



IN THE HIGH COURT OF PUNJAB AND HARYANA
AT CHANDIGARH

120

CR-918-2020 (O&M)
Date of decision : 03.12.2024

Jaswinder Kaur Kularia and others Petitioners

versus

Sukhwinder Kaur and others Respondents

CORAM : HON'BLE MR. JUSTICE PANKAJ JAIN

Present: Mr. Naveen Chopra, Advocate
for the petitioners.

Mr. Karan Dev Sharma, Advocate and
Ms. Gurneet Sagoo, Advocate
for the respondents.

PANKAJ JAIN, J. (Oral)

1. Present revision petition is directed against order dated 11.04.2019 and 21.08.2019 (Annexure P-1 Colly) passed by Civil Judge (Senior Division), Jalandhar whereby objections raised by the petitioners with respect to admission of a compromise between the parties on the ground of the same being merely a photocopy and further being barred by the provision of Section 23 of the Indian Evidence Act stands declined/overruled.
2. Parties are in thick of *lis* with respect to the estate left by late Shri Piara Singh Kularia. Petitioner No.1 claims herself to be a legally wedded wife of Piara Singh Kularia. Petitioners No.2 to 6 are the daughters of Piara Singh Kularia, all are residing abroad. Respondent No.1 claims herself to be wife of Piara Singh Kularia and Harmanpreet Singh claims himself to be son of Piara Singh Kularia through



respondent No.1 Sukhwinder Kaur.

3. Petitioners have filed suit for declaration to the effect that they are the rightful owners of all the properties movable as well as immovable left by Piara Singh Kularia being his only surviving legal heirs. Further declaration is being sought to the effect that defendants have no right, title or interest in the property left by Piara Singh Kularia. Further prayer is for grant of decree of permanent injunction restraining the defendants from falsely claiming themselves to be the legal heirs of Piara Singh Kularia. From the records, it seems that the parties in order to end the dispute, executed a compromise deed in writing dated 20.07.2017. The same has been placed on record as Annexure P-3. However for some reason, the compromise could not fructify and the parties fell apart. Daljeet Singh PW-1, the lawful power of attorney holder of the petitioners testified on 11.04.2019. While recording his testimony in the cross examination, defendants put a compromise deed dated 20.07.2017 to him which was objected to by the counsel for the plaintiffs taking refuge under Section 23 of the Indian Evidence Act claiming that any admission made therein cannot be utilized against the plaintiffs. Again on 21.08.2019, while he was being further cross-examined, photocopy of the same compromise deed was put to him which was against objected to. Trial Court declined the objection observing as under:-

“Q Is the photocopy of compromise is the compromise which was same effected between plaintiffs & defendant No. 1 & 2 and on which you being Attorney has signed and Sukhwinder Kaur defendant No. 1 has signed, Pavitter Singh Kularia S/o Sawarn Singh, Balbir Singh S/o Udam Singh R/o Dhina has signed as witness. This compromise consist of 5 pages ?



(Objection document objected to on the ground that it cannot be put to witness as the witness is claiming protection U/s 23 of Indian Evidence Act as the compromise was entered only with the intention to amicably settle the dispute between the parties & was not to be used as evidence) objection declined as compromise is part of judicial file and the witness has already replied that he has signed the compromise. However, the contents of the compromise shall not be asked from the witness.”

4. Mr. Chopra, counsel for the petitioners-plaintiffs while assailing the order passed by the Trial Court declining the objections raised by the plaintiffs submits that the compromise cannot be put to PW-1 and the objections ought not have been overruled for the reason that it was the photocopy of the compromise which was being put to PW-1 and his admission with respect to signatures thereon, is of no consequence. At no point of time, defendants sought permission to prove the said compromise by leading secondary evidence. He further submits that once the parties resiled from the compromise and the compromise was out of the Court, any fact stated therein cannot be used as admission against the plaintiffs. In order to hammer forth his contentions, he relies upon **Yurvaj and another vs. Munish Singla and another 2017(4) PLR 222, Sardari @ Ishro and others vs. Jagir Singh (deceased, through his LRs) and others 2016(2) PLR 371, Smt. Surjit Kaur vs. Gurcharan Singh 1972 PLR 726 and Sri Bauribandhu Mohanty and another vs. Sri Suresh Chandra Mohanty and others, 1992 AIR (Orissa) 136.**

