

**IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH.**

Regular Second Appeal No.1458 of 1987 (O&M)

Date of Decision: May 27, 2019.

Bhagwana and others

.....APPELLANT(s).

VERSUS

Smt. Birji and others

.....RESPONDENT(s).

CORAM:- HON'BLE MR. JUSTICE SURINDER GUPTA

Present: Mr. Mani Ram Verma, Advocate
for the appellant (s).

Mr. Sandeep Arora, Advocate
for the respondents.

SURINDER GUPTA, J.

Smt. Birji, widow and Smt. Sarti, Smt. Kirpi and Smt. Shanti, daughters of Tulsi Ram @ Sunda Ram filed suit seeking the relief of declaration that judgment and decree dated 04.12.1978 in civil appeal No.30 of 1977 titled as "*Bhagwana Vs. Ram Chander etc.*" passed by the Court of the then Senior Sub Judge, Bhiwani exercising the appellate power, is illegal, against law and result of fraud and fabrication, as such, not binding on the plaintiffs, consequently, mutation NO.434 and 435 dated 01.03.1979 are also illegal, null and void and not binding on the rights of the plaintiffs. The plaintiffs claimed their 5/8 share in land measuring 131 kanals 16 marlas and that respondent No.1 Bhagwana is owner of only 1/8th share in the suit property.

Brief facts of the case are enumerated as follows:-

The dispute in this case pertains to land measuring 131 kanals 16 marlas owned by Tulsi Ram @ Sunda Ram, who is alleged to have died somewhere around 1955. He left behind Bhagwana appellant-defendant No.1, Ram Chander, Sheo Chand as his sons, Birji wife, Sarti, Kirpi, Shanti and Jamna as daughters.

Ram Chander son of Tulsi Ram @ Sunda Ram filed Civil Suit No.21 of 1975 claiming his 1/8th share in the land in dispute, which was decreed on 29.12.1975 by then Sub Judge, Bhiwani and each heir of Tulsi Ram @ Sunda Ram was declared owner of 1/8th share in the suit land. Appellant Bhagwana filed appeal against said judgment and decree which was decided on 04.12.1978 by Senior Sub Judge, Bhiwani having enhanced Appellate Powers as per compromise between the parties. The decree dated 04.12.1978 reads as follows:-

“This appeal coming up for final hearing on the 4th day of December, 1978 before me (Shri Gorakh Nath, Senior Sub Judge, Bhiwani, with Enhanced Civil Appellate Powers) in the presence of Shri K.C. Jain, Advocate for the appellant and Shri R.P. Jain, Advocate for respondent No.1 and Shri Bharat Lal Sharma, Advocate for respondents No.2 to 7 and in view of the compromise between the parties, the judgement and the decree of the trial court are modified and it is held that the land comprised in Killa No.31//2(7-19), 3(8-0), 9 (8-0), 42//15 (8-0), 43//11(8-0) will be owned and possessed by the Bhagwana defendant alone and that the remaining land in dispute will be owned and possessed by Ram Chander plaintiff-respondent and Sheo Ram, Jamna, Sarti, Kirpi, Shanti and Barji defendant-respondent. The possession

of this remaining land in dispute has been taken by Ram Chander, Sheo Ram and the others respondents today.”

Plaintiffs Birji wife, Sarti, Kirpi and Shanti daughters of Tulsi Ram @ Sunda Ram filed the present suit challenging the judgment and decree dated 04.12.1978 on the grounds as follows:-

- (i) The plaintiffs never signed/thumb marked any compromise or made any statement in Court;
 - (ii) On behalf of plaintiffs, Bharat Lal, Advocate appeared before the trial Court but he was never appointed as their Advocate nor the power of attorney in his favour was thumb marked by them. Thumb marks on the power of attorney produced by him in Court were forged and fabricated. It appears that Bhagwana produced some fake ladies in place of plaintiffs to thumb marked the power of attorney in favour of Shri Bharat Lal Advocate, who was never given instructions by the plaintiffs to make statement on their behalf.
 - (iii) Plaintiffs were ex parte before the Appellate Court and have never moved any application seeking setting aside of ex parte proceedings, as such, their statements could not be recorded without first getting set aside the ex parte proceedings.
 - (iv) The plaintiffs were never served in the appeal filed by Bhagwana and were wrongly proceeded ex parte. In the absence of plaintiffs, judgment and decree dated 29.12.1978 passed by learned Sub Judge, Bhiwani could not be modified.
 - (v) The plaintiffs are illiterate, simpleton and *Pardanashin* ladies.
- Plaintiff No.1 Birji was 75 years of age and a fraud has been played

with them.

