

In the High Court of Punjab and Haryana at Chandigarh

C.R.No. 5944 of 2015
Date of Decision:7.11.2017

Krishna Devi and others

---Petitioners

vs

Kusum and another

---Respondents

Coram: Hon'ble Mrs. Justice Rekha Mittal

Present: Mr. R.S.Mamli, Advocate
for the petitioners

Mr. S.S.Dinarpur, Advocate
for respondent No. 1

Rekha Mittal, J.

Challenge in the present petition has been directed against order dated 3.8.2015 (Annexure P-1) passed by the Civil Judge (Junior Division), Bilaspur whereby application filed by respondent No. 1 for permission to withdraw statement dated 22.3.2011 and the compromise (Annexure P-5) has been allowed.

Counsel for the petitioners/plaintiffs has submitted that Krishna Devi and others filed suit for declaration that they are owners in possession in equal share of land measuring 47 bighas 14 biswas, detailed in head note of the plaint and the release deed purported to be executed by Sanjeev

Kumar in favour of the defendant is null and void, an act of fraud and not binding on rights of the plaintiffs with a prayer for grant of permanent injunction against alienation of the suit land and interference in possession of suit land by the defendant. During pendency of the suit, compromise deed dated 10.9.2012 (Annexure P-3) executed between Krishna Devi petitioner No. 1 and Kusum respondent No. 1 was produced before the trial court and Kusum got recorded her statement dated 22.3.2011 (Annexure P-4) accepting the compromise (Annexure P-3) and passing a decree on the basis of said compromise (Ex. CX). Later, Kusum filed application dated 22.4.2011 (Annexure P-5) on the premise that Krishna Devi, mother-in-law of respondent No. 1/applicant is a witness in a case under Section 302/34 of the Indian Penal Code registered against the applicant-defendant. She alongwith her son-in-law got the compromise and statement recorded under threat that in case she will not sign the compromise and give a statement in respect of the compromise, Krishna Devi will depose falsely against her in the murder case and she will be convicted. It is argued that the petitioner filed reply to the application, controverted the allegations raised in para 3 that the compromise or the statement recorded by Kusum is the result of coercion with a prayer for dismissal thereof. It is further argued that the learned trial court without deciding the factual controversy if the compromise and statement dated 22.3.2011 recorded by Kusum qua the compromise are the result of any threat/coercion has wrongly allowed the said application by misplaced reliance upon judgment of this Court **Mange Ram vs. Sube Singh and others 2006(RCR) (Civil) 265.**

Counsel for the contesting respondent, on the contrary, would

urge that as the trial court has not passed any judgment on the basis of compromise dated 10.9.2012 and statement of respondent No. 1 dated 22.3.2011, the respondent was at liberty to withdraw from her earlier statement and even compromise.

I have heard counsel for the parties, perused the paper book particularly the various annexures appended with the petition.

In **Mange Ram's case (supra)**, plaintiff had filed a suit for possession by way of specific performance of agreement to sell dated 12.9.2002. The parties entered into compromise whereby on 1.6.2004 the plaintiff made a statement to withdraw the suit as compromised but before the suit could be dismissed as withdrawn, the plaintiff moved an application to decide the suit on merits. The learned trial court dismissed the suit as withdrawn in terms of statement dated 1.6.2004 although before the said date, the plaintiff had moved an application to withdraw the aforesaid statement. This Court has held that the plaintiff cannot be forced to withdraw the suit before the decree in terms of the said statement could be passed by the trial court. However, it was left open to the defendant to take advantage of the compromise and the statement made by the plaintiff on 1.6.2004, if any, permissible in law.

Reverting to the case at hand, the compromise deed dated 10.9.2012 was produced on record and respondent No. 1 made a statement admitting the factum of compromise and a decree to be drawn on the basis of compromise (Ex. CX). A relevant extract from the statement of respondent No. 1, reads as follows:-

“Stated that the plaintiff No. 1 is my mother-in-law,

plaintiff No. 2, Shiksha Devi is my daughter and plaintiff Nos. 3 and 4 are my sons. We have compromised the exhibit CX. The release deed has been cancelled. Now all the plaintiffs and respondents will be shareholder and have become owner of the land to the extent of 1/5th share each. Plaintiff No. 2 to 4 are minor and they are staying with plaintiff No. 1. From there side, the plaintiff No. 1 has rightly compromised which is correct and same is in the welfare of the minors. Father of the minor has died. The decree be passed as per agreement CD. CX be taken as part of the decree. We are bound to get the motive done as per agreement.”

The respondent filed the instant application to withdraw from her earlier statement dated 22.3.2011 and the compromise by levelling allegations that the said compromise and the statement is the result of threat/coercion extended by petitioner No. 1 and her son-in-law.

Perusal of the materials on record would reveal that dispute between the parties pertains to land measuring 47 Bighas 14 Biswas owned by Sanjeev Kumar (since deceased) in regard to whose death, Kusum (his wife) has been indicted for committing murder and trial is pending in the court. Sanjeev Kuamr left behind four minor children, plaintiffs No, 2 to 5 in the suit filed by them under the guardianship of their grand mother who is plaintiff No.1 in the suit. Interests of the minors is involved in the litigation who have virtually been rendered orphans as their father has passed away and mother is facing murder charges and appears to be staying away from

the minors. It may be correct that the respondent/defendant No. 1 could withdraw from the compromise before it was acted upon or a decree is passed on its basis but in the given scenario, it would be in the fitness of things that the issue of compromise is left open, to be decided by the trial court at the time of final adjudication on merits of the case.

For the reasons aforesaid, the petition is disposed of. Impugned order is set aside and the issue of compromise is left open to be decided by the trial court at the time of final disposal of the suit on merits. However, it is clarified that nothing stated hereinbefore shall cause prejudice to either of the parties on the question of compromise.

(Rekha Mittal)
Judge

7.11.2017
paramjit

Whether speaking/reasoned: Yes/No
Whether reportable : Yes/No