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* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

+ CM(M) 55/2015 & C.M. No.1173/2015

ROSHNI DEVI

..... Petitioner

Through Petitioner with her counsel
Mr.Sumesh Dhawan, Ms. Vatsala
Kak and Ms. Tannya Baranwal, Advs.

versus

GURENDER RANA & ANR

..... Respondents

Through

CORAM:

HON'BLE MS. JUSTICE INDERMEET KAUR

ORDER

% **19.04.2016**

1 The petitioner is aggrieved by the order dated 17.05.2014 passed by the Civil Judge wherein his application filed by him under Section 151 of the Code of Civil Procedure (hereinafter referred to as the 'Code') seeking setting aside of the judgment dated 27.11.2012 had been dismissed. Vide judgment dated 27.11.2012, a compromise decree had been recorded between the Special Power of Attorney holder of the petitioner i.e. the husband of Roshni Devi namely Mange Ram Rana and his two sons namely Gurender Rana and Hitender Rana. By virtue of this compromise decree, Mange Ram Rana (husband of Roshni Devi) on the strength of this Special Power of Attorney (dated 14.09.2010) had entered into a compromise with his two sons whereby the property owned by his wife Roshni Devi by virtue of the judgment and decree dated 27.11.2012 fell to the three equal shares of Roshni Devi, Gurender Rana and Hitender Rana i.e. the petitioner and her two sons. An application seeking setting aside of this judgment and decree dated 27.11.2012 was preferred before

the Trial Court on 21.12.2012. This application was dismissed by the first impugned order dated 17.05.2014. The Civil Judge was of the view that an application filed under Section 151 of the CPC seeking setting aside of a compromise decree was not maintainable; the petitioner should take recourse to filing a separate suit. The petitioner thereafter filed an appeal under Section 96 read with Order XLIII Rule 1 (a) of the Code before the Appellate Court. The petitioner had challenged the judgment and decree dated 27.11.2012. This appeal was dismissed by the first Appellate Court on 30.10.2014. The Appellate Court was of the view that the appeal is not maintainable as the landlord had already exhausted his remedy through his application under Section 151 of the CPC; it is also barred by limitation. The appeal was not disposed of on merits.

2 Record shows that the petitioner Roshni Devi filed a suit for permanent injunction bearing suit No. 1370/2010 against her two sons Gurender Rana and Hitender Rana. This suit had been filed in the year 2006. In September, 2010, the petitioner had undergone a surgery. A Special Power of Attorney had been executed by her in favour of her husband Mange Ram Ram. This Special Power of Attorney is dated 14.09.2010. By virtue of this Special Power of Attorney, the petitioner Roshni Devi had appointed her husband Mange Ram Rana to represent her case before the Trial Court in the suit titled as 'Roshni Devi Vs. Gurender Rana and Another' i.e. suit No. 1370/2010. It authorised her husband Mange Ram Rana to prosecute and defend all actions and proceedings and to do all other

lawful acts and things as can effectively be carried out by her husband. It was on the strength of this power of attorney that her husband had compromised the matter with their two sons and the decree dated 27.11.2012 came to be passed. The statements of the parties i.e. of Mange Ram Rana and their two sons Gurender Rana and Hitender Rana were recorded. It was agreed that the suit property i.e. property bearing No.45/11 situated in the Revenue Estate of Village Ghevra, Delhi would be divided in terms of the joint application filed by the parties under Order XXIII Rule 3 of the CPC exhibited as Ex.C-2. In terms of that application, 1/3rd share of the property fell to the petitioner and 1/3rd share each fell to the share of her two sons namely Gurender Rana and Hitender Rana.

3 On 21.12.2012 i.e. within less than one month of the judgment and decree dated 27.11.2012, the petitioner Roshni Devi moved an application seeking recall of the order dated 27.11.2012. The submission was that her husband had fraudulently relied upon the Special Power of Attorney which she had given to him and had entered into a compromise with her sons Gurender Rana and Hitender Rana behind her back; they had all joined hands together against the petitioner; all of them had become aggressive and to target the interest of the petitioner and to deprive the petitioner and her only daughter Yogita of their rightful share in the property, the aforementioned compromise decree had been got obtained from the Court; submission being reiterated in this application that the Special Power of Attorney dated 14.09.2010 had not authorized her husband Mange Ram Rana

to compromise the decree behind her back; the petitioner has been victimized. She had accordingly sought the relief of getting the judgment and decree dated 27.11.2012 to be set aside.

