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IN THE HIGH COURT OF DELHI AT NEW DELHI

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*Reserved on: 28.03.2023**Pronounced on: 24.05.2023*

+ RFA 235/2023, CM APPL. 14025/2023, 14026/2023,
14027/2023, 14028/2023 & 14029/2023

SMT. PREM LATA

..... Appellant

Through: Mr. Arvind Chaudhary and
Mr. Ankit Chaudhary,
Advocates.

versus

SHRI HARVINDER SINGH ALIAS HAPPY
& ORS.

..... Respondents

Through:

CORAM:

HON'BLE MR. JUSTICE GAURANG KANTH

J U D G M E N T

GAURANG KANTH, J.

1. The Appellant in the present Appeal is impugning the judgment dated 12.09.2022 ("*Impugned Judgment*") in CS DJ No.59302/2016 passed by learned ADJ-02, North Rohini Court Complex, Delhi titled as '*Smt. Prem Lata v. Sh. Harvinder Singh @ Happy & Ors.*'. *Vide* the Impugned Judgment, the learned Trial Court was pleased to allow the Application under Order VII Rule 11 CPC filed by the Respondent Nos.6 and 7 and rejected the plaint of the Appellant under Order VII Rule 11(d) CPC being barred by the provisions enumerated under Order XXIII Rule 3A CPC.
2. The Trial Court Record is available with this Court. Learned counsel for the Appellant states that the appeal may be heard today itself and



no date for hearing of the appeal be fixed as contemplated by sub-Rule 1 of Rule 11 of Order 41 of the Code of Civil Procedure.

FACTS GERMANE FOR THE ADJUDICATION OF THE PRESENT APPEAL ARE AS FOLLOWS:

3. The property bearing No. 61, Guru Nanak Marg/Mahatma Gandhi Marg, Kewal Park, Azadpur, Delhi-110033 (hereinafter referred to as the “*suit property*”) was purchased and constructed by Shri Hukum Chand and Smt. Shakuntala Devi, who are the parents of the Appellant and the Respondent Nos. 2 to 5. Shri Hukum Chand died in the year 1988 and Smt. Shakuntala Devi died in January 2013.
4. It is the case of Respondent Nos. 6 and 7 that they bonafidely purchased half undivided share each of the suit property for a sale consideration amount of Rs.24,50,000/- each from Respondent Nos.4 and 5 *vide* registered Sale Deed dated 23.04.2014 having Registration No. 4282, Book No.1, Vol. No. 5109 at pages 148 to 154 and *vide* registered Sale Deed dated 23.04.2014 having Registration No. 4281, Book No.1, Vol. No. 5109 at pages 141 to 147 respectively, both registered on 24.04.2014 with the office of Sub-Registrar VI-A, New Delhi.
5. It is further the case of Respondent Nos. 6 and 7 that the Appellant had filed a suit for permanent injunction (Suit No. 139/2014) against Respondent Nos. 2 to 5 in respect of the suit property. During the pendency of the said suit, the dispute was compromised between the Appellant and Respondent Nos. 2 to 5. In pursuance of the said compromise, a Settlement deed dated 20.11.2014, receipt dated 20.11.2014 for an amount of Rs.30,00,000/- and a Declaration dated 20.11.2014 had been executed between the



Appellant and Respondent Nos.2 to 5 and the same was duly witnessed by the sons of the Appellant. It has specifically been mentioned in the above-mentioned declaration that the Appellant has been given Plot No. 128-B measuring 50 sq. yds., Khasra No. 307/202, Village Mukundpur, Abadi Mukundpur Part-II, Delhi - 110042 (hereinafter referred to as the “**Mukundpur property**”) on 26.08.1996 by the mother of the Appellant during her lifetime in lieu of her share in the suit property. Additionally, the Appellant received a sum of Rs.30,00,000/- towards the settlement amount for arriving at a compromise in the above-mentioned suit and accordingly, the Appellant specifically relinquished all her rights, shares, etc. in the suit property.