(vi) The judgment and decree dated 04.12.1978 is a result of fraud and misrepresentation in order to grab the share of plaintiffs in the suit property.

It was alleged that on the basis of decree, mutation No.434 and 435 dated 01.03.1979 was got sanctioned. The parties have never entered into any exchange of land bearing Khasra No.243 or got their statements to this effect recorded before the Patwari. Rapat No.179 on the basis of which mutation No.435 was entered and sanctioned, is based on the decision in Civil Suit No.117 filed in the Court of Sub Judge IInd Class, Bhiwani, which was virtually dismissed. The plaintiffs also alleged that they were not served any notice before the sanctioning of mutation by the revenue officials. Possession on the basis of alleged exchange were also not transferred and the residential house could not be exchanged with the agriculture land.

Defendant No.1 Bhagwana contested the claim of plaintiffs, inter alia pleading that the plaintiffs were party to the Civil Appeal No.30 of 1977 titled *Bhagwana Vs. Ram Chander & others*, as such they have no locus standi to challenge the decree passed in that civil appeal. Another civil suit filed by Smt. Jamna daughter of Tulsi Ram @ Sunda Ram to cancel the gift deed of her 1/8th share in the suit land executed in favour of Ram Partap, Jagram and Chand Ram sons of Bhagwana was also settled vide compromise in the aforesaid appeal and was decreed in her favour on 04.12.1978. Ram Partap, Jagram and Chand Ram sons of Bhagwana are as such necessary parties in this suit. The plaintiffs on the basis of compromise

in civil appeal No.30 of 1977 had also withdrawn a partition suit pertaining to house and *nohra* in village Dhangar. Parties have also withdrawn the partition application pending before Assistant Collector Ist Grade and all this depict that they have admitted and accepted the judgement and decree dated 04.12.1978, as correct.

On merits, he alleged that Tulsi Ram @ Sunda Ram had two wives. From the first wife, Bhagwana was born while from the second wife plaintiffs No. 2 to 4 and defendants No.2 to 4 were born. Due to this reason, appellant Bhagwana had 1/2 share in the suit land while remaining parties are also owner of 1/2 share. The daughters of Tulsi Ram @ Sunda Ram have no right in the suit land as he died in the year 1955 before coming into force of Hindu Succession Act. There was some decree of ₹3000/- against Tulsi Ram @ Sunda Ram, which was satisfied by appellant Bhagwana, as such in family partition, entire suit land measuring 131 kanal 16 marlas fell to his share. Land of Tulsi Ram @ Sunda Ram in village Gharaunda, Tehsil Narnaul fell to the share of defendants No.2 and 3. In civil appeal, Shri Bharat Lal Sharma, Advocate had appeared on behalf of plaintiffs. Power of attorney was thumb marked by them and the compromise in the civil appeal was acted upon by the parties. The plea of the plaintiffs that they had not thumb marked or some fictitious ladies were produced before Advocate Bharat Lal Sharma to thumb mark the power of attorney in his favour were contested, controverted and denied.

Plaintiffs re-asserted their case in the replication and pleadings of the parties led to framing of issues as follows:-

- (1) Whether the judgment/decreed in C.S. No.30 of 1977 is illegal, null, void and not binding on the rights of the

plaintiffs?OPP

- (2) Whether mutation No.434 of 1979 and 435 of 1979 are illegal, null and void and liable to be set aside for the grounds taken in the plaint? OPP
- (3) Whether the plaintiffs are the owners and in possession of 5/8th share in the suit land?OPP
- (4) Whether the plaintiffs have no locus standi to sue? OPD
- (5) Whether the suit is bad for non-joinder of necessary parties as alleged in preliminary objection No.3 of the written statement? OPD
- (6) Whether the plaintiffs are estopped from their acts and conduct to sue as mentioned in preliminary objection No.4 of the written statement?OPD
- (7) Whether the plaintiffs are barred to sue from the plea of acquiescence?OPD
- (8) Whether the suit has not been properly valued for purposes of court fee and jurisdiction?OPD
- (9) Whether the defendant No.1 is entitled to take back the possession of the land given to the plaintiffs and defendants No.2 to 4?OPD
- (10) Whether the judgment and decree dated 04.12.1978 in C.S. No.325 of 1978 is illegal, null and void and is liable to be set aside as alleged in para No.15 of written statement?OPD
- (11) Relief.

