial Court by the impugned order holding that daughter and sons of Devchand have rightly claimed their property and as such, suit is not barred by law.
3. Being aggrieved and dissatisfied with the order, the present revision has been filed by defendants Angad Ram Yadav and Krishna Ram Yadav.
4. Mr. Manoj Paranjape, learned counsel appearing for the applicants would submit that the trial Court has committed jurisdictional error while rejecting the application under Order 7 Rule 11 of the CPC.
5. It is not in dispute that daughter and sons of Devchand, plaintiffs in the subsequent suit, were not parties in the previous instituted suit by Angad Ram Yadav and Krishna Ram Yadav. It is also not in dispute that they are claiming share in the suit property which was compromised in the previously instituted suit by their father Devchand and as such, bar contained under Section 96(3) of the CPC would not be applicable and Order 23 Rule 3A of the CPC would be applicable to a party to a consent decree.
6. The Supreme Court in the matter of **R. Rajanna Vs. S.R. Venkataswamy and others**¹ relied upon paragraph 17 of **Pushpa Devi Bhagat vs. Rajinder Singh**² which states as under:-

“17. Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the

1 (2014) 15 SCC 471

2 (2006) 5 SCC 566

question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between the parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and choose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code”.

7. In view of the aforesaid analysis, I do not find any illegality in the order impugned.
8. Consequently, the revision being without substance is liable to be and is accordingly dismissed at the admission stage itself.

Sd/-

(Sanjay K. Agrawal)

JUDGE

B/-