6. Based on the said compromise arrived at between the Appellant and Respondent Nos.2 to 5, the Appellant filed an Application under Order XXIII Rule 3 CPC before the Court of Civil Judge, North, Rohini Courts, Delhi for withdrawal of the said suit. The Appellant appeared before the Court of Civil Judge, North, Rohini Courts, Delhi on 26.11.2014, and the learned Trial Court recorded the statement of the Appellant, which reads as follows:

“I am the Plaintiff in the present Suit. I have entered into a compromise with all the Respondents. The compromise deed is Exhibit PX. It bears my signature at Point A and B. I shall abide by the terms and conditions of the said compromise deed. In view of the compromise deed, I want to withdraw the present suit. I am making this statement voluntarily.

7. In view of the aforesaid statement made by the Appellant, the learned Trial Court was pleased to dispose of the said matter as compromised and decree sheet was accordingly drawn. The Order dated 26.11.2014, reads as follows:

“File taken up on application under Order XXIII Rule 3 read with Section 151 CPC moved on behalf of the Plaintiff.



Heard. The Plaintiff stated that she has entered into a compromise with all the Respondents. The compromise deed is Exhibit PX. In view of the compromise, she wants to withdraw the present suit. Her statement to this effect is recorded separately. In view of the statement of the Plaintiff, the present suit is disposed of as compromised. The Application under Order XXIII Rule 3 CPC is disposed of accordingly. Compromise Deed Exhibit PX shall form part of the decree. Decree Sheet be prepared accordingly. File be consigned to record room."

8. Subsequent to the withdrawal of the said suit bearing No.139/2014, the Appellant has also filed a Civil Suit in CS (OS) No. 698/2015 before this Hon'ble Court with regard to the suit property. However, the same was dismissed as withdrawn *vide* order dated 23.03.2015 with liberty to file appropriate proceedings in accordance with law.
9. Subsequently, on 31.10.2015, the Appellant filed a Civil Suit No. 59302/2016 before the learned Trial Court, *inter alia*, with the following prayers:

- (1). *That a decree of Declaration may kindly be passed in favour of the plaintiff and against the Respondents thereby declaring that the alleged sale deed I sale documents of the sale of the suit Property bearing No. 61, Guru Nanak Marg/ Mahatma Gandhi Marg, Kewal Park, Azadpur, Delhi-110033, measuring 143 sq. yds.(as shown red in the site plan attached) allegedly executed by the Respondent Nos. 2 to 5 in favour of the Respondent Nos.2 to 5 as nulland void and the said sale deed I sale documents cancelled.*
- (2) *That of the said property may be the compromise decree dated 26.11.2015 passed by the court of Ms. Shefali Sharma, Civil Judge (North} Rohini Courts, Delhi in suit No. 139/2014 titled as Smt. Prem Lata Vs. Rajinder Parshad and others qua the suit property bearing No. 61,Guru Nanak Marg, I Mahatma Gandhi Marg , Kewal Park, Azadpur, Delhi-110033 (as shown red in the site plan attached) may kindly be declared as null, void and ineffective.*
- (3) *That a decree of partition may kindly be passed thereby partitioning the said property bearing No. 61, Guru Nanak Marg/ Mahatma Gandhi Marg, Kewal Park, Azadpur, Delhi-110033, measuring 143 Sq. yds. (as shown red in the site plan attached) by metes and bounds and to handover the*



possession of the 1/5th share in the suit property to the plaintiff.

- (4). That further a decree of permanent injunction may also be passed in favour of the plaintiff and against the Respondents thereby restraining the Respondent No.1 and/or anybody else on his behalf from further selling, transferring, alienating and/or parting with the possession of the suit property bearing No. 61, Guru Nanak Marg/Mahatma Gandhi Marg, Kewal Park, Azadpur, Delhi-110033, measuring 143 Sq. yds. (as shown red in the site plan attached) and/or creating any charge or third party interest in respect of the suit property in any manner whatsoever to anybody in any manner whatsoever.*
- (5) Costs of the suit may also be awarded in favour of the plaintiff and against the defendants.*
- (6). Any further and/or such other relief (s) deemed fit and proper in the facts and circumstances of the case, may also be passed/granted in favour of the plaintiff as against the defendants.*

10. Respondent No.1 filed a written statement in Civil Suit No.59302/2016 and denied the averments made by the Appellant. It was stated by Respondent No.1 that the suit is not maintainable as the same has been filed without any cause of action. It was further contended that the Appellant has concealed the fact of receiving consideration amount as well as other documents such as the Compromise Decree dated 26.11.2014 and the Declaration dated 20.11.2014 etc. It was also stated that the suit is bad for non-joinder of necessary party i.e., Mr. Yogesh Kumar, Advocate. Furthermore, it was contended that the Appellant on one hand admitted the execution of the Settlement Deed, Declaration, and receipt in her presence but on the other hand, the Appellant claimed the above-mentioned documents to be forged and fabricated. Hence, the said suit is not maintainable and is liable to be dismissed.



