

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
NAGPUR BENCH : NAGPUR.

Second Appeal No.587/2017

(Tejarao Namdeo Chinchole .vs. Ramesh Shriram Chinchole and ors.)

Office Notes, Office Memoranda of Coram,
appearances, Court's orders or directions
and Registrar's orders

Court's or Judge's orders.

Mr. D.P. Jaiswal, Advocate for Appellant.
Mr. M.P. Kariya, Advocate for Respondents

CORAM : Manish Pitale, J.

DATED : February 28, 2018.

On 17.11.2017, while issuing notice, this Court had framed the following substantial questions of law:-

i) Could it be said that Regular Civil Appeal No.86/2014 filed by the present appellant was not maintainable especially when the compromise decree which was under challenge in the said appeal affects the rights of the appellant?

(ii) What is the effect of pending Regular Civil Appeal No.3/2017 filed by the present appellant on a compromise decree?

2. I have heard the counsel for the parties on the aforesaid substantial questions of law. The appellant herein claims to have been put in possession of the suit property, which is agricultural land, by the father of respondent no.6 in the year 1980 on *Thoka* basis. The amount of *Thoka* was claimed to be Rs.4,000/- per year and it was further claimed that

there was an oral agreement between them to settle the amount of *Thoka* once every three years. The suit property is agricultural land in Gat no.10, Survey No.4, village Malgani, tahsil Chikhli, district Buldana, admeasuring 7.22 HR. It is the case of the appellant that since the time when father of respondent no.6 put him in possession, he has continued in cultivating possession of the said suit property.

3. On 7.6.2010, the appellant filed Regular Civil Suit No. 54 of 2010 for perpetual injunction against the respondents herein and others seeking to protect his possession. He sought a decree restraining the defendants therein from disturbing his lawful cultivating possession.

4. During the pendency of the said suit, the respondent nos. 1 to 5 filed Regular Civil Suit No.6 of 2011 for declaration against respondent no.6, claiming that they had been in continuous undisturbed possession of the suit property and on that basis they sought a declaration that they were owners of the suit property and that the respondent no.6 had no right, title or interest therein.

5. On 2.8.2011, the respondent nos. 1 to 5 (plaintiffs) and the respondent no.6 (defendant) therein entered into a compromise and a compromise decree was passed disposing of the said suit. As per the said compromise decree, respondent no.6 accepted the contentions of respondent Nos. 1 to 5 and agreed that

they were entitled to ownership and possession of the suit property.

6. Since the appellant herein claimed to be in possession of the suit property and he had already initiated the aforesaid Regular Civil Suit No.54 of 2010 against the respondents and others, which was pending, he challenged the aforesaid compromise decree passed in Regular Civil Suit No.6 of 2011, by filing Regular Civil Appeal No.86 of 2014 before the District Court. In the meanwhile, on 19.12.2016, the trial Court dismissed Regular Civil Suit No.54 of 2010 filed by the appellant. Being aggrieved by the same, on 16.01.2017, the appellant filed Regular Civil Appeal No.3 of 2017 before the District Court, which is pending.

7. By the impugned judgment and order passed on 4.7.2017, the District Court has dismissed Regular Civil Appeal No.86 of 2014, which was filed by the appellant challenging the aforesaid compromise decree passed in Regular Civil Suit No.6/2011. The said Court held that since the appellant was concerned about protection of his possession, for which he had already filed Regular Civil Suit No. 54 of 2010, which was dismissed, but appeal there against being Regular Civil Appeal No. 3 of 2017 was already pending, it could not be said that the appellant was remediless or that his grievance could not be redressed. The Court further held that since the appellant was not party to the compromise decree dated 2.8.2011, it was not binding on him and that he could not be said to be an aggrieved

party against the said compromise decree. On this basis, by the impugned judgment and order, the appeal filed by the appellant has been dismissed.

8. Mr. D.P. Jaiswal, learned counsel appearing on behalf of the appellant, submits that the impugned judgment and order is erroneous because the Court below has failed to appreciate that when the proceeding in the form of suit for perpetual injunction initiated by the appellant was already pending, compromise decree between the respondents herein could not have been passed in a suit filed by the respondent nos. 1 to 5 against respondent no.6. It was contended that such a compromise decree, behind the back of the appellant, was unsustainable and this was not appreciated in the correct perspective by the Court below. It was further contended that pendency of Regular Civil Appeal No. 3 of 2017 arising from the suit for perpetual injunction filed by the appellant, was not taken into account in the correct perspective by the Court below while passing the impugned judgment and order. On this basis, it was contended that the impugned judgment and order deserved to be quashed and set aside.

9. On the other hand, Mr. M.P. Kariya, learned counsel appearing on behalf of the respondents, submitted that the impugned judgment and order was justified because the Court below has taken into consideration the position of law as regards who can be said to be an aggrieved person in the context of the facts of the present case. It was further submitted that

the appellant herein could not be said to be remediless and that he could very well pursue his pending appeal before the District Court to protect his rights and further that since the Court below had observed that the compromise decree dated 2.8.2011 was not binding on him, the appellant could not raise any legitimate grievance against the impugned judgment and order.

10. Having heard the learned counsel for the parties and having perused the pleadings, evidence and documents on record, the above mentioned two substantial questions of law framed by this Court need to be decided.

11. The most important aspect of this case is whether the appellant who claims to be in possession of the suit property can be said to be adversely affected by the compromise decree dated 2.8.2011 passed by the trial Court in Regular Civil Suit No. 6 of 2011, wherein the respondents were parties. If such a compromise decree affected the rights of the appellant, he would certainly be an aggrieved person entitled to challenge the said compromise decree. In this case, the appellant claims to have been put in possession by the father of respondent no.6 way back in 1980 on *Thoka* basis and he claims that he has continued in cultivating possession of the suit property. In the suit for perpetual injunction filed by him before the trial Court, the appellant has prayed for a decree restraining the defendants therein from disturbing his lawful cultivating possession in the suit land. In the said suit, the

respondents are parties. Therefore, the highest right that the appellant can claim is his right to continue in lawful cultivating possession of the suit land.

12. On the other hand, the compromise decree dated 2.8.2011 pertains to a claim by the respondent nos. 1 to 5 as plaintiffs in Regular Civil Suit No. 6 of 2011 for declaration of ownership in the suit property as against respondent no.6, the defendant therein. The said suit has been disposed of in terms of the compromise decree, wherein the respondent no.6 (defendant) has accepted the respondent nos. 1 to 5 as being entitled to the ownership and enjoyment of the suit property. In this compromise decree, the appellant is not a party. The crucial question is, whether the said compromise decree can be said to be vitiated because the appellant was not made a party to the same or that it was executed behind his back. In fact, this is the very grievance raised by the appellant in Regular Civil Appeal No.86/2014 filed by him, challenging the aforesaid compromise decree. According to him, during the pendency of the suit for perpetual injunction filed by him, such a compromise decree could not have been passed and that therefore, it stood vitiated.

13. As stated above, the appellant at the highest is claiming his right of protection of his lawful cultivating possession in the suit property. He has nowhere claimed ownership of the same. In the Regular Civil Suit no. 54 of 2010 filed by him, it is categorically stated by him that the father of respondent no.6 had put him

in possession in the year 1980. The appellant, therefore, cannot claim that the compromise decree in any manner adversely affected the right that he is seeking to ventilate in the suit filed by him and thereafter the appeal that arises therefrom, which is pending. The fact that the appellant was not party to the compromise decree and hence the same was not binding on him, had been noted by the Court below in the impugned judgment and order. Hence there is a finding in the impugned judgment and order itself that the compromise decree is not binding on him. In other words, the respondent nos. 1 to 5 would not be able to dispossess him only on the basis of the aforesaid compromise decree. In any case, they are parties to the suit filed by the appellant, which is now pending in the form of Regular Civil Appeal No. 3 of 2017, before the District Court. Therefore, even if there is any imminent threat to the possession of the appellant in the suit property, his rights would still be ventilated in the aforesaid pending appeal before the District Court.

