Amteshwar Anand vs Virender Mohan Singh. & Ors on 7 October, 2005

Equivalent citations: AIR 2006 SUPREME COURT 151, 2006 (1) SCC 148, 2005 AIR SCW 5650, 2006 (1) AIR JHAR R 374, 2006 (1) AIR KANT HCR 161, (2005) 9 JT 559 (SC), 2005 (7) SLT 620, 2005 (10) SRJ 75, (2006) 2 ALLMR 198 (SC), (2006) 1 CLR 111 (SC), (2006) 1 JCR 147 (SC), 2005 (8) SCALE 359, 2005 (9) JT 559, 2006 (1) CLR 111, 2006 (2) ALL MR 198, 2006 (1) HRR 93, (2006) ILR (KANT) 13, (2006) 1 CIVILCOURTC 337, (2005) 4 RECCIVR 485, (2006) 1 ICC 469, (2005) 8 SCALE 359, (2005) 8 SUPREME 219, (2005) 4 CURCC 225, (2005) 124 DLT 588, (2006) 1 LANDLR 465, (2006) 1 PUN LR 214, (2005) 8 SCJ 328, (2006) 1 WLC(SC)CVL 184, (2006) 1 KCCR 392, (2006) 1 ALL RENTCAS 49, (2006) 2 CIVLJ 735

Author: Ruma Pal

Bench: Ruma Pal, Ar. Lakshmanan

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           CASE NO.:
Appeal (civil)  6326 of 2005

PETITIONER:
Amteshwar Anand

RESPONDENT:
Virender Mohan Singh. & Ors

DATE OF JUDGMENT: 07/10/2005

BENCH:
Ruma Pal & Dr.AR. Lakshmanan

JUDGMENT:
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J U D G M E N T WITH CA No. 6327 OF 2005 @ S L P (C) No. 17856 of 2003) (Arising of S L P(C) No. 11884 of 2003) RUMA PAL, J.

Leave granted.

Sir Datar Singh (described as DS) was a wealthy man owning several properties. When he died in 1973, his family consisted of his wife and four children. The present appeals originated in a legal tussle between the heirs over the properties of DS. During the various litigations DS's widow, whom we will call Lady DS, died. Their two sons, Mahinder and Maninder are also dead. The disputes were

continued between the two daughters of DS and Lady DS viz. Amteshwar Anand (AA), Kirpal Kaur (KK) and KK's daughter, Guneeta, on the one hand and the heirs of Maninder and Mahinder on the other. It is unnecessary to burden this judgment with the names of all the parties except to note the name of the main respondent in these appeals. He is Virender Mohan Singh (VMS) and is the son of Maninder. He is supported by the other heirs of Maninder who are also respondents before us, including Maninder's eldest son, Anand Deep Singh (ADS). Although Mahinder's heirs are separately represented they also support VMS.

The basic question to be decided in these appeals is whether the disputes between the parties were set at rest by a valid consent decree dated 25th August, 1993 disposing of Suit No.63 of 1975 and Suit No.1495 of 1989.

Suit No.63 of 1975 had been filed by Maninder, against Lady DS, Mahinder, AA, KK and KK's daughter, Guneeta. Suit No.1495 of 1989 was filed by ADS against AA, KK and Guneeta, the heirs of Mahinder and the other heirs of Maninder. Basically, both the suits were filed for partition of the properties of DS, portions of which were already in occupation and enjoyment of the different heirs of DS.

