

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.27 of 2020

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Bhuneshwar Chaubey @ Duldul Chaubey Son of Late Jag Narayan Chaubey
Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.

... .. Petitioner/s

Versus

1. Kalawati Devi Daughter of Late Vishwanath Chaubey Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.
2. Maya Devi Daughter of Late Vishwanath Chaubey Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.
3. Asha Devi Daughter of Late Vishwanath Chaubey Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.
4. Rita Devi Daughter of Late Vishwanath Chaubey Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.
5. Indu Devi Daughter of Late Vishwanath Chaubey Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.
6. Om Prakash Chaubey Son of Late Vishwanath Chaubey Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.
7. Ramchandra Chaubey Son of Late Suryanath Chaubey Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.
8. Shivchandra Chaubey Son of Late Suryanath Chaubey Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.
9. Mohan Chaubey Son of Late Suryanath Chaubey Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.
10. Madan Chaubey Son of Late Suryanath Chaubey Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.
11. Shiv Mangal Chaubey Son of Late Jag Narayan Chaubey Resident of Village- Majhauri, P.S.- Bihiya, District- Bhojpur.

... .. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Surj Bansh Roy
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

9 09-11-2022

Heard learned counsel for the petitioner.

This revision application has been filed against the



Order dated 23-09-2021, passed by the learned Sub-Judge Jagdishpur (Bhojpur) in Title Suit No. 446 of 2000, dated 25.09.2021, whereby learned trial court dismissed the title suit as not maintainable.

Learned counsel for the petitioner submits that the aforesaid suit has been filed for a declaration that the suit property mentioned in Schedule 1 of the Plaint is a joint property of the plaintiff and also for setting aside the Compromise Decree dated 15.11.1997, passed by the learned Sub-Judge, Ara in Title Suit No. 50 of 1967, as forged and fraudulent. After issuance of notice, defendants filed written statement stating that the suit was barred under Order XXIII Rule 3-A of the Civil Procedure Code and on the principle of *res judicata*. Further, final decree in Title Suit No. 50 of 1967 and 36 of 1970 had already taken finality.

During the pendency of Title suit No. 446 of 2000, defendant filed an application under Order XIV Rule 2 of the Civil Procedure Code for deciding the preliminary issue on the point of maintainability of the suit, under order XXIII, Rule 3-A of the Civil Procedure Code and on the point of *res judicata*, which was rejected by the learned Trial Court on 03.09.2005.

Thereafter, defendant, namely, Vishwanath Chaubey



filed Civil Revision No. 2176 of 2005 against the Order dated 03.09.2005, passed by the trial court which was set aside by a Co-ordinate Bench on 13.07.2006 and directed the learned lower Court to proceed in accordance with the observation made in the order. In view of Order dated 13.07.2006, passed by a Co-ordinate Bench, the learned trial court framed a preliminary issue as to whether the suit was maintainable or not?

Vide order dated 25.09.2019, passed by the learned Sub-Judge, Bhojpur in Title Suit No. 446 of 2000, held that Order XXIII, Rule 3A of the Civil Procedure Code bars independent suit brought against a compromise decree and accordingly, held the suit was not maintainable and dismissed the suit as barred by the law and aggrieved by and dissatisfied with this Civil Revision application has been filed.

Learned counsel for the petitioner submits that the plaintiff has alleged fraud in obtaining the decree in Title Suit No. 50 of 1967 and the fraud vitiated the merit of the compromise and learned lower court has failed to consider the aspect of the matter. It is further stated that order XXIII Rule 3-A of the Civil Procedure Code is not applicable in the facts of the case.

Order XXIII Rule 3 of the Civil Procedure Code



provides for compromise of suit. By way of amendment in 1976, made by Act No. 104 of 1976, Rule 3-A has been inserted, with effect from 01.02.1977. The legislature has brought into force order 23 Rule 3-A which creates bar to institute the suit to set aside the decree on the ground that the compromise of which decree is based was not lawful. The purpose of effecting a compromise between the parties is to put an end to the various disputes pending before the Court of competent jurisdiction once and for all.