11. Respondent Nos. 3 to 5 also filed their written statement in Civil Suit No. 59302/2016 and denied the averments made by the Appellant. *Firstly*, it was stated by them that after the death of their father in 1988, the suit property fell into the share of Appellant, Respondent No.2 to 5 and their mother, Smt. Shakuntala Devi jointly. Thereafter on 26.08.1996, the Appellant was given the Mukundpur property by their mother in lieu of the Appellant's share in the suit property and it was agreed that the Appellant will relinquish her share in the suit property and will not claim any right, title, interest in respect of the suit property in future. Similarly, an adjacent plot was also given to Respondent No.2 (sister) in lieu of her relinquishing her share in the suit property in favor of Respondent Nos. 3 to 5. Unfortunately, the mother expired in 2013 and thereafter Respondent Nos. 3 to 5, being absolute owners of the suit property, sold the same to a bonafide purchaser in the year 2014. Subsequently, the Appellant after coming to know about the purchase, with a malafide intention, filed a civil suit for permanent injunction bearing No. 139/2014, titled as *Prem Lata v. Rajender Prasad & Ors.* against Respondent Nos. 2 to 5 praying to restrain the said Respondents from selling, alienating, or parting with possession of the suit property. It is further stated that since the suit was filed by their sister/Appellant, the Respondents, in order to settle the matter, gave the Appellant a sum of Rs.30,00,000/-, even though the Mukundpur property was already given to her in lieu of her share in the suit property. It was also stated that a declaration dated 20.11.2014 had also been executed by the Appellant to that effect. Consequently, the Appellant withdrew the aforesaid Suit No. 139/2014 filed by her in view of



the Settlement Deed dated 20.11.2014 which is also a part of Suit No. 139/2014. Further, the Appellant had also appeared in person and made a statement with regard to the settlement which has been recorded *vide* order dated 26.11.2014. *Secondly*, it was also stated by Respondent Nos. 3 to 5 that Respondent No.2 who is also the sister of the Appellant and Respondent Nos. 3 to 5, have clearly stated in her written statement in Suit No. 139/2014 that after the death of their father, the Appellant and Respondent Nos. 2 to 5 relinquished their rights arising out of 50% share of the father in the suit property in favor of their mother and by virtue of the said relinquishment deed, the mother became the absolute owner of the suit property. In order to satisfy the Appellant and Respondent No.2 (both daughters), the mother purchased properties in the name of both of them. Later, the mother being the absolute owner, executed a Power of Attorney along with other documents for transferring the suit property. *Thirdly*, the Appellant has filed the Suit No. 59302/2016, with the same cause of action against the Respondents challenging the Compromise Decree, Declaration, receipt of Rs. 30 Lakhs etc. *Fourthly*, the suit is liable to be dismissed particularly when the suit property has already been sold to a third party by virtue of genuine documents and hence neither the Appellant nor Respondent Nos. 2 to 5 are left with any right, title or interest in the suit property. *Fifthly*, it was also stated that the suit is bad for non-joinder of the necessary party i.e., Mr. Yogesh Kumar, Advocate, who the Appellant alleges has forged the Declaration as well as the Settlement Deed dated 20.11.2014.

12. The Appellant on 05.05.2016, preferred an application under Order XI Rule 12, 14 and 15 of CPC in Civil Suit No. 59302/2016 for



discovery, production and inspection of documents allegedly executed by Respondent Nos. 2 to 5 in favor of Respondent No.1. It was stated in the said Application that even though Respondent No.1 in his written statement has stated that he is the lawful and absolute owner of the suit property, however, he has not filed any sale document executed in his favor in respect of the suit property.

