

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**SA No. 407 of 2004**

1. Phatkan Bai, Aged 55 years, Wd/o Dashrath Chandra,
Occupation Agriculture. **--- Plaintiff No. 1**

2. Ramkumari D/o Dashrath, Aged about 18 years.

--- Plaintiff No. 3

3. Pinki Bai D/o Dashrath, Aged about 16 years.

--- Plaintiff No. 4

Minor through natural guardian and mother Phatkan Bai, Wd/o Dashrath Chandra.

All R/o Village Bartula, Tahsil Sarangarh, District Raigarh, Chhattisgarh.

---- Appellants

Versus

1. Smt. Mongara Bai (died and deleted). **--- Defendant No. 1**

2. Smt. Janak Kumari W/o Harishankar Chandra, Aged about 30 years, R/o Village Hasoud, Tahsil Shakti, District Bilaspur, Chhattisgarh. **--- Defendant No. 2**

3. Smt. Shayam Bai, Wd/o Ghanshyam Chandra, Aged about 40 years, R/o Village Jasara, Tahsil Sarangarh, District Raigarh, Chhattisgarh. **--- Defendant No. 3**

4. Smt. Nanki Noni @ Shivkumari, W/o Kunwal Chandra, Aged 42 years, R/o Karamandih, Tahsil Sakli, District Bilaspur, Chhattisgarh. **--- Defendant No. 4**

5. Ramkumar S/o Dashrath, Aged 16 years, Minor through natural Guardian Mother Phatkan Bai, R/o Village Bartula, Tahsil Sarangarh, District Raigarh, Chhattisgarh.

--- Plaintiff No. 2

6. State of Chhattisgarh, Through the Collector, Raigarh, District Raigarh, Chhattisgarh. **--- Defendant No. 5**

7. Raj Kumar S/o Mahadev Lal, Aged 32 years, Caste Chandra Nagu, Occupation Agriculturist, R/o Bardula, Post

Uchchabhitty, Tahsil Sarangarh, District Raigarh, Chhattisgarh.

8. Nakul S/o Santosh sahu, Aged about 38 years, Caste Teli, Occupation Agriculturist R/o Bardula, Post Uchchabhitty, Tahsil Sarangarh, District Raigarh, Chhattisgarh.

----Respondents

For Appellants	:	Mr. Ratan Pusty, Advocate
For Respondents	:	Mr. Anand Kumar Gupta, Advocate
For State	:	Mr. Sanjeev Kumar Agrawal, Panel Lawyer

Hon'ble Shri Justice Sanjay K. Agrawal

Order On Board

02.09.2019

1. The two substantial questions of law involved, formulated and to be answered in this second appeal preferred by plaintiffs No. 1, 3 and 4 state as under :-

“1. Whether the lower appellate Court was not justified in passing a compromise decree against the interest of these appellants when admittedly, these appellants had neither filed any application for entering into compromise nor were examined before passing of the decree on the basis of compromise ?

2. Whether the lower appellate Court committed an error of law by passing a decree on compromise by not recording any finding about the interest of appellants No. 2 & 3 when they were shown to be minors on the date of filing of the compromise between the Mongara Bai and Ramkumar ? ”

(For the sake of convenience, parties would be referred hereinafter as per their status and ranking shown in the suit before the trial Court.)

2. Four plaintiffs, namely Phatkan Bai and her three minor children Ramkumar, Ramkumari and Pinki Bai, represented through their natural guardian mother Phatkan Bai, filed a civil suit bearing No. 41-A/96 for declaration of title, possession and in the alternative decree for partition which was ultimately granted by the trial Court vide judgment and decree dated 25/01/2002.
3. Questioning the said judgment and decree of the trial Court, defendant No. 1 namely Mongra Bai preferred civil appeal No. 46-A/02 under Section 96 of the CPC, in which on 01/05/2004, defendant No. 1 – Mongra Bai and plaintiff No. 2 – Ramkumar filed an application for compromise wherein statements of Mongra Bai's power of attorney namely Harishanker Chandra and plaintiff No. 2 namely Ramkumar were recorded and by accepting their statements, a compromise decree was passed by learned first appellate Court on 29/04/2004.
4. Being aggrieved by the judgment and decree of compromise passed by the first appellate Court, this second appeal has been preferred by plaintiffs No. 1, 3 and 4 under Section 100 of the CPC raising and highlighting their grievance that the compromise so entered into, is contrary to Order 23 Rule 3 of the CPC, as they never agreed upon the terms of compromise and it is against their interest, as such, two

substantial questions of law were framed in this second appeal on 31/08/2005 which have been set out in the opening paragraph of this judgment.