The impugned consent decree was the culmination of a process of settlement which was recorded at three stages in three agreements. The first agreement was entered into between VMS, KK and Guneeta on 18th March, 1993. This agreement provided inter alia that VMS surrendered all his rights in the house in Bhopal in favour of KK and Guneeta. In addition he would pay a total sum of Rs. 50 lakhs to KK and Guneeta, of which Rs.5 lakhs would be paid at the time of the signing of the application under Order XXIII Rule 3 of the Code of Civil Procedure and the balance Rs. 45 lakhs in instalments by cheques drawn by VMS in favour of KK or Guneeta as specified in clause (b) of the agreement. A further sum of Rs. 5 lakhs would be payable under clause (c) at the "time of such final partition of suit properties for the shares of the other parties", if VMS was unable to obtain a release from the other co-sharers of their claims in the Bhopal House in favour of KK and Guneeta. The remaining clauses are partly confirmatory, partly operative in praesenti and partly executory. The clauses read:

> (c) That Shri V.M. Singh relinquishes and releases the share that would devolve upon him on partititon in house in Bhopal known as Sir Datar Singh house with outhouse and appurtenant area to the said building approximately 1 Acre in favour of Smt. Kirpal Kaur and Kumari Guneeta, Shri V.M. Singh shall endeavour to obtain rights in the said properties completely in favour of Smt. Kirpal Kaur and Kumari Guneeta at the time of final partitition. In case of the same not being successful, Shri V.M. Singh shall pay an amount of Rs. 5 lakhs to Smt. Kirpal Kaur and Kumari Guneeta collectively at the time of such final partition of suit properties for the shares of the other parties. Apart from this house, out house and appurtenant land, Smt. Kirpal and Kumari Guneeta will not have any right, title or interest in any other property in Bhopal or otherwise.

(d) That Smt. Kirpal and Kumari Guneeta have relinquished, released, given up, assigned all their rights, title and interest in all the movable and immovable properties which are the subject matter of the present suit or such properties which are the subject matter of the Suit No.63 of 1975. all these properties to the extent of the share of Smt. Kirpal Kaur and Kumari Guneeta shall deem to vest, be the exclusive properties of the defendant Shri V.M. Singh subject to the payments being made as specified aforesaid. Shri V.M. Singh shall be the owner of all interests, rights and benefits that have accrued or may accrue in favour of Smt. Kirpal and Kumari Guneeta and shall deem to vest with all the benefits accruing to Shri V.M. Singh and would deem to have been assigned in his favour and he shall be treated the exclusive owner to the extent of shares devolving on her from late Sir Datar Singh, late lady Satwant Datar Singh, HUF or otherwise. Smt. Kirpal and Kumari Guneeta also release, relinquish and assign their rights in 4.3 acres of land situated in Khasra No.128 of Village Behta, Bairagarh Bhopal standing in the names of Smt. Kirpal Kaur and Kumari Guneeta.

(e) All the liabilities, litigations, consequential proceedings before the revenue authorities or otherwise shall be carried on by Shri V.M. Singh entirely at his responsibility and risk. Smt. Kirpal and Kumari Guneeta shall not be liable or responsible directly or indirectly for any acts, deeds that Shri V.M. Singh may do in regard to the property in question and he further assures that he shall do all lawful acts and deeds under the law and assures that no liability of any kind, civil or criminal, is attributed or taken against Smt. Kirpal and Kumari Guneeta.

(f) That in order to facilitate and implement his right under this agreement and of course subject to the aforementioned terms and conditions, a general power of attorney shall also be executed by Smt. Kirpal and Kumari Guneeta in favour of Shri V.M. Singh and he shall be solely responsible as owner of the property, but this deed is being executed only to facilitate if there is any technical hitch in implementing this compromise in favour of Shri V.M.Singh who may get himself recorded as owner of the share of Smt. Kirpal and Kumari Guneeta. Further, it is specifically agreed that by the parties who undertake to this Hon'ble Court that the agreement shall be binding upon the parties and the cheques shall be honoured on presentation.

(g) Smt. Kirpal and Kumari Guneeta shall execute all legal documents as may be required by Shri V.M. Singh at the risk and cost of Shri V.M. Singh in his name or the name of his nominee as and when required without any liability whatsoever on Smt. Kirpal and Kumari Guneeta.

(h) Smt. Kirpal and Kumari Guneeta shall also withdraw FAO (OS) No.82 of 1992 pending in the Delhi High Court and all applications in the present Suit No.63 of 1975 directed against Shri V.M. Singh shall be treated as withdrawn."