13.Learned Trial Court *vide* its order dated 28.11.2016, allowed the Application under Order XI Rule 12, 14 and 15 of CPC filed by the Appellant and directed Respondent No.1 to supply the documents *qua* the suit property.

14.Subsequently, Respondent No.1 filed an Application under Order I Rule 10(2) read with Section 151 of CPC for striking out his name from the array of parties in Civil Suit No. 59302/2016 on the ground that he is not the owner of the suit property and Smt. Gurjinder Kaur (wife of the Respondent No.1) and Smt. Jasminder Kaur (Bhabi of Respondent No.1) are the real owners of the suit property.

15.Further, in view of the above, the Appellant again on 21.08.2017, filed an Application under Order 1 Rule 10 CPC for impleading Smt. Gurjinder Kaur and Jasminder Kaur as Respondent Nos. 6 and 7 respectively in the array of parties. Learned Trial Court allowed the application filed by the Appellant *vide* its order dated 13.12.2017.

16.Accordingly, Respondent Nos. 6 and 7, on 19.01.2018, filed their written statement in Civil Suit No. 59302/2016. *Firstly*, it was stated by Respondent Nos. 6 and 7 that they bonafidely purchased half undivided share each, of the suit property for a sale consideration amount of Rs. 24,50,000/- each from Respondent



Nos.4 and 5 *vide* registered Sale Deed both dated 23.04.2014. *Secondly*, the Appellant has already filed a suit bearing No.139/2014 in respect of the suit property and the same was disposed of in terms of the Compromise Decree dated 26.11.2014 between the Appellant and Respondent Nos. 3 to 5. Further, it was stated that the Appellant herself in her plaint admitted that a declaration had been executed by the Appellant which has duly been witnessed by her son in Suit No. 139/2014, which clearly shows that even before filing of the aforesaid suit for permanent injunction, the Appellant was given the Mukundpur property. Hence, the Appellant cannot file another suit against Respondent Nos. 3 to 5 with the same relief as agitated in Suit No. 139/2014 after she had already received a sum of Rs.30,00,000/-, settled the matter and has also relinquished all her rights, title and interest in the suit property. *Thirdly*, it was also stated that the suit is bad for non-joinder of necessary party i.e., Mr. Yogesh Kumar, Advocate, who the Appellant alleges to have forged the Declaration as well as the Settlement Deed dated 20.11.2014. *Fourthly*, the Civil Suit No.59302/2016 is not maintainable in the present form as no amended plaint has been filed in which relief against Respondent Nos. 6 and 7 has been sought.

17. On 14.02.2018, the Appellant filed an Application under Order I Rule 10(4) and Order 6 Rule 17 read with Section 151 CPC for amendment of the Plaint on the ground that Respondent Nos. 6 and 7 alleged certain new facts in their written statement. The learned Trial Court *vide* its order dated 22.08.2019 allowed the Application filed by the Appellant. Relevant part of the order is reproduced hereunder:



“As the impleadment of defendant no.6 and 7 had been allowed and new facts had come to the knowledge of the plaintiff, the relief sought through amendments are permissible. Though the amendments sought may amount to adding new cause of action in the suit, but relief claimed cannot be said be completely contrary to the original suit. As these facts came to the knowledge of the plaintiff from the W.S, the question of limitation has to be counted from the knowledge of the facts. Hence, the objection of the defendant that amendments have been sought after prescribed period are not acceptable. Hence, the application is allowed.”

18. Subsequently, Respondent Nos. 6 and 7, in November 2019, filed an Application under Order VII Rule 11 CPC read with Sections 9 and 151 of CPC for rejection of Plaint on the ground that the Appellant herself in Suit No.139/2014 filed an Application under Order XXIII Rule 3 CPC, Settlement deed and Declaration and learned Trial court after being satisfied of the settlement/ compromise, recorded the statement of the Appellant and disposed of the suit as compromised and passed a Compromise Decree dated 26.11.2014.
19. The Appellant on 22.02.2020, filed a reply to the Application filed by Respondent Nos. 6 and 7 under Order VII Rule 11 CPC read with Sections 9 and 151 of CPC for rejection of Plaint.
20. Learned Trial Court *vide* the Impugned Judgment was pleased to allow the Application under Order VII Rule 11 CPC filed by the Respondent Nos.6 and 7 and rejected the plaint of the Appellant under Order VII Rule 11 (d) CPC being barred by the provisions enumerated under Order XXIII Rule 3A CPC.
21. Aggrieved by the Impugned Judgment, the Appellant has preferred the present Regular First Appeal No. 235/2023, challenging the said Impugned Judgment.