On plain reading of order XXIII Rule 3-A of the Civil Procedure Code, it is apparent that no suit shall lie to set aside a decree on the ground that the compromise of which the decree is based was not lawful. Identical question was considered by the Hon'ble Apex Court in case of ***R. Janakiammal Vs. S.K. Kumarasamy (2021) 9 SCC 114***. It was observed and held by the Hon'ble Court that Rule 3-A of order XXIII bars the issue to set aside the decree on the ground that the compromise on which decree was based was not lawful. It is further observed and held that an agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and the bar under Rule 3-A shall be attracted if compromise on the basis which the decree was passed was void or voidable. In this case the



Hon'ble Apex Court had occasion to consider in detail order XXIII of Rule 2 as well as Rule 3-A. The earlier decision of Hon'ble Supreme Court has also been dealt in Paragraph 53 to 57 as under:-

“53. Order 23 Rule 3 as well as Rule 3-A came for consideration before this Court in large number of cases and we need to refer to a few of them to find out the ratio of judgments of this Court in context of Rule 3 and Rule 3-A. In Banwari Lal v. Chando Devi [Banwari Lal v. Chando Devi, (1993) 1 SCC 581] , this Court considered Rule 3 as well as Rule 3-A of Order 23. This Court held that the object of the Amendment Act, 1976 is to compel the party challenging the compromise to question the court which has recorded the compromise. In paras 6 and 7, the following was laid down: (SCC pp. 584-85)

“6. The experience of the courts has been that on many occasions parties having filed petitions of compromise on basis of which decrees are prepared, later for one reason or other challenge the validity of such compromise. For setting aside such decrees suits used to be filed which dragged on for years including appeals to different courts. Keeping in view the predicament of the courts and the public, several amendments have been introduced in Order 23 of the Code which contain provisions relating to withdrawal and adjustment of suit by the Civil Procedure Code (Amendment) Act, 1976. Rule 1 Order 23 of the



Code prescribes that at any time after the institution of the suit, the plaintiff may abandon his suit or abandon a part of his claim. Rule 1(3) provides that where the Court is satisfied: (a) that a suit must fail by reason of some formal defect, or (b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject-matter of a suit or part of a claim, it may, on such terms as it thinks fit, grant the plaintiff permission to withdraw such suit with liberty to institute a fresh suit. In view of Rule 1(4) if the plaintiff abandons his suit or withdraws such suit without permission referred to above, he shall be precluded from instituting any such suit in respect of such subject-matter. Rule 3 Order 23 which contained the procedure regarding compromise of the suit was also amended to curtail vexatious and tiring litigation while challenging a compromise decree. Not only in Rule 3 some special requirements were introduced before a compromise is recorded by the court including that the lawful agreement or a compromise must be in writing and signed by the parties, a proviso with an Explanation was also added which is as follows:

‘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.'

7. By adding the proviso along with an Explanation the purpose and the object of the amending Act appears to be to compel the party challenging the compromise to question the same before the court which had recorded the compromise in question. That court was enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner. The Explanation made it clear that an agreement or a compromise which is void or voidable under the Contract Act shall not be deemed to be lawful within the meaning of the said Rule. Having introduced the proviso along with the Explanation in Rule 3 in order to avoid multiplicity of suit and prolonged litigation, a specific bar was prescribed by Rule 3-A in respect of institution of a separate suit for setting aside a decree on the basis of a compromise saying:

'3-A. Bar to suit.—No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.'

54. The next judgment to be noted is Pushpa Devi Bhagat v. Rajinder Singh [Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566] , R.V. Raveendran, J. speaking for the Court noted the provisions of Order 23 Rule 3 and Rule 3-A and recorded his conclusions in para 17 in the following words: (SCC p. 576)



“17. The position that emerges from the amended provisions of Order 23 can be summed up thus:

(i) No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.

(ii) No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.

(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.

(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court. The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second



defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code.

55. *The next judgment is R. Rajanna v. S.R. Venkataswamy [R. Rajanna v. S.R. Venkataswamy, (2014) 15 SCC 471 : (2015) 4 SCC (Civ) 238] in which the provisions of Order 23 Rule 3 and Rule 3-A were again considered. After extracting the aforesaid provisions, the following was held by this Court in para 11 : (SCC p. 474)*

