

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR

Second Appeal No.480 of 2000

Ghewar Chand (Dead) Through LR

(Defendant)

Ashok Kumar Jain, aged about 36 years, S/o late Shri Ghewar Chand,
R/o Bakshi Marg, Chairagarh, District Rajnandgaon (C.G.)

---- Appellant

Versus

1. Ranulal, aged 30 years, S/o Gulab Chand
2. Poonam Chand, aged 28 years, S/o Gulab Chand

Both residents of Mudhipar, Tahsil Khairagarh, District Rajnandgaon.

3. Gulab Chand (Dead) Through LRs

(a) Santosh Kumar, aged about 25 years, S/o late Shri Gulab Chand,
R/o Village Ramsada (Nagpura), District Durg.

(b) Smt. Dhanai Bai (Died and deleted)

(c) Smt. Saroj Bai, aged 30 years, W/o Shri Narendra Kumar, C/o Jain
Drug Centre, Tamerpura, Durg, District Durg.

(Plaintiffs)

---- Respondents

Second Appeal No.481 of 2000

Ghewar Chand (Dead) Through LR

(Defendant)

Ashok Kumar Jain, aged about 36 years, S/o Late Shri Ghewar
Chand, R/o Bakshi Marg, Khairagarh, District Rajnandgaon (C.G.)

---- Appellant

Versus

1. Ranulal (Deleted)
2. Poonam Chand (Deleted)
3. Gulab Chand (Dead) Through LRs

(a) Ranulal, aged 30 years, S/o Shri Gulab Chand.

(b) Poonam Chand, aged 28 years, S/o Shri Gulab Chand

(c) Santosh Kumar, aged 25 years, S/o Shri Gulab Chand

All residents of Village Ramsada (Nagpura), District Durg.

(e) Smt. Saroj Bai, aged 30 years, W/o Karendra Kumar, C/o Jain Drug Centre, Tamerpura, Durg, District Durg.

(Plaintiffs)
---- Respondents

AND

Second Appeal No.482 of 2000

Ghewar Chand (Dead) Through LR

(Defendant)

Ashok Kumar Jain, aged about 36 years, S/o Late Shri Ghewar Chand, R/o Bakshi Marg, Khairagarh, District Rajnandgaon (C.G.)

---- Appellant

Versus

1. Ranulal (Deleted)
2. Poonam Chand (Deleted)
3. Gulab Chand (Dead) Through LRs

(a) Ranulal, aged 30 years, S/o Shri Gulab Chand.

(b) Poonam Chand, aged 28 years, S/o Shri Gulab Chand,

(c) Santosh Kumar, aged 25 years, S/o Shri Gulab Chand

All residents of Village Ramsada (Nagpura), District Durg.

(e) Smt. Saroj Bai, aged 30 years, W/o Karendra Kumar, C/o Jain Drug Centre, Tamerpura, Durg, District Durg.

(Plaintiffs)
---- Respondents

For Appellant: Mr. R.S. Marhas and Mr. Aman Tamboli, Advocates.
For Respondents: None present.

Hon'ble Shri Justice Sanjay K. Agrawal

Judgment On Board

26/02/2019

1. Since all the three appeals involve common question of law and fact, they are being disposed of by this common judgment.

2. These appeals were admitted by formulating the following common substantial question of law for determination:

“Whether the first appellate Court was justified in entertaining the first appeal under Section 96(1) of the Code of Civil Procedure ignoring the specific bar provided in Section 96(3) of the Code of Civil Procedure barring an appeal against the decree passed by the Court with the consent of the parties?”

(Parties hereinafter will be referred as per their status shown and ranking given in the plaint before the trial Court.)