SUBMISSIONS OF THE APPELLANT



22. Learned counsel for the Appellant, Mr. Arvind Chaudhary, initiated his arguments by submitting that the Impugned Judgment passed by the learned Trial Court is bad, illegal and malafide.
23. The premise on which the case of the Appellant is based is that the father (who passed away in 1988) and mother (who passed away in 2013) of the Appellant as well as Respondent Nos. 2 to 5, who were the absolute and lawful owners of the suit property died intestate and as a result the Appellant and Respondent Nos. 2 to 5 received 1/5th of share in the suit property. After the death of their mother in 2013, Respondent Nos. 2 to 5 became dishonest with respect to the suit property and started contemplating to dispose it off. After the Appellant got to know about the same, she was constrained to file a suit for permanent injunction in respect of the suit property against Respondent Nos. 2 to 5 in CS No.139/2014. Further, in spite of knowledge of the said suit, Respondent Nos. 3 to 5 refrained from appearing before the court. Thereafter, Respondent Nos. 3 to 5, started misleading the Appellant on the pretext that they wanted to settle the dispute *qua* the suit property and by playing fraud, Respondent Nos. 2 to 5 were made to engage another counsel Mr. Yogesh Kumar, Advocate, who had put on record two documents which were forged and fabricated i.e., the Declaration and the Settlement Deed, both dated 20.11.2014, allegedly entered between the Appellant and Respondent Nos. 2 to 5. The above-mentioned documents were also witnessed by the sons of the Appellant- Jeewan Lal and Varun by misleading and misrepresenting to them that after the withdrawal of the suit, due share would be given to their mother/Appellant. Further, the *modus operandi* of Respondent Nos. 2 to 5 of getting the Appellant's



counsel changed was to make the Appellant falsely believe that she will get her due share after the compromise. After the Compromise Decree dated 26.11.2014 was passed, Respondent Nos. 2 to 5 even after repeated requests of the Appellant, did not give her legitimate share in the suit property. It is pertinent to note that when the Appellant got inspected the case file of Suit No.139 of 2014, the Appellant was shocked to find that the Settlement Deed and Declaration both dated 20.11.2014 had been filed by Respondent Nos. 2 to 5 through Shri Yogesh Kumar, Advocate, and the said Advocate did not file the originals of the documents and kept the same with him to help Respondent Nos. 2 to 5 with a motive to cause wrongful loss to the Appellant.

24. It is the contention of the learned counsel for the Appellant that the sale deeds dated 23.04.2014 executed by Respondent Nos. 4 and 5 in favor of Respondent Nos. 6 and 7 are illegal and malafide and the same are liable to be cancelled and further the Compromise Decree dated 26.11.2014 is also liable to be declared null and void as the same has been procured by the Respondents by misleading and misguiding the Appellant.

25. Mr. Chaudhary, learned counsel for the Appellant contended that Order VII Rule 11 (d) CPC states that “*where the suit appears from the statement in the plaint to be barred by any law*”, however, in the entire Application filed by Respondent Nos. 6 and 7, there was no disclosure as to under which provision the suit was barred. He further contended that the learned Trial Court has not discussed as to how the suit was expressly or impliedly barred.

26. Another contention raised by the learned counsel for the Appellant is that the Application under Order VII Rule 11(d) CPC filed by



Respondent Nos. 6 and 7 was not maintainable as while deciding an Application under Order VII Rule 11 CPC, only the contents of the Plaint are to be read and not the pleadings beyond the Plaint. He further submitted that even otherwise, Respondent Nos. 6 and 7 were not party to the Civil Suit No. 139/2014 filed by the Appellant. Therefore, they cannot take advantage of their own omissions and commissions. Further, it was also argued by the learned counsel that none of the Respondents appeared in Suit No. 139/2014, except for Respondent No.2.

