

R. Rajanna vs S.R.Venkataswamy & Ors on 20 November, 2014

Equivalent citations: AIR 2015 SUPREME COURT 706, 2015 AIR SCW 531, 2017 (1) AJR 420, 2015 (1) AIR KANT HCR 685, (2015) 1 CLR 160 (SC), (2014) 4 KER LJ 723, (2014) 4 KER LT 780, (2014) 2 LANDLR 59, (2015) 1 RECCIVR 96, (2015) 1 JCR 267 (SC), (2015) 1 ALL RENTCAS 8, (2015) 2 CAL HN 108

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Bench: R. Banumathi, T.S. Thakur

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NOS. 10416-10417 OF 2014
(Arising out of S.L.P. (C) Nos. 13942-13943 of 2012)

R. Rajanna

...Appellant

Versus

S.R. Venkataswamy & Ors.

...Respondents

J U D G M E N T

T.S. THAKUR, J.

1. Leave granted.

2. Can the validity of a decree passed on a compromise be challenged in a separate suit is the short question that falls for determination in this appeal. It arises in the following circumstances:

3. The appellant filed a suit for declaration to the effect that gift- deed dated 12th August, 1982 executed by one Ramaiah was void and for a permanent prohibitory injunction restraining the defendant-respondent from alienating the suit schedule property or interfering with the peaceful possession and enjoyment of the same by the plaintiff. By its judgment and order dated 25th March, 1991, the Trial Court decreed the suit holding the gift-deed in question to be null and void, hence not binding on the plaintiff-appellant. Defendants No.2 and 3 in the said suit were also directed to demolish the building constructed in the schedule property and surrender possession thereof to the plaintiff. Aggrieved by the judgment and decree passed against him the respondent filed RFA

No.223 of 1991 before the High Court of Karnataka at Bangalore. According to the respondent a compromise petition was in terms of Order XXIII Rule 3 of Civil Procedure Code filed by the parties before the High Court in the said appeal settling the dispute amicably. The appellant stoutly disputes that position and asserts that no such compromise was either needed nor was the same ever entered into between the parties. The appellant describes the so- called compromise deed as a forged and fabricated document. The appellant denies that he ever signed any such compromise petition or asked his advocate to file the same before the Court. Even so the High Court had proceeded on the basis that a compromise had indeed taken place between the parties in the light whereof the High Court set aside the judgment and decree of the Trial Court and allowed the appeal filed by the respondents. The appellant's case is that order dated 1st August, 1995 passed by the High Court in RFa No. 223 of 1991 was the result of fraud played upon the High Court.

4. Aggrieved by the judgment and order dated 1st August, 1995 passed by the High Court, the appellant appears to have filed OS No.5236 of 2005 before the Additional City Civil Judge, Bangalore, in which the appellant prayed for setting aside of the compromise recorded in the High Court's order dated 1st August, 1995 and the decree passed on the basis thereof. The defendant-respondent No.1 moved an application in the said suit under Order VII Rule 11(d) read with Section 151 Code of Civil Procedure for rejection of the plaint on the ground that the suit in question was barred by Rule 3A of Order XXIII of the Code of Civil Procedure.

5. By its order dated 11th February, 2011, the City Civil Court, Bangalore, allowed the application filed by the respondent and rejected the plaint filed by the plaintiff-appellant. The Court took the view that in the light of the proviso to Order XXIII Rule 3 of the CPC inserted w.e.f. 1.2.1997, a party aggrieved of a decree on compromise had to approach the Court that passed the decree to establish that no compromise had taken place between the parties which could provide a basis for the Court to act upon the same. In doing so the Court placed reliance upon the decision of this Court in Pushpa Devi Bhagat v. Rajinder Singh and Ors. (2006) 5 SCC

566.