Clause (d) contains apparent contradictions but the overall intention was to record a relinquishment of rights in the properties which were the subject matter of the two pending suits by KK and Guneeta in favour of VMS in exchange for VMS giving up his rights in the Bhopal properties and assuming all liabilities in respect of the suit properties and making payment in future of the sum of Rs. 50 lakhs.

A common application (I.A.No.1860 of 1993) was filed before the High Court jointly by VMS, KK and Guneeta under Order XXIII, Rule 3 of the Code of Civil Procedure, 1908 (referred to as 'the Code') and an order was passed on 18th March, 1993 by the Court directing the settlement to be taken on record. Although VMS has paid a sum of Rs. 18 lakhs to KK and Guneeta pursuant to the settlement his cheques for the balance amount of Rs 32 lakhs have not been honoured. The second agreement was entered into on 21st April, 1993 between AA and VMS. Briefly stated, this agreement also dealt with the interest claimed by AA and VMS in the estate of DS. Its provisions were partly confirmatory of certain actions already taken by the respective parties in connection with such properties, some clarificatory, some operative in praesenti and others executable in future. The relevant clauses of the agreement provided as follows:-

> "a. That it is agreed that Defendant V.M.Singh shall pay a sum of Rs. 15 lakhs to Smt. Amteshwar Anand, Defendant No.8 on or before 30.6.1994.
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> b. That Smt. Amteshwar Anand will have a lien over 8 acres of land falling to the share of Shri V.M. Singh by succession on the death of Sardar Maninder Singh the father of Shri V.M. Singh who was the owner of 41.2 acres of land. The lien will be till the said payment of Rs. 15 lakhs is made by Shri V.M. Singh to Smt. Amteshwar Anand.
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> c. That Smt. Amteshwar Anand shall continue to remain in possession of 11 acres of land situated at Punjab Khor which is in her possession in pursuance of the order of the Revenue Authority dated 28.5.1975. It is clarified that Smt. Amteshwar Anand was in possession of 13 acres of land at the said village Punjab Khor and had sold two acres of land.
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> d. That Smt. Amteshwar Anand hereby acknowledges that she has already received consideration from Shri V.M. Singh in respect of her rights which would have accrued on partition in respect of the entire properties situated at Village Behta, Borbau and Laukheri, Tehsil and District Bhopal and also Village Pipal Kheria, District Raisen (M.P.).
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> e. That it is clarified that in view of the present settlement the rights, title and interest in the land consisting of 44 acres of land at Village Pipal Kheria, Raisen, standing in the name of Shri Virendra Singh Anand son of Smt. Amteshwar Anand who had purchased the said land from Mrs. Aparna Bajpai shall devolve on Shri V.M. Singh. Smt. Amteshwar Anand being a duly authorized power of attorney holder of Shri Virendra Singh Anand, is authorized to give the said consent.

f. That Smt. Amteshwar Anand has relinquished, released, given up, assigned all her rights, title and interest in all the moveable and immoveable properties which are the subject matter of the present suit or such properties which are the subject matter of the Suit No.63 of 1975, subject to clause (e) aforesaid. All these properties to the extent of the share of Smt. Amteshwar Anand shall deem to vest, be the exclusive properties of the Defendant Shri V.M. Singh subject to the payments being made as specified aforesaid. Shri V.M. Singh shall be the owner of all interests, rights and benefits that have accrued or may accrue in favour of Smt. Amteshwar Anand and shall be deem (sic) to have been assigned in his favour and he shall be treated as the exclusive owner to the extent of share owned by Smt. Amteshwar Anand including the shares devolving on her from late Sir Datar Singh, Late Lady Satwant Datar Singh, HUF or otherwise.

g. All the liabilities, litigations, consequential proceedings before the revenue authorities or otherwise shall be carried on by Shri V.M. Singh entirely at his responsibility and risk. Smt. Amteshwar Anand shall not be liable or responsible directly or indirectly for any acts, deeds that Shri V.M. Singh may do in regard to the property in question and the further assures that he shall do all lawful acts and deeds under the law and assures that no liability of any kind, civil or criminal, is attributed or taken against Smt. Amteshwar Anand".