4 On 17.05.2014, the aforementioned application dated 21.12.2012 was dismissed. This was largely premised on the finding that the proper recourse for the petitioner was to file a separate suit and the application filed under Section 151 of the CPC seeking setting aside of the compromise decree was not maintainable.

5 Before the Appellate Court, an appeal was filed. The Appellate Court i.e. the Court of Senior Civil Judge had noted that this appeal has been filed against the judgment dated 27.11.2012. The Court was of the view that since the petitioner/Roshni Devi had already taken resort to an application under Section 151 of the CPC and had sought setting aside of the judgment and decree dated 27.11.2012, the present appeal was not maintainable; even otherwise, it was barred by limitation.

6 Before this Court, there are three orders which have been impugned. The first order is the judgment and decree dated 27.11.2012; the second is the order passed on the application filed by the petitioner under Section 151 of the CPC seeking a recall of the judgment dated 27.11.2012 which had been dismissed on 17.05.2014. The third order which has been challenged is the order dated 30.10.2014 vide which the appeal against the judgment dated 27.11.2012 had been dismissed primarily for the reason that it was barred by limitation and not maintainable for the reason that the

petitioner had already availed of her remedy under Section 151 of the CPC.

7 Learned counsel for the petitioner to support his submission has placed reliance upon a judgment of the Apex Court (2014) 15 SCC 471 R. Rajanna VS. S.R. Venkataswamy and others as also another judgment of the Apex Court reported as (2003) 6 SCC 675 Surya Dev Rai Vs. Ram Chander Rai and Others. Submission being that this Court in its power of superintendence under Article 227 of the Constitution has wide powers where a subordinate Court has assumed a jurisdiction which it does not have or failed to exercise a jurisdiction which it does not have or the jurisdiction though available is being exercised by the Court in a manner not permitted by law and failure of justice or grave injustice has occasioned, the High Court may step in to exercise its supervisory jurisdiction. The second argument canvassed is that a compromise under the provisions of Order XXIII Rule 3 of the CPC, the proviso and the Explanation contained therein explicitly provide that where a compromise has been challenged and the question whether the agreement or compromise is lawful or not has to be determined by the Court before whom the compromise has been recorded and as such the order passed by the Trial Judge on 17.05.2014 dismissing the application of the petitioner under Section 151 of the CPC and holding that the petitioner should file a separate suit to challenge the compromise decree is an illegality committed by the Trial Judge.

8 Per contra, learned counsel for the respondent submits that the

impugned order in no manner calls for any interference. The compromise had been arrived at between the parties in view of their voluntary statements given and as such the husband of the petitioner Mange Ram Rana having full strength on the basis of Special Power of Attorney dated 14.09.2010 executed in his favour by his wife is backing out from the compromise now does not hold good. The impugned order calls for no interference. Learned counsel for the respondents additionally submits that the two sons of the petitioner have in fact also paid consideration to their mother for the aforementioned compromise decree arrived at between the parties. It is the sister of the parties who is creating a problem between the family members and the impugned order therefore calls for no interference.

9 Arguments have been heard. Record has been perused.

10 This Court notes that all the family members were present before the Trial Court. The petitioner mother Roshni Devi, her husband Mange Ram Rana and her two sons Gurender Rana and Hitender Rana as also her daughter Yogita were all present at the time of hearing. Court queries have been put to them. The petitioner has been vehement in her submission and categorically submits that during the pendency of the suit No. 1370/2010, on 14.09.2010 she had executed a power of attorney in favour of her husband which was only for the purpose of permitting him to continue with suit proceedings because of the surgery that she had undergone which was in the month of September, 2010. She had not authorized him to act in a manner which would be to her prejudice and behind her back.

Submission being that the compromise arrived at between the parties was against her interest as she has been deprived of her right to give an equal share in the suit property to her daughter; this compromise is a nullity.