The suit was dismissed by Senior Sub Judge, Bhiwani for the reasons as follows:-

“(i) Firstly, the plaintiffs have no share in the suit property left by Tulsi Ram@ Sunda Ram, who died in the year 1955 before coming into force of Hindu Succession Act.

(ii) Secondly, plaintiffs appeared to have effected compromise in

the civil appeal No.30 of 1977 having full knowledge that they had no share in the suit land left by their father.

(iii) Thirdly, the parties acted upon the compromise as on the basis of order passed in the civil appeal, three other litigation between the parties were got decided.

(iv) Jamna, defendant No.4 had filed a suit challenging the gift deed with regard to her 1/8th share in favour of sons of Bhagwana, which was decreed vide judgment and decree (Ex.D13) in view of compromise between the parties and the gift deed executed by Jamna was held as null and void.

(v) All the sons and daughters of Tulsi have filed application for partition against Bhagwana in which statement was made by counsel for Birji etc on 04.12.1978 about of possibility of compromise and on the next date, that application was got dismissed as withdrawn.

(vi) The suit for partition of house and *nohra* pending between the parties were withdrawn as per compromise.

(vii) Another application seeking correction of *khasra girdawari* was also decided on the basis of compromise between the parties.

The statement of plaintiff Birji that she had not thumb marked the power of attorney in favour of Bharat Lal Sharma, Advocate, who appeared in Civil Appeal No.30 of 1977 to make statement on behalf of plaintiffs that the matter has been compromised and the report of Finger Prints Expert Yashpal Jain PW5 was discarded with the observations as follows:-

“11. It is the statement of Smt. Birji (plaintiff)
PW-4 alone upon which the learned counsel for the

plaintiffs placed reliance and according to him this statement alone is sufficient to hold that the plaintiffs never engaged Shri Bharat Lal as counsel or put their thumb-impressions on the Wakalatnama in favour of Shri Bharat Lal. Besides this statement of the plaintiff Birji, the plaintiffs have examined Shri Yashpal Chand Jain, Handwriting and Finger Prints Expert (PW5) who has stated that the thumb-impressions alleged to be of Birji, Sarli and Shanti on the wakalatnama in dispute on this summoned file are blurred and unfit for comparison. However, he further opined that the thumb impression alleged to be of Kirpi on the wakalatnama has not been affixed by Smt. Kirpi, who had given her specimen thumb impressions in the court. The plaintiff Smt. Birji cannot be relied upon as she has denied even the facts which are not disputed by the learned counsel for the plaintiffs. She says that she had not moved an application for partition and that no application for partition was dismissed in 1973 and that no appeal was dismissed by the Collector. She has also denied the other facts which are proved on the file by the documents of defendant No.1.”

In appeal, learned Additional District Judge, Bhiwani set aside the judgment passed by the lower Court and while decreeing the suit filed by the plaintiffs, observed that the sole question, which arises for consideration in this case is as to whether daughters and widow of Tulsi Ram @ Sunda Ram had appointed Shri Bharat Lal Sharma, Advocate as their counsel. On analysing the statement of Birji PW4, Finger Prints Expert Shri Yashpal Chand Jain PW5 and Shri Bharat Lal Sharma, Advocate DW2, he concluded that power of attorney in favour of Shri

plaintiffs. Statement of DW3 Shri R.P. Jain, Advocate, who has withdrawn the other litigation on behalf of plaintiffs was discarded on the ground that he withdrew earlier suits and partition proceedings between the parties without instructions of his clients i.e. Plaintiffs. Learned lower Appellate Court also took note of the fact that compromise before the Appellate Authority was not in writing, as such, it is hit by the provisions of Order 23 rule 3 CPC. While accepting the appeal, learned first Appellate Court observed in para 17 of the judgment as follows:-

