

CR No.7346 of 2018(O&M)
Date of Decision: 09.04.2019

.....Petitioners

Versus

.....Respondents

CORAM: HON'BLE MR. JUSTICE RAJ MOHAN SINGH

Present: Mr. G.S. Sirphikhi, Advocate
for the petitioners.

**Mr. G.S. Sidhu, Advocate
for respondent No.1.**

RAJ MOHAN SINGH, J.

[1]. Petitioners have preferred this revision petition against the order dated 09.08.2018 passed by Additional Civil Judge (Senior Division), Dera Bassi vide which the Court had framed the issues on the application under Section 151 CPC filed by respondent No.1 seeking the decree dated 05.01.1963 passed by the trial Court to be illegal, null and void being the result of fraud.

[2]. Civil Suit No.442 of 07.12.1962 titled Sawan Singh Vs.

Maya Devi and another was filed for possession regarding land measuring 162 bighas, 11 biswas situated in village Malakpur, Tehsil Rajpura in the Court of Sub Judge, Ist Class, Rajpura. The said suit was decreed on the basis of compromise. Defendants therein had appeared before the Court and filed written statement, but subsequently, they entered into a compromise which was recorded. The suit was filed in respect of land measuring 162 bighas, 11 biswas of land left by Rulia. Sawan Singh filed the suit for possession of half share of the suit land and he also impleaded Bakhtawar Singh as one of the defendants. He alleged Maya Devi to be a tress-passer in the land. The suit was dismissed on the basis of compromise with regard to 17 bighas, 4 biswas of land being one half of 34 bighas, 8 biswas of land comprised in khata No.11 and khatoni No.21 as per *jamabandi* for the year 1958-59. With regard to remaining land, the plaintiffs and defendant No.2 Bakhtawar Singh were granted declaration that defendant No.1 Maya Devi shall not be able to alienate the same in any manner, although she was held entitled to her possession during her lifetime. The decree was passed on 05.01.1963 by Sub Judge, Ist Class, Rajpura.

[3]. Thereafter, present Civil Suit No.84GT/14.03.1983 was filed by Maya Devi through LRs for possession in respect of 143

bighas, 8 biswas of land. The declaration was also sought that the condition imposed in Civil Court decree dated 05.01.1963 in respect of right of alienation of Maya Devi was null and void. The said suit was decreed by the trial Court vide judgment and decree dated 01.08.1987. Maya Devi was found to have inherited the suit property from her husband in the year 1962 and since then, she became absolute owner of the property. Statement made by her in Court in the proceedings of earlier decree dated 05.01.1963 was held to be not binding upon her rights being against her status. She was declared to be absolute owner of the property. The suit was decreed to that extent leaving her other entitlements to be claimed from the Revenue Court.

[4]. Judgment and decree dated 01.08.1987 passed by the trial Court was unsuccessfully challenged by the petitioners before the Lower Appellate Court/Additional District Judge, Patiala and the appeal was dismissed on 03.06.1988. Further RSA No.1741 of 1988 was filed by the petitioners and the same was allowed vide order dated 19.08.2015. It was held by the High Court that remedy, if any, available to the plaintiffs was to move an application in the Civil Suit No.442 of 17.12.1962, rather to file a separate suit after a lapse of 22 years. Since the objection was taken by the defendants in the written statement

in respect of maintainability of the suit and even issue was also framed to that effect, therefore, the findings recorded by the trial Court under issue No.4 were found to be erroneous and it was held that the appellants in RSA No.1741 of 1988 cannot be prevented from raising such plea in view of ratio laid down in **Pushpa Devi Bhagat (D) through LR. Smt. Sadhna Rai Vs. Rajinder Singh, 2006(3) RCR (Civil) 479** being a pure question of law. In view of above, the suit was held to be not maintainable in view of embargo of the provisions in terms of Order 23 Rule 3-A CPC and the appeal was allowed vide order dated 19.08.2015.

[5]. Against the aforesaid order, LRs of Maya Devi filed Special Leave to Appeal(C) No(s).30206/2015, which was dismissed vide order dated 02.11.2015, however, it was made clear that the dismissal of the suit filed by Maya Devi shall not prevent the petitioners therein i.e. LRs of Maya Devi from seeking redressal of their claim in an appropriate proceedings before the competent Court i.e. the Court which passed the original decree on compromise.

[6]. Thereafter, LRs of Maya Devi filed an application under Section 151 CPC for declaring the compromise decree dated 05.01.1963 passed by Sub Judge, 1st Class, Rajpura in Civil Suit No.442 dated 07.12.1962 titled Sawan Singh Vs. Maya

Devi and another to be illegal, null and void being the result of fraud, misrepresentation, undue influence and against public policy. Trial Court while considering the aforesaid application was satisfied that before proceedings further in the matter, issues are required to be framed and the parties are also required to produce their respective evidence. Vide the impugned order dated 09.08.2018, trial Court framed the issues.