27.It is contended by the learned counsel for the Appellant that the Suit bearing No. 139/2014 was disposed off on 26.11.2014, however, the two sale deeds dated 23.04.2014 *qua* the suit property have been executed by Respondent Nos. 3 to 5 in favor of Respondent Nos. 6 and 7 much earlier on 24.04.2014. He further submitted that the Compromise Decree dated 26.11.2014 had been obtained by the Respondents just to save themselves from the allegations of cheating, misappropriation and fraud already committed by them, and the pre-sale consideration of the suit property had already been received by Respondent Nos. 2 to 5 from Respondent Nos. 6 and 7. Furthermore, he also submitted that *infact* no compromise took place between the parties in the Civil Suit No. 139/2014 and hence the Compromise Decree dated 26.11.2014 has no application to the present case.

28.It was also the contention of the learned counsel for the Appellant that a bare perusal of the sale deeds dated 23.04.2014 would show that Respondent Nos. 4 and 5 have been shown as Vendors and Respondent Nos. 1 and 3 have been shown as witnesses and when the Appellant and Respondent Nos. 2 to 5 are the owners of the suit



property then Respondent Nos. 4 and 5 cannot be the only Vendors in the aforesaid sale deeds. This shows that all the Respondents were in collusion and conspiracy with each other in playing fraud upon the Appellant to grab her legitimate rights and share in the property of her parents.

29. The Appellant argued that the Respondents without even making a payment of a single penny to the Appellant, obtained thumb impressions of the Appellant, who is an illiterate and old lady, on an application under Order XXIII Rule 3 CPC, Settlement deed and Declaration, and it was done by the Respondents in collusion with each other in order to misappropriate the valuable share of the Appellant in the suit property.

30. In view of the above, learned counsel for the Appellant prayed for dismissal of the Impugned judgment.

LEGAL ANALYSIS

31. This Court had heard the rival contentions of the appellant and perused the documents placed on record.

32. At this juncture, it is apposite to set out herein below Order XXIII Rule 3 CPC which provides for compromise of suit. In Rule 3, amendments were made by Act 104 of 1976 by which a proviso and an Explanation was added. Order XXIII Rule 3 CPC as amended is reproduced herein below:

*“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 satisfies the plaintiff in respect of 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 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.”

33.By the same amendment Act 104 of 1976, a new Rule i.e., Rule 3-A was added providing:

“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.”

34.Further, it is quintessential to reproduce the Compromise Deed dated 20.11.2014.

SETTLEMENT DEED

“This Deed of Agreement is made and executed at Delhi, on this 20th day of November, 2014 between PREM LATA wife of SH. ROOP NARAIN, resident of 872, TILAK GALI KASHMIRI GATE, DELHI-110006 (hereinafter called the first party)

.....AND.....

(1.) RAJ BAHADUR, (2.) SATISH KUMAR and (3.) RAJENDER PRASAD all sons of LATE SH. HUKUM CHAND and (4.) SMT. REKHA wife of SH. CHARAN SINGH (hereinafter called the second party). All the parties being the family members.

The expressions first party and second party shall mean and include their respective heirs, successors, administrators, executors and assignees of the parties.



That the first party has filed the court case (no. 139/2014/01-05-2014) against the second party, related to Entire Built up property bearing no. 61, GURU NANK MARG/ MAHATAMA GANDHI MARG, KEWAL PARK, AZADPUR, DELHI-33

AND WHEREAS FIRST PARTY in sound and disposing mind and good health without any pressure, compulsion or coercion is desirous to withdraw the said case against the Second party.

And first party assures to the Second party that she will withdraw the said case in next coming hearing.

That by the virtue of this Deed, first party or her any family members including her sons and daughters has no any rights, claims, interest on the Entire Built up property bearing no.- 61, GURU NANK MARG/ MAHATAMA GANDHI MARG, KEWAL PARK, AZADPUR, DELHI-33.

And now Second party has full right to sell, mortgages, gifts, lease, relinquish, otherwise and to deal with the said Entire Built up property bearing no.- 61, GURU NANK MARG/MAHATAMA GANDHI MARG, KEWAL PARK, AZADPUR, DELHI-33.

In witness whereof this Settlement deed is executed at Delhi. On the day of the month and year, first above written, in presence of the following witnesses."

