

SECOND APPEAL NO. 248 OF 2016

VERSUS

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DATE : 30th MARCH, 2016

2. Copies of relevant documents viz. the compromise document produced in the Suit and the order

made on it are produced in the present matter. Present appellant was defendant in the said Suit. In compromise document, it was informed to the Court that the possession of the suit property was with the plaintiff as the possession was given by way of Hiba [gift] by defendant to the plaintiff. It was informed that the plaintiff was entitled to get the name entered in the revenue record accordingly. In the plaint, it was the contention of the plaintiff that she was in possession as the property was gifted to her by the defendant. In view of the compromise document produced in the Court, the trial Court made following order.

“ The case is compromised on 15/01/2011. The Suit is allowed to be decreed in terms of compromise pursis at Exh. 15 and proceeding is closed. ”

3. Thus, the Suit filed for relief of injunction was decreed in view of the compromise document, consent filed for giving such decree. The document at Exh. 16/2 and Exh. 415, copies of which are produced in the present proceeding show that on 11/03/2011 Advocates of both sides were present before the Presiding Officer of the Court and in their presence the aforesaid order was made. Decree was prepared accordingly on 11/03/2011 itself. Present appellant/original defendant is not disputing that on the aforesaid compromise document, she had put her signature, though the learned counsel tried to contend that her Advocate probably deceived her and obtained her signature on the compromise document. He submitted that probably procedure of verification was not

followed by the Court before passing the order in terms of the compromise.

4. The proceeding for condonation of delay came to be filed on 21/08/2015. It can be said that present appellant wanted to file regular civil appeal [under the provisions of Section 96 and Order XLI of the Code of Civil Procedure] against the aforesaid compromise decree. The District Court has considered the contentions made with regard to sufficient cause. It is held that no sufficient cause is made out. The allegations were made that there was mis-representation and coercion but the Court held that no such case was made out in delay condonation application.

5. In view of the provision of Section 96 (3) of the Code of Civil Procedure, this Court had asked the learned counsel for the appellant to satisfy this Court that the First Appeal itself was tenable. The provision of Section 96 (3) runs as under :

“ No appeal shall lie from a decree passed by the Court with the consent of parties ”.

6. The learned counsel for the appellant placed reliance on some reported cases. In the case reported as **AIR 2005 Supreme Court – 3799 [Kishun @ Ram Kishun (dead) through L.Rs. Vs. Bihari (D) by L.Rs.]**, the decree was passed of compromise but when the compromise was set up by one party, it was disputed by other party and the trial

Court had adjudicated such dispute raised by one side. The Apex Court held in view of the facts of that case that it can not be termed as the decree passed on the basis of the consent of parties and so the bar of Section 96 (3) of the Code of Civil Procedure was not applicable. The facts of the present matter are altogether different. There was no contest in the trial Court and the decree is given on the basis of the compromise, the consent as already mentioned. Thus, the observations made by the Apex Court in the case cited supra are of no help to the appellant.

7. The reliance was placed by the learned counsel for the appellant on the case reported as *AIR 1993 Supreme Court – 1139 [Banwari Lal Vs. Smt. Chando Devi (through L.R.) and Anr.]*. In this case, there was allegation against the party, who had got compromise decree that fabricated petition of compromise was filed and there was no compromise between the parties. The Apex Court held that in such circumstances parties can challenge the compromise and file petition under the provisions of Order XXIII Rule 3-A of the Code of Civil Procedure or party can file Appeal u/s 96 (1) of the Code of Civil Procedure. However, it is further observed that this can be done in view of Order XLIII Rule 1-A of the Code of Civil Procedure. The provision of Order XLIII Rule 1-A runs as under.

“ Right to challenge non-appealable orders in appeal against decrees - (1) Where any order is made under this Code against a party and thereupon any

judgment is pronounced against such party and a decree is drawn up, such party may, in an appeal against the decree, contend that such order should not have been made and the judgment should not have been pronounced.

(2) In an appeal against a decree passed in a suit after recording a compromise or refusing to record a compromise, it shall be open to the appellant to contest the decree on the ground that the compromise should, or should not, have been recorded.”

8. This provision is part of Order XLIII, which is in respect of Appeal from orders. Thus, Misc. Appeal could have been filed against the compromise decree. If the delay is not condoned and the plaintiff intended to file Regular Civil Appeal under Order XLI of the Code of Civil Procedure, such order can not be challenged in Second Appeal. For entertaining Second Appeal, the conditions laid down in Section 100 of the Code of Civil Procedure need to be complied with. The order made by the District Court on delay condonation application in the present matter can not be treated as decree, as regular civil Appeal u/s 96 of the Code of Civil Procedure was not tenable for the reason already given. Thus, the Second Appeal itself is not tenable. This Court is avoiding to touch the case put up in respect of sufficient cause.

9. In the result, Second Appeal stands dismissed.

[T.V.NALAWADE, J.]

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