11 This submission of the learned counsel for the petitioner has force. This is clear from the fact that after the compromise was recorded on 27.11.2012, immediately forthwith i.e. within less than one month of the aforementioned judgment, an application dated 21.12.2012 was filed by the petitioner Roshni Devi in the Trial Court. Her submission was that her husband and two sons have become very aggressive and against her wishes got their statements recorded before the Trial Court. This was reiterated in the four page long application filed by her before the Trial Court. It is relevant to note that a reply had been filed by the husband of the petitioner namely Mange Ram Rana. In this reply, the husband disclosed to the Court that last year some differences had arisen between the petitioner wife (Roshni Devi) and her husband (Mange Ram Rana) and because of the pressure created upon Mange Ram Rana by his two sons, he had made a statement behind the back of his wife; he was not supporting his sons; at that time Mange Ram Rana was also undergoing neurological problems and his sons had influenced him to enter into this compromise under coercion. He also sought opportunity before the Trial Court to resile from the statement which he had made on behalf of his wife Roshni Devi. Submission being reiterated that there was undue coercion and influence by his two sons.

12 This application under Section 151 of the CPC filed by Roshni Devi was decided on 17.05.2014. The order dated 17.05.2014 had noted the reply filed by the husband Mange Ram Rana but the Court was of the view that if Roshni Devi had been victimized by her husband, she should have revoked the power of attorney by a written document which was not done. The Court had disbelieved the version of Roshni Devi and had refused to recall the judgment dated 27.11.2012. At the same time had noted that the application filed under Section 151 of the CPC is not maintainable as the proper remedy for the petitioner was to have filed a separate suit.

13 This order passed by the Trial Court on 17.05.2014 is clearly illegal. Order XXIII Rule 3 of the CPC and the proviso and the Explanation contained therein is clear and categorical. It reads herein as under:-

“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.

Explanation : An agreement or compromise which is void or avoidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.”

14 A plain reading of the above provision makes it clear that where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the Court before whom such question is raised would decide the same. On 17.05.2014, the Trial Court had cursorily dismissed the application under Section 151 of the CPC noting that such an application is not maintainable and the proper course for the petitioner was to have filed a separate suit. This is an illegal finding. In every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties and is binding or not, the question whether the agreement or compromise is lawful or not has to be determined by that Court itself. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree and would make the same void or voidable under the Indian Contract Act.

15 Under the Indian Contract Act, 1872, where a ‘consent’ to a compromise is not free and has been obtained by coercion, fraud or undue influence, such a consent not being a valid consent would make such a compromise/agreement voidable. This is clear from the reading

of Section 19 of the Indian Contract Act. (hereinafter referred to as the 'said Act')

16 The petitioner, at the cost of repetition, within less than one month (of the Special Power of Attorney having been used to her prejudice and against her interest), had moved an application before the concerned Court seeking setting aside of the judgment dated 27.11.2012. It was brought to the notice of the Court that her husband had played a fraud upon her and had against her interest colluded with her two sons. This was not considered by the Trial Judge. The averments made in the application clearly spell out that the petitioner had been victimized; she had undergone surgery and for that purpose alone, she had executed this power of attorney in favour of her husband. He admittedly had compromised the matter behind her back. Admittedly in terms of the compromise, the petitioner had lost 2/3rd share in the suit property and thus was not in a position to give an equal share in the property to her third child i.e. to her daughter. 'Consent' has been defined under Section 13 of the said Act. 'Free consent' has been defined under Section 14. Consent is to be free when it is not caused by coercion, undue influence, fraud, misrepresentation or a mistake. A contract is induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the Will of the other. A 'misrepresentation' has been defined under Section 18. This includes any breach of duty which without an intent to deceive, gains an advantage of the person committing it or anyone claiming under

him by misleading another to his prejudice or to the prejudice of any one claiming under him. A contract which has been entered into on the strength of an undue influence or a misrepresentation is voidable.

17 In the instant case what can be gathered from the averments made in the application under Section 151 of the CPC is that a misrepresentation had been made by Mange Ram Rana before the Court which was prejudice to the petitioner Roshni Devi; Mange Ram Rana had committed a breach of duty; the reply filed by Mange Ram Rana to the application under Section 151 of the CPC shows that he himself was under coercion, pressure and undue influence from his two sons; their defiant and aggressive attitude had coerced and unduly influenced him to make a statement prejudicial to the interest of his wife. This has been clearly stated by him in the reply to the aforementioned application filed in the Trial Court. The Trial Court in this background had not considered the facts in the correct perspective. Merely because the application was filed under Section 151 of the CPC (although the nomenclature may not be correct and should have been worded as an application under Order XXIII Rule 3 of the CPC proviso read with its Explanation) it was incumbent upon the Trial Court to have returned a finding as to whether this compromise dated 27.11.2012 was lawful or not. It had failed in this duty.