5. *Per contra*, Mr. Sharma, counsel for the respondents does not dispute that it is only the photocopy of the compromise deed which



has come on record and was put to PW-1. However, he submits that bare perusal of the contents of the compromise would reveal that the same was executed only with an intent to produce before the Court and thus, there is no bar under Section 23 of the Act to use the contents of the compromise as admission against the plaintiffs.

6. I have heard counsel for the parties and have carefully gone through the records of the case.

7. The order passed by Civil Judge (Senior Division), Jalandhar, declining the objections raised by the plaintiffs with respect to putting of the contents of the compromise to PW-1 cannot be sustained for more than one reason. Photocopy of the compromise being not a primary evidence ought not have been put to the witness without seeking permission to lead secondary evidence and without proving that the photocopy in fact falls within the ambit of secondary evidence as adumbrated under Section 63 of the Indian Evidence Act. The reasoning recorded by the Trial Court that since the witness admits his signatures on the photocopy, the contents thereof can be put to him, cannot be sustained and deserves to be set aside.

8. Section 23 of the Indian Evidence Act reads as under:-

“23. Admissions in civil cases when relevant.

In civil cases no admission is relevant, if it is made either upon an express condition that evidence of it is not to be given, or under circumstances from which the Court can infer that the parties agreed together that evidence of it should not be given.

9. The same has been interpreted by this Court in *Smt. Surjit Kaur (supra)* to hold as under:-

“5. A perusal of this section would show that if an admission



is made upon an express condition that evidence regarding it would not be given or under circumstances from which the Court could infer that the parties had agreed that the evidence regarding it would not be given, then such an admission would not be relevant. In the present cases, as I have already said, both the parties were trying to effect a compromise and during that interval, the said letter was written by the husband. It may be stated that the husband has frankly admitted that he did write that letter, but he claimed privilege regarding the same on the ground that it was written when the talks of compromise were going on between the parties. It appears from the circumstances of this case that he had written this letter perhaps at the instance of the wife, because she might be ready to go back to the husband, but her father may not be giving her permission to do so, and it is quite possible that he wrote that letter just to prevail upon her father to send her back to him. Equally probable is that the father might have asked the husband to write such a letter, so that he could show it to his daughter and on its basis persuade her to go back after telling her that the husband had admitted his fault and apologised for the same. In any case, this letter, admittedly, was written during the period when the compromise talks were going on. The inference drawn by the learned Judge from all these circumstances was that the letter was written at a time when the parties had agreed that no evidence would be given regarding it. That being so, the case will be covered by the second condition laid down in Section 23, quoted above, and as such, the husband could claim privilege regarding the same. It has been ruled in a Bench decision of the Allahabad High Court in *Shibcharan Das v. (From) Gulabchand Chhotey Lal*, AIR 1936 All 157, that where negotiations were being conducted with a view to settlement it should be held that those negotiations were so conducted without prejudice.”

10. In view of above, any admission made in a compromise which otherwise could not fructify and the defendant herself is disputing and does not want to stand by, cannot be taken as admission on behalf of the opposite party. Thus, finding that the Trial Court erred in rejecting



the objections raised by the petitioners, this Court finds that the present revision petition deserves to be allowed. Objections raised by the plaintiffs with respect to putting photocopy of compromise deed dated 20.07.2017 to PW-1 are hereby ordered to be sustained.

- 11. Ordered accordingly.
- 12. Since the main case has been decided, pending miscellaneous application, if any, shall also stands disposed off.

(PANKAJ JAIN)
JUDGE

03.12.2024
Dinesh

Whether speaking/reasoned :	Yes
Whether Reportable :	No