3. Three plaintiffs namely Ranulal, Poonamchand and Gulabchand filed three suits against defendant Ghewar Chand namely Civil Suit Nos.108-A/1984, 83-A/1984 and 21-B/ 1984. Civil Suit No.108-A/ 1984 was filed claiming damages for unauthorisedly occupying the two rooms owned by the plaintiffs. Likewise, Civil Suit No.83-A/1984 was filed for eviction and arrears of rent and Civil Suit No.21-B/1984 was filed for damages and cost of the articles unauthorisedly taken by the defendants. The above-stated three civil suits were dismissed by the trial Court accepting the compromise dated 4-10-1989 (Ex.D-1/ Ex.P-1), agreement Ex.D-2, and sale deed dated 23-11-1989 registered on 7-12-1989. The plaintiffs preferred three first appeals before the first appellate Court under Section 96(1) of the CPC and the said Court allowed the three appeals filed by the plaintiffs stating that compromise was not entered with free consent of the parties and undue influence and fraud was played while entering into compromise and therefore set aside the decrees of the trial Court dismissing the suits and remanded the matters for deciding the suit on merits against which these second appeals have been preferred before this Court in which substantial question of law formulated has been set out in the

opening paragraph of this judgment.

4. Mr. R.S. Marhas, learned counsel appearing for the appellant / defendant, submits that civil suits were dismissed on the basis of compromise which amounts to decree passed by the trial Court with the consent of parties, therefore, first appeal under Section 96(1) of the CPC was barred in view of the provision contained in Section 96(3) of the CPC, as such, the second appeals deserve to be allowed setting aside the judgment & decree of the first appellate Court.
5. None present for the respondents / plaintiffs, though served by notice of this Court.
6. I have heard learned counsel for the appellant / defendant and considered the submissions made herein-above and went through the records with utmost circumspection.
7. Sub-sections (1) and (3) of Section 96 of the CPC state as under: -

“96. Appeal from original decree.—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.

(2) xxx xxx xxx

(3) No appeal shall lie from a decree passed by the Court with the consent of parties.”
8. Sub-section (3) of Section 96 of the CPC clearly provides that no appeal shall lie from the decree passed by the Court with the consent of parties, as such, it is barred for entertainment of first appeal under Section 96(1) of the CPC in which decree has been passed by the Court with the consent of parties.

9. The Supreme Court in the matter of Kishun alias Ram Kishun (dead) through L.Rs. v. Bihari (D) by L.Rs.¹ has held that where compromise set up by one party is disputed by other party and the Court is required to adjudicate whether there was compromise or not between the parties and passing decree, it cannot be termed as decree passed on the basis of consent of parties and bar of Section 96(3) of the CPC would not be applicable and decree would be appealable under Section 96(1) of the CPC. Paragraph 6 of the report states as under: -

“6. That apart, we are of the view that the High Court was in error in holding that the appeal filed by Kishun against the decree of the trial court accepting a compromise which was disputed by him, was not maintainable. When on a dispute in that behalf being raised, an enquiry is made (now it has to be done in view of the proviso to Order XXIII Rule 3 of the Code added by Act 104 of 1976) and the suit is decreed on the basis of a compromise based on that enquiry, it could not be held to be a decree passed on consent within the meaning of Section 96(3) of the Code. Section 96(3) contemplates non-appellability of a decree passed by the court with the consent of parties. Obviously, when one of the parties sets up a compromise and the other disputes it and the court is forced to adjudicate on whether there was a compromise or not and to pass a decree, it could not be understood as a decree passed by the court with the consent of parties. As we have noticed earlier, no appeal is provided after 1-2-1977, against an order rejecting or accepting a compromise after an enquiry under the proviso to Order XXIII, Rule 3, either by Section 104 or by Order XLIII, Rule 1 of the Code. Only when the acceptance of the compromise receives the imprimatur of the court and it becomes a decree, or the court proceeds to pass a decree on merits rejecting the compromise set up, it becomes appealable, unless of course, the appeal is barred by Section 96(3) of the Code. We have already indicated that when there is a contest on the question whether there was a compromise or not, a decree accepting the compromise on resolution of that controversy, cannot be said to be a decree passed with the consent of the parties. Therefore, the bar under Section 96(3) of the Code could not have application. An appeal and a second appeal with its limitations would be available

1 AIR 2005 SC 3799

to the party feeling aggrieved by the decree based on such a disputed compromise or on a rejection of the compromise set up.”