35.It is also necessary to reproduce the Declaration dated 20.11.2014, which has been filed in Suit No.139/2014.

DECLARATION

"1. PREM LATA wife of SH. ROOP NARAIN, resident of 872, TILAK GALI, KASHMIRI GATE, DELHI-110006, do hereby solemnly affirm and declare as under:-

1. That SH. HUKUM CHAND is my father and SMT. SHAKUNTALA DEVI is my mother who was the joint owners of Entire Built up property bearing no.- 61, GURU NANK MARGI MAHATAMA GANDHI MARG, KEWAL PARK, AZADPUR, DELHI-33.



2. That my father SH. HUKUM CHAND has expired in year 1988 and after the death of my father, my mother SMT. SHAKUNTALA DEVI had given the Plot no. 128B, Area measuring 50 Sq.yd., Khasra no. 307/202, Village- Mukundpur, Abadi Mukundpur Part-II, Delhi-110042. on dated 26.08.1996. against my entire share in Entire Built up property bearing no.- 61, GURU NANK MARG MAHATAMA GANDHI MARG, KEWAL PARK, AZADPUR, DELHI-33 and after that I or my any family members including my sons and daughters have no any rights, claims, interest on the Entire Built up property bearing no.- 61, GURU NANK MARG MAHATAMA GANDHI MARG, KEWAL PARK, AZADPUR, DELHI-33.

That I had given all my rights, claims, interest in Entire Built up property bearing no.- 61, GURU NANK MARG/ MAHATAMA GANDHI MARG, KEWAL PARK, AZADPUR, DELHI-33 in favour of my three brother namely, (1.) RAJ BAHADUR, (2.) SATISH KUMAR and (3.) RAJENDER PRASAD all sons of LATE SH. HUKUM CHAND.

4. That it is my true and correct statement and I shall be remaining responsible for the same."

36.A bare perusal of the Settlement/Compromise deed dated 20.11.2014 suggests that the Appellant entered into an Agreement with Respondent Nos. 2 to 5 with respect to the suit property without any pressure, compulsion or coercion to withdraw the Suit No. 139/2014. It was further stated that by virtue of the Compromise Deed, the Appellant or any of her family members have no right in the suit property. Further, it was also stated that Respondent Nos. 2 to 5 have full right to sell, mortgage, gift, lease, relinquish and otherwise deal with suit property. Interestingly, Compromise Deed was witnessed by the sons of the Appellant i.e., Varun and Jeevan Lal.

37.Further, perusal of the Declaration dated 20.11.2014 suggests that the Appellant declared that the father and mother of the Appellant



and Respondent Nos. 2 to 5 were the joint owners of the suit property. Further, after the death of their father in 1988, their mother gave the Mukundpur property to the Appellant in lieu of her entire share in the suit property and the Appellant or any of her family members would not have any right, claims or interest in the suit property. It was also stated by the Appellant in the Declaration that she had given all her rights, claims or interest in the suit property in favor of her three brothers i.e., Respondent Nos. 3 to 5.

38. At this juncture, it is also relevant to peruse the Order dated 26.11.2014 and statement dated 26.11.2014 of the Appellant by virtue of which the learned Trial Court disposed of the Suit No. 139/2014 as compromised. In the Order dated 26.11.2014, it was observed that in view of the Compromise, the Appellant is withdrawing the suit and the Compromise Deed (**Ex.PX**) shall form part of the said decree. Pertinently, the statement of the Appellant to that effect has also been recorded wherein she voluntarily stated that she has signed the Compromise Deed and she will abide by the terms and conditions enumerated in the Compromise Deed and in view of the same she will also withdraw the Suit No. 139/2014. It is also to be noted that Respondent Nos. 3 to 5 were not even present in the Court while recording the Statement of the Appellant. Hence, this Court is of the opinion that no fraud or cheating has been committed by Respondent Nos. 2 to 5 in obtaining the Compromise Decree. Further, it must be borne in mind that the Appellant herself filed the Application under Order XXIII Rule 3 CPC before the learned Trial Court and thereafter presented the settlement deed and Declaration, accordingly, her statement was also recorded in respect thereof. The learned Trial



Court, after going through all the material documents such as the Compromise Deed, Declaration and the statement of the Appellant, had passed the Compromise Decree dated 26.11.2014. It is further relevant to note that it was the Appellant who had filed the Application under Order XXIII Rule 3 CPC before the learned Trial Court in Suit No. 139/2014.