“ 17. After hearing the rival contention of the parties, I am of the view that it is not to be decided by this Court whether the present plaintiffs being daughters of Tulsi are to succeed to the property of deceased Tulsi or not. It is only the compromise, which is to be decided by this Court regarding its legality or illegality. As per statement of Shir Bharat Lal, Advocate, he has admitted in his testimony before the Court that he does not know all these persons personally, nor he has obtained the thumb-impressions in his presence. Therefore, keeping in view the statement and the law laid down in 1981 P.L.J. 298 regarding the procedure laid down in Order 23 Rule 3, Civil Procedure Code, I hold that in this case, the compromise was not signed or thumb marked by the parties, nor it was written by them. Therefore, Order 23 Rule 3, Civil Procedure Code would be attracted in this case. The Law cited by the appellant 1981 P.L.J. 298 is fully applicable to the facts of this case. Reliance may also be had to *L.Prem Parkash Versus Pt. Mohan Lal and another AIR 1943 Lahore 268*, wherein it is held as under:-

*“Where a decree is passed in consequence
of a compromise and is a mere record of the*

will of the parties, it cannot be regarded to have acquired any greater sanctity than the compromise itself on the ground that it was adopted by the Judge or that the command of the Judge had been added to it. The Judge is not called upon to consider the validity and legality of the compromise and in the absence of any determination of these questions the decree in such cases is liable to the same attack and suffers from the same infirmities which the compromise was open or subject to.”

Therefore, I am of the view that in view of law cited above, judgement and decree passed in Civil Appeal No.30 of 1976 dated 4.12.1978 is not binding on the rights of the plaintiff and any mutations effected on the basis of the same are not validly effected in the revenue record and the plaintiffs and proforma-defendant would have had the same status, as they had at the time of passing of the judgement and decree dated 29.12.1975 by Shri L.N. Mittal Sub Judge Ist Class, Bhiwani.”

I have heard learned counsel for the parties and have gone through the paper book and record of the Courts below with their active assistance.

At the very outset, I am of the considered opinion that matter in this case does not require examination of the contention of parties about the inheritance of the property of Tulsi Ram @ Sunda Ram. Learned first Appellate Court has rightly observed that sole question before the Court is as to whether wife and daughters of Tulsi Ram @ Sunda Ram have

them in Civil Appeal No.30 of 1977 and he was competent to compromise on their behalf. The other legal question, which arises for consideration is as to whether the compromise, if effected by Mr. Bharat Lal Advocate is valid under Order 23 rule 3 CPC?

While answering the first question, learned first Appellate Court took note of the evidence on record and observed as follows:-

“12. He drew my attention to the statement of Sh. Bharat Lal, where he stated that he does not know personally the ladies, who had engaged him in this case. He also admitted that the ladies did not come on 4.12.1978, whereas the power of attorney filed by him bears the date 4.12.1978. In view of the admission made by Shri Bharat Lal that Smt. Sarli, Shanti, Birji and Kirpi were not present on 4.12.1978 to sign the alleged compromise and power of attorney in the Court, therefore, an inference has to be drawn that thumb impressions found on Ex.P1 i.e. Power of attorney are not those of the plaintiffs and proforma respondent No.4. In order to substantiate his agreement, the learned counsel drew my attention to the report of Shri Yashpal Chand Jain (PW4), in which he only admitted that there is only one thumb impression of Smt. Kirpir, which is worth comparison. The thumb impressions on the power of attorney were compared by him with the sample thumb impressions taken in the Court and he came to the conclusion that they are not of one and the same person. The other thumb impression of Mst. Birji, Sarli and Shati are opined by him as blurred fixed with fluid ink. Their characteristics of ridges and its pattern for the purpose of comparison could not be detected and these thumb impressions were declared to be unfit for comparison.

13. The learned counsel further argued that the

defendants have not produced any expert to rebut the testimony of Yashpal Chand Jain. Therefore, his report remains unrebutted evidence on the record.”