6. It was after the rejection of the plaint that the appellant filed miscellaneous application IA Nos. 1 and 2 of 2011 in RFA No.223 of 1991 praying for setting aside of order dated 1st August, 1995 by which the High Court had allowed the appeal filed by the respondents and set aside the decree passed in OS No.5236 of 2005 on the basis of the alleged compromise between the parties. The appellant's case before the High Court was that no such compromise had taken place nor was any compromise petition ever signed by him. It was also alleged that the appellant had given no instructions to his advocate for presenting any compromise petition and that the alleged compromise petition was totally fraudulent and based on forged signature of the appellant apart from being unauthorised as the counsel engaged by him had no authority to present or report any such compromise before the Court. The appellant also prayed for condonation of delay in filing the application for setting aside the compromise decree passed by the High Court.

7. The High Court of Karnataka has by its orders impugned in this appeal, dismissed IA No.1 of 2011 filed by the appellant without even advertng to the provisions of Order XXIII Rule 3 CPC and in

particular Rule 3A which bars a suit to have a compromise decree set aside on the ground that the compromise on which the decree had been passed did not exist or take place. The High Court appears to have taken the view that even if the compromise was fraudulent since the appellant had filed a suit for declaration he ought to pursue the same to its logical conclusion. The High Court further held that even if the plaint in the suit filed by the appellant had been rejected in terms of Order VII Rule 11(d) of CPC, the appellant ought to seek redress against any such order of rejection. The High Court has on that basis declined to consider the prayer made by the appellant for setting aside the compromise decree.

8. The precise question that falls for determination in the above backdrop is whether the High Court was right in directing the appellant to seek redress in the suit having regard to the provisions of Order XXIII rule 3 and Rule 3A of CPC.

9. Order XXIII Rule 3 and Rule 3A of CPC may at this stage be extracted for ready reference:

"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 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 shall not be deemed to be lawful within the meaning of this rule."

10. It is manifest from a plain reading of the above that in terms of the proviso to Order XXIII 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 XXIII Rule 3, the agreement or compromise shall not be deemed to be lawful within meaning of the said rule if the same is void or voidable under Indian 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 XXIII Rule 3A 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 XXIII Rule 3A of CPC. That is precisely what has happened in the case at hand. When the appellant filed OS No.5326 of 2005 to challenge validity of the compromise decree, the Court before whom the suit came up rejected the plaint under Order VII Rule 11 CPC on the application made by the respondents holding that such a suit was barred by the provisions of Order XXIII Rule 3A of the CPC. Having thus got the plaint rejected, the defendants (respondents herein) could hardly be heard to argue that the plaintiff (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.

11. The upshot of the above discussion is that the High Court fell in a palpable error in directing the plaintiff to take recourse to the remedy by way of separate suit. The High Court in the process remained oblivious of the provisions of Order XXIII Rules 3 and 3A of the CPC as also orders passed by the City Civil Court rejecting the plaint in which the Trial Court had not only placed reliance upon Order XXIII Rule 3A but also the decision of the Court in Pushpa Devi's case (supra) holding that a separate suit was not maintainable and that the only remedy available to the aggrieved party was to approach the Court which had passed the compromise decree. The following passage from the decision of Pushpa Devi (supra) case is, in this regard, apposite:

"17. ..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."

12. We may also refer to the decision of this Court in Banwari Lal v. Chando Devi (1993) 1 SCC 581 where also this Court had observed:

"As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order XXIII, or an appeal under S. 96(1) of the Code, in which he can now

question the validity of the compromise in view of Rule 1-A of Order 13 of the Code."

13. In the light of the above, we allow these appeals, set aside the order passed by the High Court and remit the matter back to the High Court for disposal of IA Nos.1 and 2 of 2011 in accordance with law in the light of the observations made hereinabove. In the peculiar facts and circumstances of the case, we leave the parties to bear their own costs. We make it clear that we have expressed no opinion as to the merits of the application seeking setting aside of the compromise decree which aspect is left for the High Court to examine in accordance with law.

.....J. (T.S. THAKUR)J. (R. BANUMATHI)
New Delhi;

November 20, 2014