

M/S. Sree Surya Developers And ... vs N. Sailesh Prasad on 9 February, 2022

Author: M.R. Shah

Bench: Sanjiv Khanna, M.R. Shah

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 439 OF 2022

M/s. Sree Surya Developers and Promoters

...Appellant(s)

Versus

N. Sailesh Prasad and Ors.

...Respondent(s)

WITH

CIVIL APPEAL NOS. 440-441 OF 2022

M/s. Raja Pushpa Properties Pvt. Ltd.

...Appellant(s)

Versus

N. Sailesh Prasad and Ors.

...Respondent(s)

JUDGMENT

M.R. SHAH, J.

1. Feeling aggrieved and dissatisfied with the impugned judgment and order dated 01.10.2019 passed by the High Court for the State of Telangana at Hyderabad in Appeal Suit No.454 of 2019 by which the High Court has allowed the said appeal preferred by the respondent No.1 herein – original plaintiff and has quashed and set aside the order passed by the learned II Additional District Judge, Ranga Reddy District dated 02.05.2019 in I.A. No.108 of 2019 in O.S. No.537 of 2018 by which the learned Trial Court rejected the plaint under Order 7 Rule 11(d) of the Civil Procedure Code (hereinafter referred to as “CPC”), the original defendants to O.S. No.537 of 2018 have preferred the present appeals.

2. The facts leading to the present appeals in nutshell are as under:-

2.1 That the suit schedule property was gifted to the respondent No.1 herein – original plaintiff during his minority by his paternal grandmother (respondent No.2 herein and original defendant in O.S. No.537 of 2018) vide registered Gift Deed dated 13.02.2003. That the said Gift Settlement Deed was revoked vide Revocation of Gift Deed dated 10.12.2004 by the grandmother of the respondent No.1 herein – original plaintiff. That thereafter a registered Development Agreement-cum-

General Power of Attorney dated 18.01.2008 came to be executed between the grandmother of the plaintiff and the appellant herein – M/s. Sree Surya Developers and Promoters – original defendant No.2. It appears that under the said Development Agreement, the grandmother was entitled to 35,000 sq. ft. of fixed saleable super built-up area along with proportionate number of car parking spaces and undivided share in the land.

2.2 The father of the respondent No.1 – original plaintiff (original respondent No.3 herein and defendant No.3 in O.S. No.537 of 2018) filed a suit being O.S. No.1750 of 2015 as the next friend of then minor respondent No.1 herein seeking for declaration that revocation of Gift Deed dated 10.04.2004 as being illegal and not binding on the plaintiff therein and also for perpetual injunction. Subsequently, a compromise was arrived at between the parties to O.S. No.1750 of 2015 vide Compromise Deed Dated 30.12.2015. Under the Compromise, it was agreed that the respondent No.1 herein – original plaintiff would be entitled to entire 35,000 sq. ft. of the constructed area, which was agreed to be allocated to the grandmother under the Development Agreement. It was further agreed as per the Compromise Decree that the Developer would be entitled to assign the development rights accrued to it under the said Development Agreement to the third parties. In furtherance of the compromise, I.A. No.31 of 2016 under Order XXIII Rule 3 CPC came to be filed alongwith the Compromise Memo praying for passing of decree in terms thereof. The father of the respondent No.1 (respondent No.3 herein – original defendant No.3) filed I.A. in the said suit under Rule 172 of the Civil Rules of Practice seeking permission to act on behalf of the respondent No.1 herein and the Trial Court was pleased to permit him to do so.

2.3 Thereafter, the Compromise Decree came to be passed by the VIII Additional Senior Civil Judge, RR District dated 13.01.2016 in O.S. No.1750 of 2015 in terms of the Memorandum of Compromise entered into by the father on behalf of respondent No.1 herein, the grandmother and the appellant herein – Developer. It appears that thereafter the appellant – Developer assigned its development rights under the above- mentioned Development Agreement to respondent No.4 herein under a Deed of Assignment dated 06.04.2016 and on the basis of the same, the respondent No.4 has started developing the subject property in O.S. No.537 of 2018.

2.4 That on attaining the age of majority, the respondent No.1 herein filed the present suit being O.S. No.537 of 2018 through his General Power of Attorney praying inter alia declaration of right, title and interest over the suit schedule property and declaration of Compromise Decree. He also prayed the revocation of deed as null and void. 2.5 That having been served with a notice of the suit, the appellant filed written statement denying all the material allegations. The appellant also filed I.A. No.108 of 2019 under order VII Rule 11 CPC for rejection of the plaint on various grounds and mainly on the ground that the suit for setting aside the consent decree/Compromise Decree would

be barred under Order XXIII Rule 3A of CPC. The Trial Court vide order dated 02.05.2019 allowed the said I.A. and rejected the plaint on the ground that in view of Order XIII Rule 3A CPC, no independent suit would be maintainable against the Compromise Decree. 2.6 Feeling aggrieved and dissatisfied with the order passed by the Trial Court rejecting the plaint in exercise of powers under Order VII Rule 11(d) CPC on the ground that in view of the provisions of Order XXIII Rule 3A CPC, no independent suit would be maintainable against the Compromise Decree, the original plaintiff preferred the present appeal before the High Court.

2.7 By the impugned judgment and order, the High Court has allowed the said appeal and has quashed and set aside the order passed by the Trial Court rejecting the plaint and has remanded the matter to the Trial Court by observing that the effect of the provisions of Order XXXII Rules 1 to 7 CPC has not been considered by the Trial court, which would have a direct bearing on the validity of the Compromise Decree dated 13.01.2016 in O.S. No.1750 of 2015.

2.8 Feeling aggrieved and dissatisfied with the impugned judgment and order passed by the High court, the original defendant Nos. 2 and 4 – Developer and its Assignee have preferred the present appeals.