From the above evidence, it is proved that the power of attorney produced by Shri Bharat Lal Sharma, Advocate was not bearing thumb impression of plaintiff Kirpi. The other thumb impressions on the power of attorney were not decipherable. Once the decipherable thumb impression on power of attorney is proved to have been not affixed by the person, whose thumb impression is alleged to have been affixed on power of attorney (Ex.P1), a safe conclusion can be drawn that it was also not bearing thumb impressions of other plaintiffs. Shri Bharat Lal Sharma, Advocate when examined as DW2, has stated that he appeared in the Court on behalf of Jamna, Kirpi, Sarti, Shanti, Sheo Ram and Birji and had produced power of attorney. Statement about the compromise was got recorded by Shri K.C. Jain, Advocate for Bhagwana and on his statement, Rajinder Parsad Advocate and he had signed. His client Sheoram also put thumb impressions. He was, however, not knowing the ladies, who engaged him or who put thumb impressions on the power of attorney. He has admitted that on the date of compromise i.e. 04.12.1978, they were not present in Court. From the statement of this witness, it cannot be inferred that plaintiffs have engaged him.

Shri Yashpal Chand Jain, PW5 has specifically stated that thumb impression of Birji, Sarli, Shanti on power of attorney Ex.P1 in the summoned file were blurred and affixed with fluid ink. Their characteristics of ridges and its pattern for the purpose of comparison could not be detected and these thumb impressions were declared to be unfit for comparison.

Thumb impression of Kirpi on the power of attorney did not tally with her specimen thumb impression. Statement of this witness is unrebutted.

On 04.12.1978, appellant Bhagwana and his counsel got recorded statement as follows:-

“Statement of the counsel for defendant appellant namely for Bhagwana.

The parties have partitioned the joint holding. The land comprised in Killa Nos.31//2(7-19), 3(8-0), 9(8-0), 42//15(8-0), 43//11(8-0) will be owned and possessed by Bhagwana defendant-appellant alone. The remaining land in dispute will be owned and possessed by Ram Chander, plaintiff-respondent and Sheo Ram, Jamna, Sarli, Kirpi, Shanti and Barji, defendant respondents. The possession of the entire remaining land has been delivered to Ram Chander, Sheo Ram, Jamna etc. through Ram Chander and Sheo Ram today. Shrimati Jamna respondent had executed a gift deed dated 21/8/78 in favour of Jag Ram, Ram Partap and Chand Ram and that gift deed will be null and void. The suit which is pending regarding that gift will be got decreed. The parties have also compromised regarding the *nohra* and the house in dispute and are getting disposed off the suit regarding those properties today. The judgment and decree of the trial court shall stand modified accordingly so far the land in dispute in this suit is concerned.

RO&AC.

Sd/- L.T.I. Bhagwana
Sd/- L.T.I. Bhagwana
Sd/- K.C. Jain, Adv.

Sd/-
Senior Sub Judge,
Exercising Enhanced Civil
Appellate Powers, Bhiwani
4/12/78.”

Bharat Lal and Rajinder Parsad Advocates, Sheo Ram and Ram Chander got their statements recorded to the effect that parties have effected partition by metes and bounds as stated by learned counsel for the appellant

and order be passed accordingly. On the basis of aforesaid statement, the

appeal filed by Bhagwana was accepted and decree was passed as referred above.

From the evidence produced by the appellant, it appears that an application seeking partition was withdrawn on 22.12.1978 by counsel Shri R.P. Jain, Advocate representing Birji and others. The suit filed by Jamuna daughter of Tulsi Ram @ Sunda Ram was withdrawn by her counsel Mr. R.P. Jain, Advocate. However, in that statement, no reference to the compromise in appeal was made. Civil Suit No.117 of 14.04.1978, pending in the Court of Senior Sub Judge, Bhiwani filed by Ram Chander, Sheo Ram, plaintiffs and Jamuna against Bhagwana was ordered to be decreed on the statement of Shri K.C. Jain, Advocate for defendant Bhagwana, wherein he has stated that parties have compromised and he has no objection if the suit of the plaintiffs is decreed. Statement of counsel for Bhagwana is on record as Ex.D1 and of Shri R.P. Jain, Advocate for plaintiffs is Ex.D3. In another suit bearing No.325 of 1978 filed by Jamna statement of Bhagwana dated 04.12.1978 was recorded, wherein he stated that he had heard the statement of Shri R.P. Jain, Advocate, admitting the same to be correct and stated that he will remain bound by the compromise, as such, the suit be dismissed. The application for partition filed by Birji and others, was dismissed on 22.12.1978 in view of compromise between the parties.

