

IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

CR No. 3140 of 2013 (O&M)

Date of decision: February 8,2016.

Sheo Raj

.....Petitioner

VS.

Jagdish

.....Respondent

CORAM: HON'BLE MR.JUSTICE K.KANNAN

Present: Mr. Sanjay Mittal, Advocate
for the petitioner.

Mr. A.P.S. Mann, Advocate
for the respondent.

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

K.KANNAN,J (Oral)

1. In a suit for injunction, a compromise was brought between the parties at the Appellate Court under the terms of which the property was to be divided equally between the plaintiff and the defendant. After the decree was passed, the plaintiff applied for passing of final decree for half share in the manner brought out in the partition. The Local Commissioner was appointed and in further process

of partition of the property and in execution the defendant/ judgment debtor objected on the following pleas.

(i) That the Appellate Court did not have the power to pass a partition decree in an injunction suit; and (ii) it was brought about by fraud;

The court below declined to entertain the objection and allowed for further process to secure to the plaintiff the benefit of half share predicated through the Commissioner's report.

2. The learned counsel reiterated the objections and stated the court did not have a power to pass a partition decree in an injunction suit. The contention is erroneous, for, there is no fetter for a court to accept any form of compromise between parties, and all that the court will examine under Order 23 Rule 3 CPC is, whether the compromise is lawful. Any other arrangement, even if it is not with reference to the subject matter could still be made a compromise and obtain imprimatur from the court.

3. The counsel wants to contend that his own remedy by means of a suit to challenge the compromise shall be preserved. The defendant will have no such right available in the light of the amended provisions of Order 23 Rule 3A CPC which bars a suit to be filed to challenge a compromise. If a compromise terms is put into court on the basis of which, any party seeks for a decree to be passed, it shall be always open to contend that there was no lawful compromise and the court shall not adjourn the case except for reasons to be stated but hear a case day to day and dispose of it in the manner contemplated under Rule 3 CPC. The amendment introduced by the Act 104/1976 by introduction of Rule 3A was only because a full-fledged adjudication on the lawfulness of the compromise was provided before the very court, where the compromise was brought. In cases of inherent lack of

jurisdiction of the court, a decree could be annulled or if there were any of the vitiating circumstances that would make illegal the compromise, a separate suit could have been competent; but not otherwise.

4. The decree holder must have the benefit of the further process as already ordered. There is no merit in the revision petition. The Revision Petition is dismissed.

FEBRUARY 08 , 2016

Rajeev

(K.KANNAN)
JUDGE