18 The judgment dated 27.11.2012 was the subject matter of challenge before the Appellate Court. The Appellate Court had disposed of the appeal on 30.10.2014. It was largely premised on the

fact that the petitioner had already by way of an application under Section 151 of the CPC had availed of its remedy before the Trial Court and had sought setting aside of the judgment dated 27.11.2012 which had been declined on 17.05.2014.

19 This Court notes that the appeal filed before the Senior Civil Judge had challenged only the judgment and decree dated 27.11.2012. It had not challenged the dismissal of the application under Section 151 of the CPC on 17.05.2014. The dismissal of the application on 17.05.2014 is the subject matter of these proceedings. It has not been challenged earlier. The Appellate Court had returned a finding that the petitioner has already availed of the remedy by seeking setting aside the judgment dated 27.11.2012 and her application having been dismissed on 17.05.2014, it does not now lie in the mouth of the petitioner to re-assail the judgment dated 27.11.2012.

20 Relevant would it be to note that before the Appellate Court, the order dated 17.05.2014 was not under challenge and neither party has addressed any argument on the aforementioned impugned order. That order has thus not been considered by any Superior Court on its merits.

21 A perusal of the record persuades this Court to hold that this Court must exercise its power of superintendence as a patent illegality has been committed by the Courts below; a grave injustice has been caused to the petitioner who is standing before the Court and is crying loud telling the Court that her husband and her two sons in connivance with one another, to her prejudice, have entered into a

compromise and while she was undergoing a surgery, a compromise wholly prejudicial to her interest has been arrived at. She is now not in a position to give an equal share in the suit property to her only daughter with whom she is presently living as both her sons have ousted her from the property. Her husband is also living separately and although he is now supporting her and in his reply filed in the Trial Court (to the application under Section 151 of the CPC), he has stated that it was under coercion and undue influence by his sons that he had entered into this compromise on 27.11.2012 yet the petitioner wife is so estranged from her husband that she is no longer taking any support from him and all her emotional and financial support is now being addressed to her through her daughter with whom she is living.

22 The petitioner at this stage has even made a proposal to the parties that she is willing to give $1/5^{\text{th}}$ share to all her class I legal heirs i.e. one share to her husband and three shares to her three children i.e. two sons and one daughter and $1/5^{\text{th}}$ would be retained by her but this proposal is not acceptable to the respondents sons. In fact the matter had been sent to the Mediation Cell of this Court and every effort had been made to settle the matter but this Court notes that the Mediator has reported a case of 'non- starter'; even before this Court, the two sons of the petitioner are vehement and do not wish to settle the matter.

23 This Court has already noted that it has wide powers of superintendence and any illegality or perversity or a travesty of justice is liable to be rectified by this Court. This Court is of the view that the

petitioner who is crying hollow and telling every forum that she has been ousted of her legal right by the connivance of her husband and two sons has not been heard and has accordingly made out a good case to get the impugned order set aside.

24 Accordingly, the judgment and decree dated 27.11.2012 which has been obtained on the strength of an undue influence and misrepresentation is set aside. The said compromise is declared as unlawful. The impugned order dated 17.05.2014 vide which the application of the petitioner under Section 151 of the CPC seeking a recall of the judgment dated 27.11.2012 is allowed. The order passed by the Appellate Court on 30.10.2014 dismissing the appeal of the petitioner against the judgment dated 27.11.2012 (as a necessary corollary) is also set aside. The suit property is relegated to its original status. The petitioner is the complete owner of the suit property. This Court has been informed that pursuant to the aforementioned orders, mutation of the property has not been effected. The petitioner being the full owner of the property is at liberty to deal with it in the manner that she wishes to do so.

25 Petition is allowed and disposed of in the above terms.

INDERMEET KAUR, J

APRIL 19, 2016/A