From the above evidence on record, the question, which now arises for consideration is whether an inference can be drawn that Shri Bharat Lal Sharma, Advocate was duly engaged by plaintiffs. Bharat Lal Sharma, Advocate had filed power of attorney Ex.P1 on behalf of Kirpi, Jamna, Sarti and Shanti in the appeal and power of attorney Ex.P2 on behalf

of Sheo Ram and Birji. So far as, Jamna is concerned, power of attorney in favour of Bharat Lal Sharma, Advocate was thumb marked by her. Sheo Ram had also signed statement recorded by the Appellate Court on 04.12.1978. In view of the above, Jamna and Sheo Ram stood estopped from challenging the compromise in the civil appeal. Thumb impressions of Sarli, Shanti and Birji on the power of attorney being blurred could not be compared with their specimen thumb impressions. Shri Bharat Lal Sharma, Advocate had appeared and stated that he was not knowing the ladies, who engaged him

Specific evidence has come on record that Kirpi had not given power of attorney in favour of Bharat Lal Sharma, Advocate and thumb impression on the power of attorney filed by him in civil appeal, do not tally with her specimen thumb impression. I find merit in contention of plaintiff that they never engaged him and statement in the Civil Appeal No.30 of 1977 made by Shri Bharat Lal Sharma, Advocate was not on their instructions and also not binding on them.

The next question on which the appeal filed by Birji and others were accepted by the first Appellate Court is that the compromise was not as per the spirit of Order 23 Rule 3 CPC. While arriving the conclusion to this effect, learned first Appellate Court had relied on the observations in case of *Dalip Singh and another Vs. Raj Mall and others 1981 Punjab Law Journal 298*, I find merit in the observations of first Appellate Court.

Order 23 Rule 3 CPC reads as follows:-

“3. Compromise of suit— Where it is proved to 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 satisfied the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise 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 agreement, compromise or satisfaction is the same as 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.

Explanation—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.”

Shri Bharat Lal Sharma, Advocate, who appeared on behalf of plaintiffs while appearing as DW2 has nowhere stated that plaintiffs have given any instruction to enter into compromise on their behalf. He has simply stated that a statement was got recorded by Bhagwana and his counsel. These statements were signed by him and Rajinder Prasad, Advocate. Sheo Ram his client had also thumb marked the same. He was not knowing the plaintiffs. There were no specific instructions with him to enter into compromise on their behalf. The compromise before the Court was not in writing and signed by the parties. Even if, it be believed that counsel for the parties are competent to sign on their behalf, even then, the

authority of Shri Bharat Lal Sharma to enter into compromise on behalf of

plaintiff or to ratify any such compromise was lacking. Learned first Appellate Court has rightly observed that compromise on behalf of plaintiffs is not valid as per provisions of Order 23 Rule 3 CPC.

I have taken note of all the facts that have come on record including the withdrawal of litigation by the parties subsequent to the compromise dated 04.12.1978 in civil appeal No.30 of 1977. However, keeping in view the fact that the compromise was not a valid one and was not as per provisions of Order 23 Rule 3 CPC, withdrawal of subsequent litigation do not operate as estoppel against the plaintiffs as competence of Shri Bharat Lal to represent plaintiff and instructions with him to enter into compromise are not proved on record.

Learned first Appellate Court has taken note of the fact that Shri R.P. Jain, Advocate, who had withdrawn the suit/petitions, has nowhere stated that he withdrew/compromised the other suit/petition on the instructions of his clients i.e. Plaintiffs.

Keeping in view all the facts and circumstances on record, I am of the considered opinion that the first Appellate Court has rightly discarded and committed no error while holding that judgement and decree dated 04.12.1978 passed in Civil Appeal No.30 of 1977 is not binding on the rights of the plaintiffs.

The next question, which arises for consideration is what will be fate of civil appeal No.30 of 1977, if the compromise is executed and the order passed by the Appellate Authority on the basis of that compromise is set aside. In that eventuality the aforesaid appeal remains pending and either of the parties to the suit shall have right to get the same revived to get

the decision on merits.

As a sequel of my above discussions, I find no merits in this appeal and the same is dismissed.

May 27, 2019.
Sachin M.

(SURINDER GUPTA)
JUDGE

<i>Whether speaking/reasoned:</i>	<i>Yes/No</i>
<i>Whether Reportable:</i>	<i>Yes/No</i>