Following the same procedure adopted in connection with the first agreement, an application was made by AA and VMS being I.A. No.4252 of 1993 in Suit No.1495 of 1989 under Order XXIII Rule 3 of the Code asking the Court to accept the compromise arrived at between the applicants. The application was disposed of on 27th May 1993 by directing the agreement "

be taken on record".

On the very next day i.e. on 28th May, 1993 a third agreement was executed reflecting an oral settlement between the heirs of Maninder, including VMS (who were referred to as the second party) on the one hand and the heirs of Mahinder (referred to as the first party) on the other. AA, KK and Guneeta were included as the third and fourth parties to the deed "through their assignee_____ appellant Virender Mohan Singh." It is not necessary to record the terms of the deed as they are not relevant to the issues raised in this appeal except to note clause (8) which provides:

"That it is expressly agreed and undertaken by S. Virender Mohan Singh of the Second Party that he alone shall be responsible and liable to satisfy any present or future claim that may be made on the share falling to the first party under the present settlement/compromise by either the other members of the Second party, members/heirs and assignees of the third party and/or the Fourth Party. The shares of the First Party shall in no way be disturbed and affected by any such claims that may be raised by the second party, third and the fourth party. If the second third or the fourth party attempts to disturb and/or claim any right, title or interest in the share of the first party under the present settlement, it shall be the liability of S.

> Virender Mohan Singh and shall be satisfied from the share and/or properties of the said S. Virender Mohan Singh. Similarly it is expressly agreed and undertaken by Smt. Ranjit Kaur of the first party that she alone shall be responsible and liable to pay present or future claim that may be made by other members of the first party and/or any member of the Confirming Party".

In other words, in keeping with the terms of the first two agreements VMS assumed all the liabilities for any claim that may be made against the other heirs of DS by AA, KK and Guneeta in respect of their shares in the estate of DS. The third agreement was signed by all the heirs of Mahinder and the heirs of Maninder. VMS signed the deed on behalf of AA, KK and Guneeta as their assignee.

For the third time a joint application was made under Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure praying, inter alia, for the Court to:-

> "a) accept the family settlement orally arrived and reduced into writing subsequently on 28th May, 1993.(Annexure C);
>
> (b) pass a decree in terms of the said family settlement which is Annexure C to the present application as also in terms of IA No.1860 of 1993 and IA No.4252 of 1993 (Annexure A & B) which compromises have been accepted on 18.3.1993 and 27.5.1993 by this Hon'ble Court and decree Suit No.63 of 1975 and 1495 of 1989 in terms thereof;

On 25th August, 1993 the High Court passed a decree in terms of all three agreements.

On 7th July 1995 KK and Guneeta made an application under Section 151 of the Code of Civil Procedure in which they claimed that though Suit No.1495 was decreed in terms of the compromise between them and VMS, five cheques given by VMS to them had been dishonoured on presentation. It was urged that VMS had committed contempt of Court and, therefore, the compromise was liable to be cancelled. It was submitted that VMS should be directed to remit the amount of the cheques or in the alternative the compromise and decree passed by the Court should be cancelled.

An agreed order was passed by the High Court of Delhi on 8th November,1995 under which KK and Guneeta were directed to execute a General Power of Attorney in favour of VMS within 2 weeks and deposit the same in Court when VMS would make payment of the balance amount as claimed by them. Pursuant to the order, VMS brought bank drafts for the balance amount but KK and Guneeta refused to accept the same.