[7]. The grievance of the petitioner is that once the plea of fraud is taken, the Court under inherent powers cannot enquire into the same by framing issues as the powers are only summary in nature. Learned counsel for the petitioners contended that while deciding the appeal on 03.06.1988, Lower Appellate Court in para No.8 of the judgment had specifically observed that Smt. Maya Devi suffered a consent decree on 05.01.1963 and the same was not held to have been obtained against her by exercising fraud or undue influence. However, it was held that she was bound by that decree and her ownership was curtailed by her own consent and agreement.

[8]. Perusal of para No.8 of the judgment dated 03.06.1988 passed by the Lower Appellate Court in entirety would show that only contentions of the parties were recorded as the decree holder had also argued that the decree did not operate as *res*

judicata against the right of the decree holder.

[9]. Now the present controversy has boiled down to the extent whether the Court dealing with the application under Section 151 CPC (in pith and substance, the same has to be under Order 23 Rule 3 CPC) has to be decided the same by way of following regular procedure after framing necessary issues.

[10]. Learned counsel for the petitioners relied upon Sri **Dadu Dayal Mahasbha Vs. Sukhdev Arya, 1990(1) RCR (Rent) 38, Ramji Gupta and another Vs. Gopi Krishan Agrawal(D) and others, 2013(2) RCR (Civil) 898, Tarachand Jain Vs. Saroj Gupta, 2006(33) RCR (Civil) 648, Sardarni Raminder Sarup Singh Vs. Govinder Singh, 2010(28) RCR (Civil) 196, Devi Sarup and others Vs. Smt. Veena Nirwani and others, 2007(1) RCR (Civil) 286 and Horil Vs. Keshav and another, 2012(2) RCR (Civil) 852.**

[11]. In **Dadu Dayal Mahasbha's case (supra)**, the Hon'ble Apex Court had a controversy which was summed up in para No.7 of the said judgment in the following manner:-

“7. Let us consider the cases in which consent decrees are challenged. If a party makes an application before the Court for setting aside the decree on the ground that he did not give his consent, the court has the power and duty to investigate the matter and to set

aside the decree if it is satisfied that the consent as a fact was lacking and the court was induced to pass the decree on a fraudulent representation made to it that the party had actually consented to it. However, if the case of the party challenging the decree is that he was in fact a party to the compromise petition filed in the case but his consent has been procured by fraud, the court cannot investigate the matter in the exercise of its inherent power, and the only remedy to the party is to institute a suit. It was succinctly summed up in the aforementioned case that the factum of the consent can be investigated in summary proceedings, but the reality of the consent cannot be so investigated. The principle has been followed in this country for more than a century. In Vilakathala Raman v. Vayalil Pachu, 27 Madras Law Journal Reports 172, the trial court had vacated its previous order regarding satisfaction of decree on the ground that the same was obtained by the judgment debtor's fraud on the court. The High Court, while confirming the order, said that in the exercise of inherent power under Section 151 of the Code of Civil Procedure a court can vacate an order obtained by fraud on it. Reliance had been placed on an old decision of Bombay High Court of 1882 and a Madras decision of 1880. In Basangowda Hanmantgowda Patil and others v. Churchigirigowda Yogangowda and another, I.L.R. 34 Bombay 408, the defendant applied to the court to set aside a compromise decree on the ground that he had not engaged the lawyer claiming to be representing him and had not authorised him to

compromise the suit. The court accepted his plea and ruled that it is the inherent power of every court to correct its own proceedings when it has been misled. Similar was the view of the Calcutta High Court in several decisions mentioned in Sadho Saran's case (supra). The ratio has been later followed in a string of decisions of several High Courts. The same principle applies where a suit is permitted to be withdrawn on the basis of a prayer purported to have been made on behalf of the plaintiff. The courts below were, therefore, not right in holding that the application of the appellant invoking the inherent jurisdiction of the court was not maintainable. If the appellant's case is factually correct that Hari Narain Swami was not its elected secretary and was, therefore, not authorised to withdraw the suit, the prayer for withdrawing the suit was not made on behalf of the appellant at all and the impugned order was passed as a result of the court being misled. Such an order cannot bind the appellant and has to be vacated. The trial court was thus clearly wrong in dismissing the appellant's application as not maintainable, and the High Court should have intervened in its revisional power on the ground that the trial court had failed to exercise a jurisdiction vested in it by law."

[12]. Perusal of the aforesaid judgment would show that the Court cannot investigate the matter in exercise of its inherent power, if the decree is challenged on the ground that his consent was obtained by fraud. In such eventuality, the only

remedy is to institute a regular suit. It was summed up that the factum of the consent can be investigated in summary proceedings, but the reality of the consent cannot be investigated. Once the Court is satisfied that it was misled by one of the parties in passing of the order, the Court can correct its order on its satisfaction. The inherent power of the Court can be exercised on such satisfaction in a summary proceedings without investigating the reality of the consent.