“11. It is manifest from a plain reading of the above that in terms of the proviso to Order 23 Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signed by the parties, the Court before whom such question is raised, shall decide the same. What is important is that in terms of Explanation to Order 23 Rule 3, the agreement or compromise shall not be deemed to be lawful within the meaning of the said Rule if the same



is void or voidable under the Contract Act, 1872. It follows that in every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed by the parties, the question whether the agreement or compromise is lawful has to be determined by the court concerned. What is lawful will in turn depend upon whether the allegations suggest any infirmity in the compromise and the decree that would make the same void or voidable under the Contract Act. More importantly, Order 23 Rule 3-A clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. This implies that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone who can examine and determine that question. The court cannot direct the parties to file a separate suit on the subject for no such suit will lie in view of the provisions of Order 23 Rule 3-A CPC. That is precisely what has happened in the case at hand. When the appellant filed OS No. 5326 of 2005 to challenge the validity of the compromise decree, the court before whom the suit came up rejected the plaint under Order 7 Rule 11 CPC on the application made by the respondents holding that such a suit was barred by the provisions of Order 23 Rule 3-A CPC. Having thus got the plaint rejected, the defendants (the respondents herein) could hardly be heard to argue that the plaintiff (the



appellant herein) ought to pursue his remedy against the compromise decree in pursuance of OS No. 5326 of 2005 and if the plaint in the suit has been rejected to pursue his remedy against such rejection before a higher court.

56. The judgments of Pushpa Devi [Pushpa Devi Bhagat v. Rajinder Singh, (2006) 5 SCC 566] as well as Banwari Lal [Banwari Lal v. Chando Devi, (1993) 1 SCC 581] were referred to and relied on by this Court. This Court held that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone which can examine and determine that question.

57. In subsequent judgment, Triloki Nath Singh v. Anirudh Singh [Triloki Nath Singh v. Anirudh Singh, (2020) 6 SCC 629 : (2020) 3 SCC (Civ) 732] , this Court again referring to earlier judgments reiterated the same proposition i.e. the only remedy available to a party to a consent decree to avoid such consent decree is to approach the court which recorded the compromise and separate suit is not maintainable. In paras 17 and 18, the following has been laid down: (SCC p. 638)

“17. By introducing the amendment to the Civil Procedure Code (Amendment) Act, 1976 w.e.f. 1-2-1977, the legislature has brought into force Order 23 Rule 3-A, which creates bar to institute the suit to set aside a decree on the ground that the compromise on which decree is based was not lawful. The purpose of effecting



a compromise between the parties is to put an end to the various disputes pending before the court of competent jurisdiction once and for all.

18. Finality of decisions is an underlying principle of all adjudicating forums. Thus, creation of further litigation should never be the basis of a compromise between the parties. Rule 3-A Order 23 CPC put a specific bar that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. The scheme of Order 23 Rule 3 CPC is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and a voluntary act on the part of the parties. The court can be instrumental in having an agreed compromise effected and finality attached to the same. The court should never be party to imposition of a compromise upon an unwilling party, still open to be questioned on an application under the proviso to Order 23 Rule 3 CPC before the court.”

There is catena of decision on this point as referred in ***Banwari Lal Vs. Chando Devi (1993) 1 SCC 581, Pushpa Devi Bhagat Vs. Rajinder Singh & Ors. (2006) 5 SCC 566, Horil Vs. Keshav, (2012) 5 SCC 525 and R. Ranjana Vs. S.R. Venkataswamy & Ors. (2014) 15 SCC 471.***

Now, considering the decisions of the Hon’ble Apex Court, it stands quite clear that a separate suit for challenging compromise decree is barred under Order XXIII, Rule 3A of the



Civil Procedure Code. It is held that such a challenge can only be examined by the Court, who has allowed the compromise decree and not by any other court. In order to look into justifiability of the case brought by the aggrieved party.

It is admitted that Title Suit No. 50 of 1967 was filed in which a compromise decree was challenged which could not be done in a separate suit as per the provision given in order XXIII, Rule 3-A of the Civil Procedure Code.

After perusing the plaint of Title Suit No. 50 of 1967, it is revealed that petitioner was a party as defendant No. 4 under the guardianship of Siya Ram Pandey, who has now challenged the compromise decree dated 15.11.1997, by way of a separate suit bearing Title Suit No. 446 of 2000.

In view of the above points, it is stated that the present Civil Revision is in the teeth of the order 23, Rule 3-A and therefore devoid of merit. This Court observes that the trial court rightly held that the suit in the present form and for the relief would be barred under order XXIII Rule 3-A of the Civil Procedure Code and therefore, the Trial Court rightly rejected the title suit.

Thus, I am not inclined to interfere in the impugned order.



Accordingly, this Civil Revision application stands
dismissed.

(Khatim Reza, J)

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