On 27th May 1996, AA filed an application for setting aside the second agreement and the decree dated 25th August 1993 on the ground that the agreement between AA and VMS was conditional upon VMS making payment of Rs.15 lakhs to AA on or before 30th June 1994, that VMS had failed to pay the amount of Rs.15 lakhs within that date or thereafter and had thereby committed a fundamental breach of the compromise and that the agreement stood repudiated. It was also alleged that the land over which AA was to have a lien by way of security for payment of Rs.15 lakhs had also

been mortgaged to Punjab National Bank which was the subject matter of a suit. This fact had been fraudulently suppressed by VMS. Furthermore, it was claimed that the 44 acres of land at Raisen referred to in Clause (e) was not the subject matter of the two suits nor was AA's son who owned the land, party to the suits; that VMS had acquired no lawful right to any of the properties of AA and that AA had not received any benefit in terms of the settlement or the compromise decree, which decree had come to the knowledge of AA recently.

In 1998, an application was made by KK and Guneeta seeking to add supplementary grounds to the application made by them in 1995 for setting aside the first agreement dated 18th March 1993 and decree dated 25th August 1993. Like AA, they sought to allege that the compromise agreement entered into between themselves and VMS was conditional upon payment of the entire amount of Rs.50 lakhs within stipulated times, which condition had been violated by VMS. The consent decree was also challenged on the ground that the third agreement entered into by VMS on 28th May 1993 was not signed either by the applicant or by AA and was, therefore, not binding on them. It was alleged that no notice of the compromise petition filed on the basis of the third agreement had been issued to KK or Guneeta nor were their statements recorded prior to the decree being passed. According to them VMS had committed breach of the order dated 18th March, 1993 and had failed to fulfill the undertaking given by him to Court in that order to make payment of the full amount of Rs. 50 lakhs. It was also sought to be claimed that the order dated 18th March 1993 taking the settlement on record was not a preliminary decree nor a final decree and that in any event the decree dated 25th August, 1993 was compulsorily registerable. It was generally alleged that VMS had made false representations to induce the applicants to enter into the compromise.

The learned Single Judge rejected the applications filed by KK and Guneeta as well the applications filed by AA. The submissions were elaborately dealt with and it was held that the three applications filed were misconceived and amounted to a misuse of the process of the Court. The applications were accordingly dismissed with costs.

KK, Guneeta and AA preferred two separate appeals from this order. The Division Bench, by a common judgment, concurred with the findings of the learned Single Judge and held that the learned Single Judge had rightly rejected the applications filed by the appellants and accordingly dismissed the appeals.

Two appeals have been preferred before us from the decision of the Division Bench. We also propose to dispose of them by this common judgment.

Before us, learned counsel appearing on behalf of AA has submitted that no notice was given to AA of the alleged family settlement or of the application for the compromise decree and she had no knowledge of the decree dated 25th August 1993. It was submitted that the compromise on which the decree was passed was not signed by AA and, therefore, was not binding on her under the provisions of Order XXIII Rule 3 of the Code. It was further submitted that no right had been created under the second agreement in favour of VMS and that he had not been assigned AA's share in the suit properties. It was said that the third agreement dated 28th May,1993 was admittedly a record of an earlier oral agreement dated 1st May, 1993 to which AA was not a party. It was

contended that the purported assignment was not an assignment in law: first, because the agreement was a conditional one, namely the rights of AA were to be transferred to VMS subject to VMS making payment; second, the assignment was not registered and finally, that the assignment was not pursuant to any leave granted to VMS under Order 22 Rule 10 of the Code of Civil Procedure. It is said that the omission to obtain such leave was deliberate in order to keep the passing of the compromise decree a secret from the appellants.

KK and Guneeta have adopted AA's arguments and have also contended that the conditional right in their agreement with VMS was not complied with as VMS had defaulted in making payment in terms of their agreement with him. It was further said that the non payment was an admitted fact and the reasons as disclosed in VMS' pleadings before the Court that he did not pay because of the non execution of the Power of Attorney in his favour by KK and Guneeta was wrong, as the execution of the Power of Attorney was also subject to all payments having been made by VMS to these appellants. It was submitted that time was of the essence of the agreement. It was also claimed that these appellants had no notice of any kind of the passing of the final decree.