5. Mr. Ratan Pusty, learned counsel appearing for the appellants/plaintiffs No. 1, 3 and 4 would submit that the first appellate Court is absolutely unjustified in granting decree for compromise contrary to the provisions contained under Order 23 Rule 3 of the CPC, as the compromise application was never signed by plaintiffs No. 1, 3 and 4 and neither did they instruct their counsel to enter into compromise on their behalf, therefore, the decree for compromise is liable to be set aside and the appeal be returned to the first appellate Court for hearing it on merits.
6. Mr. Anand Kumar Gupta, learned counsel appearing for respondent/defendant No. 1 namely Mongra Bai would support the impugned judgment and decree passed by the first appellate Court and would submit that the parties have entered into compromise with open eyes and therefore, it cannot be concluded that learned first appellate Court is unjustified in granting decree for compromise altogether, as such, the second appeal deserves to be dismissed.
7. I have heard learned counsel appearing for the parties, considered their rival submissions made herein-above and went through the records thoughtfully.
8. The first question for consideration would be whether second appeal would be maintainable against a compromise decree passed by the first appellate Court. This question is

raised in light of the provisions contained in proviso to Order 23 Rule 3 of the CPC.

9. The question so raised is no longer *res integra* and has effectively been determined by their Lordships of the Supreme Court, in the matter of ***R. Rajanna Vs. S.R. Venkataswamy & Ors.***¹ where they have relied upon their earlier decision rendered in the matter of ***Banwari Lal Vs. Chando Devi***² and held as under :-

“We may also refer to the decision of this Court in *Banwari Lal v. Chando Devi* where also this Court had observed: (SCC p.588, para 13)

“13.As such a party challenging a compromise can file a petition under proviso to Order 23 Rule 3, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Order 43 Rule 1-A of the Code.” ”

Even otherwise, Section 100 of the CPC, there is no *para materia* provision similar to Section 96 (3) of the CPC barring second appeal against the decree passed by the Court with the consent of the parties.

10. Now, the second question that arises for consideration is whether the compromise so entered into and the decree so passed therein on the basis of compromise was lawful. Thus, it would be relevant to notice the provisions contained under Order 23 Rule 3 of the CPC, which is quoted below :-

“3. Compromise of suit. - Where it is proved to

¹ (2014) 15 SCC 471

² (1993) 1 SCC 581

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 suit]:

[Provided that where it is alleged by one party and denied by the other that 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.]”

11. The aforesaid rule gives a mandate to the Court to record a lawful adjustment or compromise and pass a decree in terms of such compromise or adjustment. The conditions which normally must be satisfied for validly invoking the provisions of Order 23 Rule 3 of the CPC and for passing of such a decree, are as under :-

- (i). there should be a lawful agreement or compromise;
- (ii). this compromise has to be in writing and signed by the parties;
- (iii). the compromise must be recorded by the Court;
- (iv). a decree on such compromise can be passed so far it relates to the parties to the suit but may extend to a special

matter which is not the subject-matter of the suit.

12. The words “in writing and signed by parties” have been added presumably to reduce if not altogether eliminate controversies about the factum and or terms of the agreement or compromise.

13. The Supreme Court, in the matter of **Gurpreet Singh Vs. Chatur Bhuj Goel**³, had an occasion to consider the impact of the words “in writing and signed by the parties” inserted by C.P.C. (Amendment) Act, 1976 w.e.f. 01/02/1977, wherein highlighting the object of Order 23 Rule 3 of the CPC, it has been held as under :-

“9. ...The whole object of the amendment by adding the words 'in writing and signed by the parties' is to prevent false and frivolous pleas that a suit had been adjusted wholly or in part by any lawful agreement or compromise, with a view to protract or delay the proceedings in the suit.

10. Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties

3 (1988) 1 SCC 270

should be dispensed with. The Court must therefore insist upon the parties to reduce the terms into writing.”

14. Thereafter, in the matter of ***Byram Pestonji Gariwala Vs.***

Union Bank of India & Ors.⁴, the Supreme Court further clarified the position with the words “in writing and signed by the parties” as enumerated in Rule 3 of Order 23 of the CPC, and held that the counsel representing the parties, instead of parties in person, is competent to sign the compromise even on implied authority of parties, but further held that the counsel should not ordinarily act on implied authority of parties except when warranted by the exigency of circumstances. Paragraphs 37, 38, 39 and 40 of the report are as under :-

“37. We may, however, hasten to add that it will be prudent for counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity of the legal profession.

4 (1992) 1 SCC 31

38. Considering the traditionally recognised role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, attainment of certainty and expeditious disposal of cases by reducing the terms of compromise to writing signed by the parties, and allowing the compromise decree to comprehend even matters falling outside the subject-matter of the suit, but relating to the parties, the legislature cannot, in the absence of express words to such effect, be presumed to have disallowed the parties to enter into a compromise by counsel in their cause or by their duly authorised agents. Any such presumption would be inconsistent with the legislative object of attaining quick reduction of arrears in Court by elimination of uncertainties and enlargement of the scope of compromise.

39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorised representative. If a power-of-attorney holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorisation by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parties personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental change, even at the risk of delay, inconvenience and needless expenditure, it

would have expressly so stated.

