

HON'BLE SRI JUSTICE D.V.S.S.SOMAYAJULU

CRP.No.1958 of 2015

O R D E R:

This revision petition is filed questioning the order dated 16.04.2015 passed in IA.No.41 of 2014 in OS.No.156 of 2002 by the XIII Additional Senior Civil judge (FTC), City Civil Courts, Secunderabad.

The suit OS.No.156 of 2002 is filed to set aside a compromise decree in OS.No.354 of 1999 passed by the III Senior Civil Judge, City Civil Court, Secunderabad. It is alleged that the compromise that is recorded is illegal, tainted with fraud etc. Therefore, a prayer is made for cancellation of the decrees dated 27.01.2000 in OS.No.354 of 1999.

An application IA.No.41 of 2014 was filed under Order VII Rule 11 of CPC., in the suit by the defendant to reject the plaint in view of the bar to the suit under Order XXIII, Rule 3-A of CPC. The defendant relied upon Order XXIII, Rule 3-A of CPC., and a decision reported in ***K.Rajam Raju v. P.Rangamma***¹ and prayed the Court to reject the plaint. The respondent contested the matter. The impugned order came to be passed by which the Court dismissed the application holding that evidence has to be taken in the Court to decide the suit. Questioning the same, the present revision is filed.

¹ 2006 (4) ALD 61

This Court has heard the learned counsel for the appellant. Despite four opportunities, the respondent counsel did not appear. Therefore, the matter was reserved for orders.

The learned counsel for the revision petitioner/defendant states that the averments in the plaint are that under force and compulsion the parties were forced to enter a compromise on 27.01.2000 and that the plaintiff pleads in order to save the marriages of his daughters, the compromise was entered into under undue influence and coercion. Therefore, the prayer in suit to cancel the compromise decree dated 27.01.2000. The counsel argues that such a suit is not maintainable before the lower Court.

The counsel for the petitioner relies on Order XXIII, Rule 3-A of CPC., which is to the following effect-

“Rule 3-A: Bar to suit:- No suit shall lie to set aside a decree on the ground that the compromise on which the decree was not lawful.”

He contends that the suit does not lie at all and that the only remedy for the plaintiff is to file an application in the same Court that passed the so-called tainted decree to set aside the same as per the proviso to Order XXIII, Rule 3 of CPC. Counsel also relied upon the following judgments.

(1) ***R.Rajanna v. S.R.Venkataswamy***²

(2) ***K.Rajam Raju v. P.Rangamma (1 supra)***

² 2015 (1) ALT 47 (SC)

(3) **Gopal Lal v. Babu Lal**³

(4) **Surendra Ojha v. Mostt. Panpati Kaur**⁴ and

(5) **Pratap Mistry v. Sitaram Mistry**⁵.

It is his contention that a separate suit does not lie at all.

As mentioned earlier there is no representation by responded at all.

This Court notices that Order VII, Rule 11 of CPC., gives power to a Court to reject a plaint if the same appears to be barred by law. In the case on hand, Order XXIII, Rule 3-A of CPC., clearly states that no separate suit to side aside a decree shall lie, if a compromise is recorded. The heading of Order XXIII, Rule 3-A of CPC., clearly says “bar to a suit”.

All the cases cited by the counsel for the petitioner are also to the same effect. The Hon’ble Supreme Court in **R.Rajana**’s case (2 supra) clearly held in para 10 that a separate suit does not lie and an application has to be filed before the Court that passed the decree. The Hon’ble Supreme Court clearly held that the Court, which passed the decree alone can determine the question. A single judge of this Court in **K.Rajam Raju**’s case (1 supra) also held that a separate suit does not lie and only an application would lie in the same Court which passed the decree.

³ AIR 2004 Rajasthan 264

⁴ AIR 2008 PATNA 128

⁵ AIR 2010 PATNA 104

In the case on hand, this Court notices that second suit challenging the compromise decree is filed before III Senior Civil Judge, City Civil Court, Secunderabad. The impugned compromise recorded on the 27.11.2000 was recorded by the said Court alone. The question is whether the suit will lie in that Court ?.

This Court is of the opinion that the suit does not lie and only an application to set aside the allegedly tainted decree will lie in view of the proviso to Order XXIII, Rule 3 and 3-A of CPC.

In addition, in the counter filed, there are serious allegations about the delay being caused in the disposal of the suit OS.No.156 of 2002. There are errors in the factual aspects, but the fact remains there appears to be an order of remand and that the plaintiff's evidence is already recorded in OS.No.156 of 2002. In para 4 of the counter that is filed in IA.No.41 of 2014 it is mentioned that the defendant, who is the revision petitioner here has also filed his evidence affidavit. Therefore, this Court while holding that a separate suit to question a compromise will not lie, directs that the plaint presented in OS.No.156 of 2001 should be treated as an application that is filed under the proviso to Order XXIII, Rule 3 of CPC. This direction is given in view of the fact that the suit is of the year 2002 and the sum and substance of the plaint is to set aside the compromise decree that is purportedly recorded due to coercion etc. As 16 years has

elapsed, the evidence already recorded shall be treated as evidence in the application filed to set aside the compromise.

The III Senior Civil Judge, City Civil Court, Secundrabad shall proceed with the trial of the application to set aside the compromise decree on a priority and all requests for adjournment etc, shall be dealt with very strictly, but in accordance with the law. Every endeavor must be made by the III Senior Civil Judge to dispose of the matter on a priority, preferably within three months from date of receipt of this order. It is needless to say that the Court below will dispose the matter without being influenced by what is stated in this order.

With the above direction, the civil revision petition is disposed of. No order as to costs.

As a sequel, miscellaneous petitions, if any, pending in this revision shall stand closed.

D.V.S.S.SOMAYAJULU, J

Date: 18.12.2018
KLP