VMS appeared in person. He submitted that it was not open to the appellants to challenge the agreements or the compromise decree, because each of them had acted on the basis of the agreements and derived benefits thereunder. As far as the Bhopal house was concerned, KK and Guneeta had sold the same on the basis that the property belonged to them. It was also submitted that a sum of Rs. one lakh had been received by KK from VMS as recently as on 11th July, 2001 towards the consideration amount. As far as AA was concerned, she had also sold properties at Punjab Khor on the basis of the agreement and the compromise decree as recently as on 19th April, 2005. VMS also contended that AA had initially filed a suit in respect of the Punjab Khor properties in 1974. That was why in 1975, Maninder had filed Suit No.63 of 1975 claiming partition of the property of D.S. including the Punjab Khor properties. The suit remained ex-parte as far as AA was concerned. However, on the basis of an alleged Power of Attorney alleged to have been executed by Maninder in favour of AA, AA had approached the Revenue Officer and the Revenue Officer had passed an order in AA's favour on 28th May, 1975. This order was challenged by ADS by filing suit No.1495 of 1989. It was this property at Punjab Khor, which was inter alia the subject matter of the compromise decree and which AA had sought to sell. It was submitted that only property which was the subject matter of the two suits had been affected by the agreement or the family settlement. The property of forty four acres of land in Raisen which were owned by Virender Singh, AA's son had already been sold to VMS by Virender Singh who had admittedly been paid the full consideration therefor. The conveyance could not be executed because the necessary papers were with the first appellant, who was at that time not in the country. Our attention was drawn to several documents in this connection. Clause (e) in the agreement between AA and VMS, according to VMS, merely clarified the position. It was submitted that the appellants had knowledge of the consent decree. Even after knowledge of the decree they were interested only in receiving the monies payable under their respective agreements and not in setting aside the final consent decree. Reliance was placed on some correspondence as well as on the 1995 application of KK and Guneeta. It was therefore submitted that the appeals should be dismissed.

ADS has appeared through counsel and has supported VMS. He has said that the procedure followed in the present case was fully in compliance of Order XXIII Rule 3. It is said that all the three appellants had already received benefits under the compromise decree.

The heirs of Maninder have submitted that a conjoint reading of all the paragraphs in the two agreements would show that VMS was authorized to take steps as the assignee of the appellants to achieve final partition. It was pointed out that it is nobody's case that VMS had not assumed the legal liabilities of AA, KK and Guneeta not only before the Revenue Authorities, but also the responsibility of all proceedings. It was said that the payment of the money under the first two agreements was not a condition precedent and that their conduct also showed that.

As far as the heirs of Mahinder were concerned, they say that they had acted on the basis that VMS was duly authorized to represent the appellants. It is urged that the agreements arrived at between the parties were lawful and were freely consented to by all parties. It is further submitted that no registration was required since the documents in question were family settlements and there was only a rearrangement of antecedent interests. It was stated that it would be extremely inequitable if the compromise decree were set aside at this stage after parties had long since acted on the same. We are of the view that the findings of fact arrived at concurrently by the courts below do not require interference by this Court. It cannot be said that the conclusions were unsupported by or were contrary to the evidence on record. On the legal issues also there has been no disagreement. The first issue is whether the two agreements between the appellants and VMS were conditional. Both the Courts below have construed the agreements and answered the issue in the negative. As we have already said, each of the first two agreements recorded the relinquishment of rights by AA, KK and Guneeta in the suit properties and assignment of such rights to VMS. This was recorded in the agreements as already having taken place. As far as the first agreement was concerned, the relinquishment of VMS' rights in the Bhopal house was effected by clause (e). Clause (d) of the second agreement recorded that AA had already received the consideration in respect of the properties mentioned from VMS. The further payments to be made by VMS to the three appellants were, on the other hand, to be made in future. The phrase "subject to the payments being made" in clause (d) of the first agreement and clause (f) of the second agreement does not operate as a precondition to the relinquishment of the rights of KK, Guneeta and AA in the suit properties. According to these clauses of the agreements, vesting had already taken place or was to take place with the execution of the agreements. In this context, to construe the phrase 'subject to' as amounting to a pre-condition would be contrary to the body of the clauses in which the phrase appears. The only meaning we can give to the phrase consistently with the other terms of the agreement, is that it imposed a personal obligation on VMS to make the payments . By the agreement, as has been rightly held by the courts below, the parties had finally resolved disputes with regard to their shares in the suit properties. Therefore, even if VMS had defaulted in making payment to the appellants of the amounts as specified in the agreements that would not give the appellants a ground to rescind the agreements.