10. The principle of law laid down in Kishun alias Ram Kishun (supra) was followed with approval in the matter of Daljit Kaur and another v. Muktar Steels Private Limited and others² and it was held in paragraph 18 of the report as under: -

“18. The ratio laid down in the aforesaid case applies on all fours to the case at hand. The respondent-defendants had raised a dispute with regard to the validity of the compromise and the court concerned had conducted an enquiry. Thus, a decree had been passed on the basis of the compromise based on that enquiry and, therefore, it cannot be said to be a consent decree. The decision in *Pushpa Devi Bhagat*³ has to be understood that when a decree is passed without any dispute being raised or contested in the court of first instance, the decree being passed on consent cannot be appealed against. As the present controversy is covered by the decision rendered in *Kishun* (supra), we are not required to dwell upon the applicability of Order 43 Rule 1-A CPC.”

11. Reverting to the facts of the present case in the light of the provisions contained in Section 96(3) of the CPC and the judgment of the Supreme Court in Kishun alias Ram Kishun (supra) followed in Daljit Kaur (supra), it is quite vivid that in the instant case, civil suits filed by the plaintiffs were dismissed accepting the compromise allegedly entered into between the plaintiffs and the defendants vide Ex.D-1 followed by Exs.D-2 & D-3 which was seriously opposed by the plaintiffs that the compromise Ex.D-1 has not been acted upon and the plaintiffs were forced to sign Exs.D-2 & D-3 and there is no such compromise Ex.D-1. The suits were dismissed on the basis of alleged compromise entered on 4-10-1989 and the suits were dismissed on 26-2-1998. In the first appeals preferred by the plaintiffs

² (2013) 16 SCC 607

³ Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566

under Section 96(1) of the CPC, the first appellate Court clearly came to the conclusion that the compromise was not entered with free consent as defined in Section 14 of the Indian Contract Act, 1872 and undue influence / fraud was played while entering into compromise which is not in accordance with law and consequently, the suits were remitted to the trial Court for deciding on merits.

12. In the considered opinion of this Court, decrees passed by the trial Court cannot be held to be compromise decrees in terms of Order 23 Rule 3 of the CPC when the compromise was seriously disputed by the plaintiffs with the allegation that it was obtained with undue influence and by playing fraud and it was not entered into voluntarily by the plaintiffs with free consent which the first appellate has accepted by recording valid and sufficient reason. The principle of law laid down in Kishun alias Ram Kishun (supra) squarely applies to the present case, as the first appellate Court was required to adjudicate the issue whether there was compromise or not between the parties. The first appellate Court after adjudicating the issue on this aspect, reached to the conclusion that compromise allegedly entered was not lawful and passed impugned decree, and therefore it can be branded as a decree granted by the trial Court with the consent of parties barring first appeal under Section 96(1) of the CPC. Even otherwise, the present appellants appeared before the first appellate Court in appeal under Section 96(1) of the CPC, but did not raise any question before the first appellate Court with regard to bar under Section 96(3) of the CPC / appealability of decree and allowed the appeal to be decided and also participated in the said proceeding

without protest or demur and when adverse impugned decree was passed, in second appeals the ground based on Section 96(3) of the CPC was taken before this Court which is not sustainable as discussed herein-above.

13. In view of the aforesaid legal analysis, unhesitatingly I am of the opinion that first appeals preferred by the plaintiffs under Section 96(1) of the CPC were not against the compromise decree passed with the consent of parties by the trial Court, therefore, the first appeals were rightly entertained under Section 96(1) of the CPC by the first appellate Court. The first appellate Court is fully justified in setting aside the decree passed by the trial Court.

14. As a fallout and consequence of the aforesaid discussion, the first appeals filed by the plaintiffs were held to be entertainable under Section 96(1) of the CPC and the substantial question of law is answered in favour of the plaintiffs and against the defendants. The second appeals are dismissed directing the trial Court to conclude the proceeding, as directed by the first appellate Court, within three months from the date of receipt of a copy of this judgment. No order as to cost(s).

15. Decree be drawn-up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge