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**IN THE HIGH COURT OF PUNJAB AND HARYANA AT
CHANDIGARH**

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Date of decision:13.01.2025

KHUSHAL & ANR.

...APPELLANTS

VS.

LAKHI RAM

...RESPONDENT

CORAM: HON'BLE MR. JUSTICE SUVIR SEHGAL

Present: Mr. Sudhir Aggarwal, Advocate
for the appellant.

None for the respondent.

SUVIR SEHGAL, J.

1. Aggrieved with the concurrent finding recorded by the two Courts, appellants/defendants are before this Court by way of instant second appeal.

2. Respondent-plaintiff filed a suit to the effect that the judgment and decree dated 09.01.1989 secured by the defendants in civil suit No.476/88 titled as Khushal versus Lakhi Ram decided by the Court of Additional Senior Sub Judge, Gurugram is a result of fraud and misrepresentation. Pleaded case of the plaintiff is that defendant No.1 is his sibling and defendant No.2 is the son of defendant No.1. Plaintiff claimed to be owner of agricultural land in village Damdama, Tehsil and District Gurugram (hereinafter referred to as "suit land") and by extending false



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assurances, defendants won over his confidence and convinced him to execute a will in their favour in respect of the suit property. Defendant No.1 assured the plaintiff that he will provide for him for the rest of his life and also give him his monthly pension, being drawn from the Haryana State Electricity Board. Defendants brought him to Gurugram on the pretext of executing a Will, plaintiff's thumb impressions were obtained on some papers and he was made to appear before officials. When the defendants backtracked, the plaintiff decided to cancel his Will and came to know that they had managed to secure a Civil Court decree dated 09.01.1989 (Ex.P4).

3. Upon being served, defendants appeared and contested the suit by filing a written statement wherein besides raising various preliminary objections, it was averred that the decree was passed with the consent of the plaintiff without any undue influence or pressure. The story set up by the plaintiff was denied and it was stated that the decree is legal and binding upon the parties.

4. Plaintiff filed a replication controverting the stand taken by the defendants in the written statement. Issues were framed by the trial Court on the basis of the pleadings of the parties, who led evidence in support of their respective case. After contest, the trial Court by judgment dated 10.10.1997 decreed the suit. Defendants remained unsuccessful in the first appeal which was rejected by the learned Additional District Judge, Gurugram on 27.01.2000, resulting in the institution of the present appeal.

5. By referring to order 23 Rule 3A CPC, Mr. Sudhir Aggarwal, counsel for the appellant has contended that a fresh suit to challenge a

consent decree is not maintainable. He asserts that the first appellate Court



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erred in holding that the decree was passed under Order 12 Rule 6 CPC and that it was not a decree on the basis of compromise.

6. I have heard counsel for the appellant and considered his submissions besides examining the requisitioned record with his able assistance. As per office note, counsel for the respondent has been informed vide telephonic message (SMS), but he has not appeared.

7. In their evidence, the appellants had summoned the file of the previous litigation bearing Civil Suit No.476/88 between the parties which culminated in the passing of the decree dated 09.01.1989 (Ex.P4).

8. A perusal of the plaint (Ex.DW3/1) shows that the appellants had filed a suit for declaration and permanent injunction against the respondent claiming that they constituted a Joint Hindu Family. About year earlier a family settlement had taken place and the suit land had fallen to the share of the appellants. It was specifically pleaded that the appellants had become the owners in possession of the suit land and that the respondent had relinquished all his rights in their favour. Defendants appeared before the trial Court and filed a written statement (Ex.DW1/2) admitting all the averments of the plaint. A joint statement (Ex.DW4/1) of the parties was recorded before the learned Additional Senior Sub Judge, Gurugram on 09.01.1989 wherein it is stated that they have compromised the matter vide Ex.C1 and the suit be decided on the basis of the settlement. On 09.01.1989 while decreeing the suit, the trial Court recorded as under:-

“Present : Plaintiff in person

Defendants with Sh. Hari Sharma, Advocate



Case taken up on an application dated 06.01.89. Written statement filed admitting the claim of the plaintiff. Compromise also filed. Statements of the parties recorded. Compromise is Ex.C1. In these circumstances, this suit is disposed of in terms of the compromise Ex.C1. Ex.C1 shall form part of the decree sheet. Decree sheet be drawn accordingly. File after compliance be consigned to the record room.

Sd/-

Announced

Addl. Senior Sub Judge

Gurugram

9-1-89”

9. Sh. Hari Sharma, Advocate (DW-1), who represented the respondent in the previous suit has been examined and he has deposed that he was engaged by the respondent. He stated that the written statement was drafted on the instructions of the respondent, who not only read it but signed it in his presence. In his testimony, Lakhi Ram (PW-4) has admitted that he had met Hari Sharma, Advocate but denied that he has engaged him as a counsel. However, respondent could not deny his signatures on the vakalatnama, written statement or on the joint statement recorded by the parties before the trial Court. Sanctity is attached to the proceedings of the Court, which cannot be questioned.

10. From the ocular and documentary evidence adduced, it is evident that the decree dated 09.01.1989 (Ex.P4) was passed on the basis of a settlement arrived at between the parties. The decree fell within the purview of Order 23 Rule 3 CPC. There is a distinction between a decree passed under Order 23, Rule 3, CPC and decree under Order 12 Rule 6 CPC.



discretion on an admission made by the defendants, which may be either oral or in writing or otherwise. When an element of settlement or compromise comes into the admission made by the defendants, the decree passed on its basis would fall within the ambit of Order 23 Rule 3 CPC. The lower appellate Court has erred in coming to the conclusion that decree Ex.P4 has been passed under Order 12 Rule 6 CPC.

11. Once a decree is based on consent and is passed under Order 23 Rule 3 CPC, by virtue of Rule 3-A *ibid*, no appeal is maintainable against such a consent decree nor can a suit be freshly filed for setting aside a compromise decree on the ground that the compromise is not lawful. It has been held by the Supreme Court in **Pushpa Devi Bhagat (dead) through LRs Sadhna Rai (Smt.) Versus Rajinder Singh and others (2006) 5 SCC 566** that a consent decree operates as an estoppel. It is valid and binding unless it is set aside by the Court which passed the consent decree by an order on an application under proviso to Rule 3 Order 23 CPC. Supreme Court observed that the only remedy available to a party to a consent decree to avoid such a decree is to approach the Court which recorded the compromise and made a decree in terms of it, to establish that there was no compromise between the parties. In such an event, the court which recorded the compromise will itself consider and decide the question as to whether the compromise was valid or not. This is so because the consent decree is nothing but a contract between the 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.



12. In view of the dictum of the Supreme Court, the suit filed by the respondent challenging the consent decree is not maintainable. Findings recorded by the Courts below being contrary to the legal position settled by the Supreme Court, deserve to be reversed.

13. For the foregoing reasons, appeal is allowed. Judgments and decrees returned by the Courts below are set aside and the suit filed by the respondent/plaintiff is dismissed with no order as to costs through out.

14. Pending miscellaneous application also stands disposed of.

13.01.2025
sheetal

(SUVIR SEHGAL)
JUDGE

Whether Speaking/reasoned	Yes/No
Whether Reportable	Yes/No