The next question raised by the appellants relates to Order XXIII Rule 3 of the Code. According to them the procedure envisaged under that provision had not been complied with either in passing the orders on 18th March, 1993 and 27th May, 1993 when the agreements were taken on record or when

the final decree was passed on 25th August, 1993. It is a matter of record that when the appellants filed applications (IA.No.1860 of 1993 and IA. No.4252 of 1993) for accepting the first two agreements under Order XXIII Rule 3, the applications set out the clauses of the agreements verbatim. The applicants had affirmed separate affidavits in support of their respective applications, affirming on oath that they were fully conversant with the facts and circumstances of the case and that the applications had been drafted and filed under their instructions and that the statements of facts contained in the applications were true and correct to their knowledge. Order XXIII, Rule 3 casts an obligation on Court to be satisfied that a suit has been adjusted wholly or in part by a lawful agreement or compromise in writing and signed by the parties. On the material before it, the High Court would have had no reason to hold that the suits had not been adjusted as affirmed by the parties to the application. It was not necessary for the Court to say in express terms that it was satisfied that the compromise was a lawful one. There is a presumption that the Court was so satisfied unless the contrary is proved . No doubt in Ajad Singh Vs. Chatra & Ors. this Court has said that the suit could not have been disposed of except by recording its satisfaction as contemplated by Rule 3 of Order XXIII of the Code. However, in that case there was in fact no proceeding under Order XXIII Rule 3 at all. There the suit was decreed by the Trial Court on the basis of a compromise which had been entered into during the pendency of the suit which was not only on plain paper but was executed in a police station. This Court held that the suit could not have been disposed of except by recording the compromise and by following the procedure contemplated by Rule 3 of Order XXIII. The decision is therefore distinguishable on facts.

The second obligation cast on Court by Order XXIII Rule 3 is to order the agreement to be recorded. This is normally done simultaneously with the passing of the decree. In the present case the rights of the other parties to the suit in respect of the suit properties had not yet been agreed upon, the stages were split into two. This does not mean that the orders dated 18th March, 1993 and 27th May, 1993 were not in keeping with the provisions of Order XXIII Rule 3. What the High Court has done by the two orders dated 18th March, 1993 and 27th May, 1993 is to comply with the mandate to record the agreements. Finally the Court is required to pass decree in accordance with the agreement or compromise. The learned Single Judge correctly came to the conclusion that no decree could be passed disposing of the suits at that stage as the other parties in the suit had not yet entered into any settlement. When the third agreement was also filed subsequently, the Court recorded the statements of VMS who had also signed the third agreement as the assignee of the appellants, as well as the statements of the representatives of the other heirs. All the parties to the suits by this time had settled their differences in the pending suits. The submission of the appellants that their statements were required to be recorded is unacceptable in view of our finding that they had assigned their rights in the suit properties (except as provided in the two agreements) and in view of their affidavits which were already on record. The validity of the assignment was however questioned by the appellants on the ground that the first two agreements were not registered. The submission is untenable. Section 17(1) of the Registration Act, 1908 in so far as it is relevant, requires under Clause (b) thereof, registration of "non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property". Sub section (2) of Section 17 creates exceptions to the mandatory requirements of Section 17(1) (b) and (c). One of the exceptions made in Section 17(2) of the