[13]. In **Ramji Gupta and another's case (supra)**, the Court was also dealing with the inherent power of the Court under Section 151 CPC. If the Court is satisfied that the decree has been obtained by fraud which is apparent and the same has been passed by mistake of the Court, then the Court may be justified in rectifying such mistake, either by recalling the said order or by passing any appropriate order. However, inherent power cannot be utilized in conflict of any other existing provision. In case of fraud upon a party to the suit, the Court may direct the affected party to file a separate suit for setting aside the decree obtained by fraud.

[14]. In **Tarachand Jain's case (supra)**, the scope of Section 151 CPC for recalling the decree on the ground that the applicant was misled for entering into an agreement with the third person was negated by the Delhi High Court in details as

to how applicant was misled did not come forth on record. The inquiry required for trying the claim of the applicant does not fall within the scope of Section 151 CPC and the application was dismissed. For want of specific particulars in respect of undue influence, coercion or allegation of misleading, the Court cannot exercise inherent jurisdiction.

[15]. At the time of filing of the application, Maya Devi had already died. In the instant case, respondents were successful before the Civil Court upto the stage of Lower Appellate Court and Maya Devi was held to be absolute owner of the property and the compromise decree was declared to be illegal. High Court while deciding RSA No.1741 of 1988 accepted the appeal of the present petitioners, thereby holding independent suit to be not maintainable in view of embargo provisions in terms of Order 23 Rule 3-A CPC. In view of aforesaid, remedy was suggested by the High Court to assail the compromise decree only in terms of Order 23 Rule 3 CPC. The said order dated 19.08.2015 passed by the High Court was affirmed by the Hon'ble Apex Court in Special Leave to Appeal (C) No(s). 30206/2015 when the same was dismissed, thereby giving remedy of redressal of grievance of the respondents before the Court who had passed the original decree on compromise.

[16]. In pith and substance, the application filed by the LR's

of Maya Devio has to be treated under Order 23 Rule 3 CPC. Challenge to the compromise decree can only be made before the same Court and no separate suit is maintainable in view of ratio laid down in **Devi Sarup and others case (supra)**. The aforesaid legal position has also been set at naught in **Horil Vs. Keshav and another's case (supra)**, wherein the Hon'ble Apex Court has held that the expression "not lawful" used in Order 23 Rule 3-A CPC also covers a decree based on a fraudulent compromise, therefore, a challenge to a compromise decree on the ground that it was obtained by fraudulent means would also fall under the provision of Order 23 Rule 3-A CPC.

[17]. Trial Court as well as the Lower Appellate Court have also concluded the issue on the basis of sufficiency of evidence to prove that the compromise decree was illegal. It was only on technical ground, the High Court in regular second appeal held that instead of filing independent suit, the application is maintainable before the same Court who had passed the decree. If the maintainability of the application is questioned by the petitioners, then it amounts to denying the remedy of independent suit as well as the application before the same Court. Respondents cannot be held to be remediless, particularly when the remedy has been provided by the High Court as well as by the Hon'ble Apex Court in hierarchy of

present litigation. Petitioners cannot be allowed to breath hot and cold in same breath. If the inherent jurisdiction of the High Court under Section 151 read with Order 23 Rule 3 CPC is allowed to be questioned at this stage, then evidence adduced by the respondents before the trial Court cannot be questioned, particularly when the same was discarded on merits, rather the remedy was held to be not maintainable. In such a situation, respondents would be well within their right to bring such evidence on record which would suffice to show that the compromise decree was illegal on the basis of grounds taken by the respondents in the application. The Court has to decide the *lis* on merits. If integrated questions of facts are involved, the same can only be decided by way of following proper procedure. Framing of issues in such a situation cannot be held to be beyond jurisdiction of the Court. In the regular second appeal, the stand of the petitioners was that the independent suit was not maintainable. In the present revision petition, the stand of the petitioners is that the Court cannot exercise inherent jurisdiction to annul a compromise decree. Both the pleas of the petitioners cannot go simultaneously.

[18]. Reading of the aforesaid precedents would give rise to only irresistible conclusion that if integrated questions of facts are involved and the same required leading of evidence, then

inherent power in terms of Section 151 CPC cannot be invoked. Since the application is maintainable, it is ordered to be maintained before the same Court, therefore, the same Court would try the issue after converting itself into a regular Court and in such eventuality, framing of issues before deciding the *lis* would be *sine quo non*.

[19]. For the reasons recorded hereinabove, I find no justification to interfere in the impugned order dated 09.08.2018 passed by Additional Civil Judge (Senior Division), Dera Bassi. This revision petition is found to be totally devoid of merits and is accordingly dismissed.

09.04.2019

Prince

**(RAJ MOHAN SINGH)
JUDGE**

**Whether reasoned/speaking
Whether reportable**

**Yes/No
Yes/No**