

VRJ

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION**

WRIT PETITION NO.13800 OF 2023

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Bina Deegan

... Petitioner

V/s.

Saras Gopi Alias K. Saraswathi Amma &
Anr.

... Respondents

Mr. Ameya Gokhale with Ms. Kriti Kalyani and Mr. Siddhant Marathe i/by Mr. Shardul Amarchand Mangaldas & Co. for the petitioner.

Mr. Vishal Kanade with Mr. Vishal Maheshwari with Ms. Kamini Pansare and Mr. Mihir Beradia for respondent No.1.

Mr. Venkatesh Dhond, Senior Advocate with Ms. Karishma Rao, Mr. Rushabh Vidyarthi, Mr. Ashish Bhakta, Ms. Shreni Shetty, Ms. Vinita Melvin, Ms. Meenakshi Pahuja i/by ANB Legal for intervening applicant.

CORAM : AMIT BORKAR, J.

DATED : NOVEMBER 8, 2023

P.C.:

1. The petitioner-original plaintiff is challenging order passed by the Trial Court dated 10th October 2023 to the extent of paragraph 5 of the order.

2. It appears that the plaintiff filed S.C. Suit No.1233 of 2017 seeking relief of declaration and possession in relation to suit flat.

3. During pendency of the said suit, parties to the suit entered into settlement agreement on 21st April 2023. The settlement agreement was placed on record before the Trial Court. The Trial Court, by the impugned order, rejected application below Exhibit-33 to pass a consent decree in terms of settlement agreement holding that the source of title of the parties to the immovable properties is not proved. The Trial Court held that in absence of a title document, the settlement agreement has no legal effect of transfer of title.

4. The petitioner takes exception to the said finding submitting that the title to immovable property can be proved by circumstantial or any other mode of evidence. Proof of primary document of title is not only mode of proving title.

5. At this stage, it is necessary to consider Order 23 Rule 3 of the Civil Procedure Code, 1908. Order 23 Rule 3 of the Civil Procedure Code, 1908, reads as under:

1.....

2.....

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 to 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 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 not 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.

6. Order 23 Rule 3 of the Civil Procedure Code, 1908, was amended in 1976. The purpose of Code of Civil Procedure (Amendment) Act, 1976 is to compel party challenging the compromise to question the same before the Court which had recorded the compromise. While holding such inquiry, the Court is enjoined to decide as to whether parties have arrived at adjustment in a lawful manner. The explanation to Order 23 Rule 3 makes it clear that a compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful within the amendment of said rule. Therefore, the Court while recording a compromise under Order 23 Rule 3 will be within its power to decide whether the agreement or a compromise in question was lawful and not void or voidable under the Indian Contract Act, 1872. If the agreement or compromise is fraudulent, it will be deemed to be void.

7. In the facts of the case, the parties to the agreement intend to confer title of the property from one party to another. It was, therefore, necessary for the Trial Court to decide as to whether the

party releasing rights in favour of another was within its right to confer such ownership. It was, therefore, necessary to ascertain as to whether party releasing rights in favour of another had title over the said property. Such issue of title can be proved by producing primary evidence and in absence of primary evidence, the parties are permitted to prove such fact in issue by producing secondary evidence.

8. In appropriate cases, to arrive at satisfaction of lawful agreement, it is always open for the Trial Court to call upon parties to adduce oral evidence in support of fact in issue. However, exercise of such power depends on facts and circumstances of each case. It is not necessary in every case that the Court needs to direct parties to lead oral evidence in support of fact in issue about lawfulness of agreement. A compromise or satisfaction must satisfy conditions of lawful agreement.

9. According to the petitioner, respondent No.1 herein is the mother. However, the Court will have to decide issue as to who is the owner of the property. Therefore, the Court is required to grant opportunity to the parties to furnish evidence either primary or secondary and after granting opportunity to the parties to furnish evidence and if the Court comes to the conclusion that the agreement between the parties is lawful, the Court shall pass a decree based on settlement arrived at by the parties.

10. Hence, in my opinion, the writ petition partly succeeds, the observations made in paragraph 5 of the impugned order are set aside.

11. Parties are relegated before the Trial Court to furnish material in support of their case of establishing ownership of suit property and if the Court is satisfied about the ownership of the property and lawfulness of settlement between the parties, the Court shall pass appropriate orders on application below Exhibit-33.

12. With above clarification, the writ petition stands disposed of. No costs.

(AMIT BORKAR, J.)