Registration Act 1908, is Clause (i). This exception pertains to "any composition deed." In other words all composition deeds are exempt from the requirement to be registered under that Act . The Composition Deed in this case was a transaction between the members of the same family for the mutual benefit of such members. It is not the appellants' case that the agreements required registration under any other Act. Apart from this, there is the principle that Courts lean in favour of upholding a family arrangement instead of disturbing the same on technical or trivial grounds particularly when the parties have mutually received benefits under the arrangement . Both the courts below had concurrently found that the parties had enjoyed material benefits under the agreements. We have ourselves also re-scrutinized the evidence on record on this aspect and have found nothing to persuade us to take a contrary view. Furthermore, in this case the agreements had merged in the decree of the Court which is also excepted under Sub section 2(vi) of Section 17 of the Registration Act, 1908 . The appellants then contended that the exception created in respect of decrees and orders of a Court would not apply in this case because Clause (e) of the second agreement related to immoveable properties other than those which were the subject matter of the pending suits. The submission is misconceived. The only property which did not form part of the suit properties were the forty four acres of land at Raisen belonging to AA's son. Clause (e) in the second agreement did not seek to either create, declare, assign, limit or extinguish either in present or in future, any right title or interest in the property within the meaning of Section 17 (1)(b) of the Registration Act. All that Clause (e) of the second Agreement expressly did was to clarify a previous deal. It did not affect any change to any legal rights in the property and merely recited what the existing rights were. This clause would not therefore serve to take the consent decree dated 25th August, 1993 outside the scope of the exception in Section 17(2)(vi) of the Registration Act, 1908.

The disputes in the two suits between all the parties were resolved by the three agreements. But in concluding the three agreements, care was taken to see that the terms and conditions of one agreement did not conflict with the terms and conditions of another. Parties had separately signed their agreements and approached the Court (albeit at different points of time) seeking to get a decree passed in terms of their agreements. As such it was not necessary for the parties to one agreement to sign the other two agreements. It was thus also not necessary for any of the appellants to have signed the third agreement entered. The final decree dated 25th August, 1993 was on the basis of all three agreements each of which had been signed by the concerned parties and their statements in support thereof were on record in compliance with Order XXIII Rule 3 of the Code.

The appellants made much of the fact that no leave was obtained from the courts under Order 22 Rule 10 of the Code to bring VMS on record as an assignee of their rights. This was an argument which has been raised for the first time before us. The Rule gives an assignee of a parties interest during the pendency of the suit the option to apply for leave to continue the suit and is resorted to by an assignee when the assignee is of the opinion that his interest would be better preserved thereby. There is no obligation on the assignee to come on record. Indeed, in Dhurandhar Prasad Singh Vs. Jai Prakash University : (2001) 6 SCC 534, this Court has held that the prayer for leave could be made not only by the assignee but also by the assignor. The appellants, who were the assignors in this case, were aware that they had assigned their rights and liabilities in the suit properties to VMS. They did not choose to bring the fact of such assignment on record in the pending suits. Furthermore, the suits were not being "continued" but were being brought to an end

as far as the appellants were concerned. For both these reasons, VMS' choice not to apply for leave under Order 22 Rule 10 cannot be construed as having been made with any ulterior motive to defraud the appellants.

The pleadings of fraud in both the applications of the appellants were in any event grossly inadequate. Both the Trial Court and the Division Bench have correctly held so. In fact the basic cause for which the appellants initially came to the Court was a non payment of amounts as specified under the agreements by VMS. We concur with the finding of the learned Single Judge that the appellants could execute the decree for the monies due under compromise decree dated 25th August 1993. Mere non-payment was certainly not supportive of a ground for setting aside the decree on the basis of an allegation of fraud.

The final submission of the appellants was that time for payments under the agreements was of the essence. But the appellants themselves had never understood the agreements in that manner. They had asked for payment much after the dates had expired. As far as KK and Guneeta were concerned, in their application made in 1995 what they had asked for was for payments due in 1993. It was only as alternative that they had pleaded for the decree to be set aside that too on the ground of alleged contempt having been committed by VMS. For the reasons stated, we are of the view that these appeals m `ust be, and they are hereby dismissed with costs.