

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

**CR No.5515 of 2011 (O&M)
Decided on: 10.05.2016**

Rajbir Singh

....Petitioner

Versus

Hawa Singh and others

....Respondents

CORAM: HON'BLE MRS JUSTICE REKHA MITTAL

Present : Mr. Kulvir Narwal, Advocate
for the petitioner.

Mr. Lokesh Sinhal, Advocate
for respondents No.6, 8 to 10 and 15 to 19.

None for respondents No.1, 3 to 5, 7, 12 and 13.

- 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?*

REKHA MITTAL, J.

The present petition lays challenge to orders dated 10.11.2010 (Annexure P-4) and dated 10.11.2010 (Annexure P-5) passed by the Additional District Judge, Sonapat, dismissing the applications filed by the predecessor-in-interest of the petitioner.

A brief backdrop of the case is that Hawa Singh-respondent No.1 filed a suit to assail the judgment and decree dated 27.11.1992 and in the suit Maha Singh, Risala, Smt. Birmati, Ajmer and Krishan were arrayed as defendants. The suit was dismissed by the

learned trial Court vide judgment and decree dated 11.03.2003 that became subject-matter of appeal preferred at the instance of unsuccessful plaintiff – Hawa Singh. The appeal was disposed of by the Additional District Judge, Sonapat vide order dated 02.11.2004 on the basis of statement made by Sh. Prem Tirath, Advocate for the respondents, Maha Singh son of Krishan Lal and Om Parkash son of Gulzari Lal attorney of respondents No.3 to 5. A relevant extract from the statement dated 02.11.2004, germane to the present controversy, reads as under:-

*“Statement of Shri Prem Tirath Adv. For the respondents
(all the respondents)*

Without oath

And

Respondent Maha Singh son of Krishan Lal, aged 65 years, Agriculturist, resident of Tihar Milk, The. Gohana, Diss. Sonapat.

On SA.

And

Om Parkash son of Gulzari Lal, aged 60 years, Agriculturist, resident of Vill: Gangana The. Gohana, Distt: Sonapat. Attorney of respondents No.3 to 5 namely Birmati, Ajmer and Krishan.

On SA.

I (Omparkash) am general attorney of respondents named above vide general power of attorney dated 23.11.1992. Parties have effected compromise. So we have no objection if the appeal is allowed and judgment and decree dated 27.11.1992 and 11.3.2003 are set aside and suit of the plaintiff is decreed by declaring the judgment and decree dated 7.9.1977 as legal. Accordingly, in view of the statement the appeal may be allowed leaving the

parties to bear their own costs.”

On the basis of aforesaid statement, the Court of appeal disposed of the appeal vide order dated 02.11.2004 and the same reads, quoted thus:-

*“Present Shri Ram Mehar Adv. for the appellant.
Shri Prem Tirath, Adv. for the respondents
along with Om Parkash, general attorney and
respondent No.1, Maha Singh in person.*

Parties have effected compromise, Statement of the counsel for the respondents, one of the respondents Maha Singh and General Attorney of the respondents namely Om Parkash has been recorded. So, in view of their statement recorded overleaf, the present appeal is allowed. The judgments and decree dated 27.11.1992 and 11.3.2003 under appeal are set aside while the suit of the plaintiff is decreed declaring the decree dated 7.9.1977 as legal one. However, the parties are left to bear their own costs. Decree-sheet be drawn accordingly. File be consigned to record room.”

Risala – defendant/respondent No.2 before the trial Court and Appellate Court respectively filed an application under Order 47 Rule 1 of the Code of Civil Procedure (in short 'CPC') for review of the judgment and decree dated 02.11.2004. During pendency of the application, another application was filed for passing the appropriate order and treating the application filed under Order 47 Rule 1 CPC for review of the judgment and decree dated 02.11.2004 as an application under Section 151 read with Order 23 Rule 3 CPC. The second application filed by Risala Singh through his legal representatives

Rajbir Singh and others was disposed of by the Additional District Judge, Sonapat vide order Annexure P-4 and a relevant extract from the order is quoted hereinbelow for ready reference:-

“Hence, at this stage the present review application cannot be treated as an application under Section 151 read with Order 23 Rule 3 CPC. However, after hearing the arguments on review application, if the Court thinks proper the Court has power to pass the particular order. Hence, the application for treating the review petition as an application under Section 151 read with Order 23 Rule 3 CPC is hereby devoid of merits and same is hereby dismissed.”