14. In these facts, it is not possible to hold that either the appellant can be said to be an aggrieved person in respect of the compromise decree dated 2.8.2011 or that he is left completely remediless, insofar as his claim of continuing in lawful cultivating possession of the suit property is concerned.

15. This aspect has been dealt with by the appellate Court in the impugned judgment and order in paragraphs 10 to 12, which read as follows:-

"10. It is not in dispute that, in the impugned compromise decree, the defendant admitted ownership of the plaintiffs. In addition thereto, the appellant had filed Regular Civil Suit No.54/2010, seeking permanent injunction against the plaintiffs & defendant, seeking therein that, they should not interfere into his peaceful & cultivating possession, in respect of the suit field. The said suit came to be dismissed and Regular Civil Appeal No.3/2017, is at present pending to the file of this Court, and therefore, the appeal being continuation of the suit, it cannot be said that, the appellant has become remedy-less to ventilate, his grievance.

11. The question of possession in respect of the suit field, was not decided by the trial court on merits, nor, the appellant was a party to the suit, and therefore, impugned compromise decree is not binding on the appellant. Moreover, the appellant has already availed-of the remedy, to protect his possessory right qua the suit field, by filing Regular Civil Suit No.54/2010. After dismissal of the said suit, he preferred Regular Civil Appeal

No.3/2017 and thus, the appellant cannot in law, invoke right of appeal simultaneously, as his another appeal is pending hearing before this court.

12. Therefore, it cannot be said by any stretch of imagination that, the appellant's alleged possessory right in respect of the suit field, got endangered due to impugned compromise decree. The appellant can ventilate his legitimate grievances & can assert his possessory right, in respect of the suit field, in Regular Civil Appeal No.3/2017."

16. The learned counsel appearing on behalf of the respondents has relied upon judgments of the Hon'ble Supreme Court in the case of **Hardevinder Singh .vs. Paramjit Singh and others - (2013) 9 Supreme Court Cases 261**, and **Arjan Singh .vs. Punit Ahluwalia and others - (2008) 8 Supreme Court Cases 348**, which were referred to in the impugned judgment and order also. In these judgments, the Hon'ble Supreme Court has laid down that a person who is not party to a suit can also prefer an appeal with leave of the appellate Court, provided that he demonstrates that he is prejudicially affected by the judgment of the trial Court. The Hon'ble Supreme Court has also laid down that a person who is not party to a compromise or settlement, would not be bound by such compromise or settlement.

17. The aforesaid position of law has been correctly applied in the impugned judgment and order by the Court below, while holding that the appellant cannot be said to be an aggrieved person, in respect of the compromise decree dated 2.8.2011, firstly because it is not binding on him and secondly, because the right of possession claimed by him and the grievance raised in that context can very well be ventilated by him in Regular Civil Appeal No.3 of 2017, which is pending before the District Court. Therefore, it is evident that the Court below was justified in dismissing the appeal. Regular Civil Appeal No. 3 of 2017 filed by the appellant, which is pending before the District Court, can not in any manner be adversely affected by the compromise decree, since the appellant was not a party to the said compromise. This adequately protects the grievance, if any, of the appellant in the facts and circumstances of the present case.

18. In the light of the above, the substantial questions of law quoted hereinabove are answered against the appellant and in favour of the respondents and this appeal is dismissed.

19. But, while issuing notice in this appeal on 17.11.2017, this Court had directed the parties to maintain status quo in respect of the suit property. It would be in the interest of justice that such order of status quo be continued till disposal of Regular Civil Appeal No.3 of 2017 pending before the District Court,

Buldana. The said Court is directed to decide the aforesaid appeal as expeditiously as possible and in any case within a period of six months from the date when a copy of this order is produced before the appellate Court. The order of status quo passed by this Court on 17.11.2017 shall continue to operate during the pendency of Regular Civil Appeal No.3 of 2017 before the District Court, Buldana. This direction is being given in the best interest of the parties to this litigation. There shall be no order as to costs.

JUDGE

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