

IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH

Civil Revision No.4390 of 2016 (O&M)
Date of Decision: February 01, 2019

Smt.Bhagwati

...Petitioner

Versus

Jai Hind & others

...Respondents

CORAM: HON'BLE MR.JUSTICE AMIT RAWAL

Present: Mr. N.D.Achint, Advocate,
for the petitioner.

AMIT RAWAL, J. (Oral)

CM No.26848-CII of 2018

Compromise Annexure P-2 is taken on record.

CM stands disposed of.

CR No.4390 of 2016

The present revision petition is directed against the impugned order dated 26.02.2016, whereby the application of the petitioner filed under Section 151 CPC for recalling of the order dated 26.03.2011, whereby the decree was passed and the counter claim of the respondent-defendants, in terms of the compromise Ex.C1 was allowed.

The case has a chequered history. Plaintiffs are the real daughters of Dhani Ram son of Ganga Bishan. Dhani Ram was holding ancestral agricultural land and residential property in Village Wazirabad and Daya Nand Colony, Gurgaon. Respondents (nephews of Dhani Ram)

propounded a Will and filed a suit for declaration. Similarly, the petitioner along with others also filed a suit claiming devolution of interest by way of natural succession. The suit of the plaintiffs for declaration was dismissed vide judgment and decree dated 23.05.2014. In the suit filed by the plaintiffs, the nephews filed a counter claim. However, during the interregnum, part of the land was acquired by the Government and the compensation stood deposited before the Land Acquisition Collector. The petitioner submitted an application before the Civil Court, Gurgaon and made an enquiry and realised that Will dated 19.04.2005 was propounded by the defendants-nephews. They also agreed with regard to other properties and also placed on record compromise dated 14.06.2010 on record.

Mr. N.D.Achint, learned counsel appearing on behalf of the petitioner submitted that the earlier suit was dismissed in default and thereafter on an application, the same was restored and the matter was sent to the Lok Adalat and on 26.03.2011, the following order was passed:-

“Present: Sh.S.K.Rao, counsel for plaintiff.

Sh.J.K.Dang, counsel for defendant.

Cost paid vide receipt no.60688-65602. Compromise have been effected between the parties. Statement of parties have been recorded separately. Written compromise Ex.C.1 placed on record. In view of written compromise, plaintiff wants to withdraw the present suit. As per compromise Ex.C1, the suit is hereby dismissed as withdrawn and counter-claim of the defendant is hereby decreed as per the terms of compromise. Decree sheet be prepared accordingly. File be consigned to record room after due compliance.”

The petitioners submitted an application under Section 151 CPC for recalling of the order on the ground that the compromise was

confined to the land which was acquired and not with regard to other residential properties and, therefore, without satisfaction of the compromise arrived at, the Court should not have passed the decree. In support of the aforementioned contention, relied upon the ratio decidendi culled out by Hon'ble the Supreme Court in **Banwari Lal Versus Smt.Chando Devi (Through L.R.)**, 1993(3) R.R.R. 685 to contend that it was incumbent duty for the court to record the satisfaction that the compromise was lawful.

I have heard the learned counsel for the petitioner, appraised the paper book and of the view that there is no force and merit in the submissions of the learned counsel for the petitioner.

One of the terms and conditions of the compromise revealed that the nephews had undertaken to pay to four plaintiffs ₹ 25.00 lacs each, i.e., ₹1.00 crore (one crore) by account payee cheques. It is a matter of record that all the plaintiffs in their suit have been given cheques, which have been encashed.

Provisions of Order 23(3) CPC provide the Court to pass the decree in case the parties have compromised. For the sake of brevity, the proviso added to rule (3) of Order 23 by this Court reads thus:-

“Provided that the hearing of a suit shall proceed and no adjournment shall be granted in it for the purposes of deciding whether there has been any adjustment or satisfaction unless the Court for reasons to be recorded in writing thinks fit to grant such adjournment, and provided further that the judgment in the suit shall not be announced until the question of adjustment or satisfaction has been decided.

Provided further that when an application is made by all the parties to the suit either in writing or in open court through their counsel that they wish to compromise the suit, the Court

may fix a date on which the parties or their counsel should appear and the compromise be recorded but shall proceed to hear those witnesses in the suit who are already in attendance, unless for any other reason to be recorded in writing, it considers it impossible or undesirable to do so. If upon the date fixed no compromise has been recorded, no further adjournment shall be granted for this purpose, unless the court, for reasons to be recorded in writing, considers it highly probable that the suit will be compromise on or before the date to which the court purposes to adjourn the hearing.”

Proviso in the Statute protects the right of the other party in case there has been satisfaction of the compromise. Concededly, the plaintiffs have already been paid the cheque of ₹ 25.00 lacs each, i.e., ₹1.00 crore.

There is no dispute to the ratio decidendi culled out in the judgment cited supra, but the facts of the aforementioned case revealed that one of the party had not adhered to the compromise.

In my view, the order under challenge rejecting the application is perfectly legal and justified and does not suffer from any illegality or perversity as submission of the application was nothing but an act of aggrandizement.

For the reasons mentioned above, no ground for interference is made out. Resultantly, the revision petition is dismissed.

February 01, 2019
ramesh

(AMIT RAWAL)
JUDGE

Whether speaking/reasoned
Whether Reportable:

Yes/No
Yes/No