39. Furthermore, the Hon'ble Supreme Court in the matter of ***R. Janakiammal v. S.K. Kumarasamy***, reported as **(2021) 9 SCC 114** has examined the law laid down under Order XXIII Rule 3 as well as Rule 3A CPC and found out the ratio of judgments of the Apex Court in context of Rule 3 and Rule 3A:

“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.”

58. The above judgments contain a clear ratio that a party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful i.e. it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable. In Suit No. 1101 of 1987, the plaintiff prayed for a declaration declaring that the decree passed in OS No. 37 of 1984 is sham and nominal, ultra vires, collusive, unsustainable invalid, unenforceable and not binding on the plaintiffs. We have noted the grounds as contained in the plaint to challenge the consent decree in the foregoing paragraphs from which it is clear that the compromise, which was recorded on 6-8-1984 was sought to be termed as not lawful i.e. void or voidable. On the basis of grounds which have been taken by the plaintiff in Suit No. 1101 of 1987, the only remedy available to the plaintiff was to approach the court in the same case and satisfy the court that compromise was not lawful. Rule 3-A was specifically added by the amendment to bar separate suit to challenge the compromise decree which according to legislative intent was to arrest the multiplicity of proceedings. We, thus, do not find any error in the judgment of the trial court and the High Court holding that Suit No. 1101 of 1987 was barred under Order 23 Rule 3-A.”

40. After perusal of the Settlement/Compromise Deed, Declaration, and Statement of the Appellant, this Court is of the considered opinion that the Appellant has not produced any evidence or



document which substantiates the case put forward by the Appellant that the Respondents have resorted to any coercion, undue influence and misrepresentation and lured the Appellant into signing the Settlement Deed and the Declaration. Hence, the contention of the Appellant that the two documents i.e., Declaration as well as the Settlement Deed were forged and fabricated, could not be accepted. The Appellant has also not been able to prove that the Compromise Deed was unlawful by any means. Further, in view of the judgments of the Hon'ble Supreme Court, there is a specific bar in terms of Order XXIII Rule 3-A CPC and no independent suit can be filed for setting aside a compromise decree. Furthermore, it has been held in a catena of judgments that a compromise decree operates as an estoppel and is valid and binding unless it is set aside by the Court which passed the compromise decree, by an order on an application under the proviso to Rule 3 of Order XXIII CPC.

41. Further, the learned counsel for the Appellant argued that the compromise arrived between the Appellant and Respondent Nos. 2 to 5 is illegal as the two sale deeds dated 23.04.2014 in respect of the suit property were executed by Respondent Nos. 3 to 5 in favor of Respondent Nos. 6 and 7 on 24.04.2014, however, the Appellant entered into the Compromise deed on 20.11.2014 on the promise that she would be given her share in the suit property. Hence, Respondent Nos. 2 to 5 played fraud upon the Appellant and the Compromise was illegal. In this regard, Order XXIII Rule 3-A CPC would be applicable to the present facts and circumstances, which states that 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 CPC. Hence, the learned Trial Court rightly held that the Civil Suit No. 59302/2016 filed by the Appellant for setting aside the Compromise Decree dated 26.11.2014 passed in the Suit No. 139/2014 by the learned Trial Court was not maintainable.

42.It is also pertinent to note that Appellant had also filed CS (OS) No. 698/2015 before this Hon'ble Court with regard to the suit property. However, the same was dismissed as withdrawn *vide* order dated 23.03.2015 with liberty to file appropriate proceedings in accordance with law. However, in spite of the above-mentioned order, the Appellant filed Civil Suit No.59302/2016 with regard to the same cause of action. Further, Order XXIII Rule 1(4) CPC also precludes the Appellant to file a fresh suit on the same subject matter once it has been withdrawn.

43.Learned Trial Court was thus justified in rejecting the plaint under Order VII Rule 11 CPC. In view of the above discussion, there is no substance in the Appeal and the same is, therefore, dismissed. All the pending applications are also dismissed. No order as to costs.

GAURANG KANTH, J.

MAY 24, 2023

PS