40. Accordingly, we are of the view that the words 'in writing and signed by the parties', inserted by the C.P.C. (Amendment) Act, 1976, must necessarily mean, to borrow the language of Order III rule 1 CPC:

"any appearance application or act in or to any court, required or authorized by law to be made or done by a party in such court, may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or by his recognized agent, or by a pleader, appearing, applying or acting as the case may be, on his behalf:

Provided that any such appearance shall, if the court so directs, be made by the party in person".

(emphasis supplied)"

15. In the matter of ***D.P. Chadha Vs. Triyugi Narain Mishra &***

Ors.⁵, the Supreme Court has held as under :-

"The power of the court to direct personal presence of any party is inherent and implicit in jurisdiction vesting in the court to take decision. This power is a necessary concomitant of courts obligation to arrive at a satisfaction and record the same as spelt out from the phraseology of Order 23 Rule 3 C.P.C. It is explicit in Order 3 Rule 1. This position of law admits of no doubt."

5 (2001) 2 SCC 221

16. Likewise, in the matter of ***Jineshwardas (D) by Lrs. & Ors. Vs. Smt. Jagrani & Anr.***⁶, their Lordships of the Supreme Court have clearly held that the words “in writing and signed by the parties” inserted in Order 23 Rule 3 of the CPC does not exclude authority of counsel to enter into compromise on behalf of the party. Paragraph 8 of the report states as under :-

“8. We are in respectful agreement with the above statement of law. Consequently it is not permissible for the appellant, to contend to the contrary. That apart we are also of the view that a judgment or decree passed as result of consensus arrived at before court, cannot always be said to be one passed on compromise or settlement and adjustment. It may, at times, be also a judgment on admission, as in this case. ”

17. Similarly, in the matter of Krishna ***Gajanana Vedeshwar & Ors. Vs. Narayan Gajanan Vedeshwar & Ors.***⁷, the Karnataka High Court has held that where a compromise is signed by counsel on behalf of the party, in absence of any allegation of fraud, misrepresentation, etc., against the counsel, the compromise must be held to be valid.

18. Thus, from the principles of law laid down in above-stated judgments, duty is cast on Courts to guard against misuse of authority by counsel and must satisfy itself about the genuineness of the compromise before putting its stamp of approval on a compromise. The words “in writing and signed

⁶ AIR 2003 SC 4596

⁷ AIR 2005 Karnataka 229

by the parties” inserted in Order 23 Rule 3 by the CPC (Amendment) Act, 1976 necessarily mean and include duly authorised representative and counsel. Thus, a compromise in writing and signed by counsel representing the parties but not signed by the parties in person, is valid and binding on the parties, unless it is attempted with fraud, misrepresentation, etc. as the counsel has implied authority.

19. Reverting to the facts of the present case, in light of the principles of law emanating from the aforesaid judgments, it is quite vivid that in the instant case, though plaintiff No. 2 i.e. Ramkumar entered into compromise with defendant No. 1 i.e. Mongra Bai in the civil appeal preferred by Mongra Bai, the other three plaintiffs namely Phatkan Bai, Ramkumari and Pinki Bai, who are the appellants herein, though represented by their counsel, were not examined before the first appellate Court nor the statement of the counsel appearing for them was recorded stating that plaintiffs No. 1, 3 and 4 have instructed him to enter into compromise on their behalf.

20. Learned first appellate Court, also in its impugned judgment, did not reason that the plaintiffs other than plaintiff No. 2 – Ramkumar have also agreed to enter into compromise along with plaintiff No. 2 – Ramkumar and defendant No. 1 – Mongra Bai. The first appellate Court ought to have satisfied himself that all the parties to the appeal particularly, the present appellants in whose favour decree was passed by the trial Court, agreed and entered

into compromise alongwith Ramkumar and Mongra Bai, and it should not have passed a compromise decree in absence of either the statements of the appellants herein on oath before the appellate Court or the statement on instruction made by their counsel before that Court. As such, in absence of the compromise application on behalf of the appellants herein, in writing and signed by them, and in absence of any statement made by their counsel on their behalf on instruction, as according to the appellants/plaintiffs No. 1, 3 and 4, they did not, at any point of time, instruct their counsel to enter into compromise on their behalf, the first appellate Court, merely on the basis of the compromise between plaintiff No. 2 – Ramkumar and defendant No. 1 – Mongra Bai, committed a jurisdictional error in recording compromise of the suit under Order 23 Rule 3 of the CPC. Resultantly, the compromise decree passed by the first appellate Court can be said to be contrary to Order 23 Rule 3 of the CPC, as such, the substantial questions of law No. 1 and 2 are answered in favour of the appellants herein.

21. Accordingly, the impugned judgment and decree dated 29/04/2004 is hereby set aside and the matter is remitted back to the first appellate Court. Civil appeal No. 46-A/02 is restored to its original number for hearing and disposal in accordance with law in the Court of 3rd Additional District Judge, Raigarh. Records be sent forthwith to the said Court.
22. The second appeal is allowed to the extent indicated herein-above. No order as to cost(s).

23. A decree be drawn up accordingly.

Sd/-
(Sanjay K. Agrawal)
Judge

Harneet