Thereafter, the review application filed under Order 47 Rule 1 CPC and to decide the appeal on merits was dismissed vide order dated 10.11.2010 (Annexure P-5).

Counsel for the petitioner has submitted that vide judgment and decree dated 27.11.1992 passed in favour of Risala son of Ram Sarup, ownership rights in the suit land measuring 13 kanal 09 marla situated in the revenue estate of village Tihar Milk, Tehsil Gohana, District Sonapat, were created in his favour. The suit filed by Hawa Singh, respondent/plaintiff to stake his claim qua the suit property by assailing the judgment and decree dated 27.11.1992 was opposed by Risala Singh tooth and nail and the suit was eventually dismissed by the trial Court vide judgment and decree dated 11.03.2003. During pendency of appeal filed by Hawa Singh to assail the judgment and decree dated 11.03.2003, no compromise was effected between Hawa Singh and Risala and the statement made by counsel for the respondents including that of Risala in regard to compromise is

without any instructions from Risala, therefore, the said statement is neither binding against the petitioner nor can be used to his detriment by depriving Risala or/and his successors-in-interest of the right created by the judgment and decree dated 27.11.1992. It has been argued with vehemence that if a compromise was to be effected by the parties during pendency of the appeal, the same was required to be recorded in writing and signed by the parties but in the instant case there was no compromise much less a lawful agreement and thus the order dated 02.11.2004 passed by the Appellate Court cannot be allowed to sustain. In support of his contention, he has relied upon judgment of Hon'ble the Supreme Court of India ***“Gurpreet Singh vs Chatur Bhuj Goel”***, 1988 PLJ 118.

Counsel for the respondents, on the contrary, has supported the impugned orders with the submissions that as dispute between the parties was settled by way of compromise, statement of Sh. Prem Tirath Advocate representing all the respondents in the first appeal including Risala – respondent No.2 now represented by the petitioner, Maha Singh – respondent No.1, Om Parkash attorney of respondents No.3 to 5 namely Birmati, Ajmer and Krishan therein was recorded that formed the basis for disposal of the appeal on the basis of compromise, no fault can be found in the impugned orders merely on the plea that compromise was not reduced into writing. For this purpose, he has referred to judgment of Hon'ble the Supreme Court of India ***“Jineshwardas (D) through L.Rs. and others vs Smt. Jagrani and another”***, 2003(4) RCR (Civil) 606. Reference has also been made to judgment of this Court ***“Jagtar Singh and others vs Amar Singh and***

others”, 2006(1) RCR (Civil) 805. It has further been argued that as counsel representing Risala was competent to make a statement on behalf of his client, neither Risala nor the present petitioner can wriggle out of the said statement to challenge order dated 02.11.2004 whereby the appeal preferred by Hawa Singh was disposed of.

I have heard counsel for the parties, perused the paperbook and the orders impugned.

Order 23 Rule 3 CPC provides:-

“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 than 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.*”

In ***Gurpreet Singh's case (supra)***, the Hon'ble Apex Court in Para 10 has held that when the parties enter into a compromise during hearing of the suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with.

The Court must, therefore, insist upon the parties to reduce the compromise into writing. In ***Jineshwardas (D) through L.Rs. and others case (supra)*** wherein the judgment in Gurpreet Singh's case (supra) has been considered in detail, the Apex Court after taking into consideration the observations made in ***“Byram Pestonji Gariwala vs Union Bank of India and others”***, 1992 (1) SCC 31 has held in Para 8 that their lordships are in respectful agreement with the abovesaid statement of law. Consequently, it is not permissible for the appellant to contend to the contrary. That apart, their lordships are also of the view that a judgment or decree passed as a result of consensus arrived at before Court, cannot always be said to be one passed on compromise or settlement and adjustment. It may, at times, be also a judgment on admission, as in this case. In Para 9 of the judgment, the Court also considered the appeal on merits and held that there are no adequate reasons on merits also to call for interference in a second appeal. The so-called questions formulated cannot be considered to be even questions of law and at any rate not substantial questions of law as required under Section 100 CPC.

In ***Jineshwardas (D) through L.Rs. and others case (supra)***, Jineshwardas the original plaintiff filed a suit for possession by way of specific performance of an agreement and for damages at market value in the alternative. The suit was dismissed by the trial Court, the judgment of the trial Court denying specific performance and recovery of possession was affirmed but claim of the plaintiff to receive a sum of Rs.2,500/- with interest was allowed. In second appeal preferred before the High Court, the same was admitted on questions of law reproduced

in Para 2 of the judgment. When the second appeal came for final hearing, in view of agreement between counsel for the parties, the appeal was decided, judgments and decrees passed by the Courts below were modified and the respondents were held liable to pay Rs.25,000/- to the appellants within a period of one month failing which the amount will carry interest @ 12% per annum till its realization.

Later, an application for review was filed by the legal heirs of Jineshwardas on the premise that the compromise has not been entered into writing and signed by the parties and, therefore, any statement made by counsel appearing for the appellant was without any instructions of the appellant. The application for review was dismissed that led to filing of an appeal before Hon'ble the Supreme Court of India.

In the case at hand, no compromise was effected between the parties at the time of hearing of the appeal. It is a mystery as to what was the consideration for Risala to agree for a compromise and make a statement for acceptance of claim of the respondent/appellant to set-aside the judgment and decree dated 27.11.1992 whereunder rights in the suit property were created in his favour. Even by filing response to the application for review, nothing has been revealed at the instance of respondent/appellant as to what were the terms and conditions of compromise or what persuaded Risala to enter into a compromise and allow the judgment and decree dated 27.11.1992 to be set-aside. Not only this, counsel for the respondents is not in a position to apprise this Court as to for what consideration, Risala agreed for acceptance of the appeal filed by Hawa Singh and to set-aside the judgment and decree

dated 27.11.1992. It may be true that failure to reduce the compromise in writing, signed by the parties in compliance with the provisions of Order 23 Rule 3 CPC may not be taken seriously in every case but in view of the facts and circumstances of the present case, it is difficult to accept contention of the respondents that as a matter of fact, dispute between the parties was settled by way of compromise that formulated the basis for disposal of the appeal in view of statement made by counsel representing Risala and others. It further appears to the Court that as there was some settlement between Hawa Singh – respondent/appellant, Maha Singh – respondent No.1, Birmati, Ajmer and Krishan – respondents No.3 to 5 in the appeal and all the respondents were being represented by same counsel namely Sh. Prem Tirath, Advocate, he (Sh. Prem Tirath, Advocate) made a statement for all the respondents along with Maha Singh and Om Parkash attorney of respondents No.3 to 5 but at the back of Risala and without his knowledge. There is nothing on record suggestive of the fact that there was any exigency of circumstances demanding immediate adjustment of suit by agreement of compromise and signature of the party could not be obtained without undue delay, therefore, had the Court of appeal been cautious and careful, the situation created vide order dated 02.11.2004 and proceedings consequent thereto would have been avoided.

One thing more to be added here is that there is no material on record to suggest that any right was created in favour of Maha Singh, Birmati, Ajmer and Krishan, other respondents in the appeal, under the judgment and decree dated 27.11.1992 that was set-aside by

the Court of appeal by accepting the appeal preferred by Hawa Singh (plaintiff) against the judgment and decree dated 02.11.2004. In view of the above, it is expedient in the interest of substantial justice that the impugned order dated 10.11.2010 (Annexure P-5) is set-aside and the appeal filed by Hawa Singh against Maha Singh and others is restored to its original status for disposal on merits only *qua* Risala, after hearing the parties, in accordance with law.

In view of what has been discussed hereinabove, the petition is allowed in the aforesaid terms. Civil Appeal No.105 of 2003 titled '*Hawa Singh and others vs Maha Singh and others*' is restored on the Board of First Appellate Court to be disposed of after hearing counsel for the appellant and respondent No.2 therein. Nothing stated in this order shall be construed as an expression of opinion on merits of the case.

10.05.2016
yakub

(REKHA MITTAL)
JUDGE