3. Shri Mukul Rohatgi, learned Senior Advocate appearing on behalf of the appellant – Developer has vehemently submitted that in the facts and circumstances of the case, the High Court has committed a grave error in quashing and setting aside the order passed by the Trial court rejecting the plaint in exercise of powers under Order VII Rule 11 CPC holding that in view of Order XXIII Rule 3A CPC, no independent suit would be maintainable against the Compromise Decree. 3.1 It is submitted that Order XXIII Rule 3 CPC provides for compromise of suit. It is submitted that by way of amendment in 1976 made by Act No.104 of 1976, Rule 3A has been inserted, which specifically provides 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. It is submitted that therefore the present suit filed by the respondent No.1 herein – original plaintiff challenging the Compromise Decree would be barred under Order XXIII Rule 3A CPC and therefore the Trial Court rightly rejected the plaint.

3.2 It is further submitted by Shri Rohatgi, learned Senior Advocate appearing on behalf of the appellant – Developer and the learned counsel for the Assignee that as held by this Court in a catena of decisions, the only remedy available to the aggrieved party would be to submit an appropriate application before the same Court which recorded the compromise. Reliance is placed on decisions of this Court in the case of Banwari Lal Vs. Chando Devi, (1993) 1 SCC 581; Pushpa Devi Bhagat Vs. Rajinder Singh & Ors., (2006) 5 SCC 566; Horil Vs. Keshav, (2012) 5 SCC 525; R. Rajanna Vs. S.R. Venkataswamy & Ors., (2014) 15 SCC 471 and recently in R. Janakiammal Vs. S.K. Kumarasamy, (2021) 9 SCC 114.

3.3 It is submitted that in the present case as such the original plaintiff had already filed an application under Order XXIII Rule 3A before the same court which passed the consent Compromise Decree. It is submitted that in the present case even the original plaintiff has filed a first appeal under Order XLIII before the first Appellate court challenging the Compromise Decree. It is submitted that therefore as such the plaintiff has already availed the other remedies available to

him. It is submitted that therefore the present suit is nothing but an abuse of process of law. It is submitted that in any case, the substantive independent suit questioning the Compromise Decree shall not be maintainable in view of Order XXIII Rule 3A CPC. 3.4 It is further submitted by Shri Rohatgi, learned Senior Advocate appearing on behalf of the appellant that in the present case the respondent No.1 herein – original plaintiff has indulged in clever drafting seeking one relief by way of drafting multiple prayers. It is submitted that the only relief that the plaintiff seeks is setting aside the Compromise Decree dated 13.01.2016 which he has sought by drafting multiple prayers in order to avoid the bar to suit envisaged under Order XXIII Rule 3A of CPC, which in other words is mere clever drafting. It is submitted that as held by this Court in a catena of decisions by mere clever drafting of the plaint, the plaintiff cannot be permitted to maintain the suit, which otherwise would not be maintainable and/or barred by any law. It is further observed and held by this Court that if clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage. Reliance is placed on the decisions of this Court in the case of T. Arivandandam Vs. T.V. Satyapal and Anr., (1977) 4 SCC 467; Madanuri Sri Rama Chandra Murthy Vs. Syed Jalal, (2017) 13 SCC 174; Canara Bank Vs. P. Selathal and Ors., (2020) 13 SCC 143; and Raghwendra Sharan Singh Vs. Ram Prasanna Singh, (2020) 16 SCC 601.

3.5 Shri Rohatgi, learned Senior Advocate has further submitted that even otherwise the impugned judgment and order passed by the High Court is unsustainable. It is submitted that in the entire judgment, there is no discussion by the High Court on the maintainability of the suit and/or any discussion on Order XXIII Rule 3A CPC on the basis of which the Trial Court rejected the plaint.

3.6 It is submitted that on the contrary, the High Court has gone into the validity of the Compromise Decree considering Order XXXII Rules 1 to 7 CPC and the High Court has virtually given the findings relying upon Order XXXII Rule 7 CPC that the Compromise Decree was not binding to the plaintiff. It is submitted that the High Court ought to have addressed itself to the maintainability of the suit and at this stage the High Court was not required to consider at all on the validity of the Compromise Decree.

3.7 Number of other submissions have been made by learned counsel appearing on behalf of the appellant on the validity of the Compromise Decree. However, for the reasons stated hereinbelow, we propose to consider the only issue with respect to maintainability of the suit and the issue before this Court is not on the validity of the Compromise Decree, therefore, we do not propose to deal with any of the submissions on merits on the validity of the Compromise Decree.

4. Present appeals are vehemently opposed by Shri B. Adinarayana Rao, learned Senior Advocate appearing on behalf of the original plaintiff(s).

4.1 it is submitted that in the present case, the Compromise Decree is hit by Order XXXII Rule 7 CPC. It is submitted that therefore on attaining the majority immediately when respondent No.1 herein – original plaintiff instituted a suit for various reliefs, which otherwise can be granted in a substantive independent suit, the High Court has rightly set aside the order passed by the Trial Court rejecting the plaint. 4.2 It is vehemently submitted by learned Senior Advocate appearing on

behalf of the original plaintiff that in the present case, the reliefs prayed in the suit are not only with respect to the Compromise Decree, but other reliefs are sought for which an independent substantive suit shall be maintainable. It is submitted that as such the plaintiff has not prayed to set aside the Compromise Decree. It is submitted that what is prayed is to declare that the Compromise Decree is not binding on him. It is submitted that therefore for the other reliefs sought, it can be said that an independent suit under Order XXIII Rule 3A shall not be barred. 4.3 However, the learned Senior Advocate appearing on behalf of the respondents – original plaintiff(s) is not disputing that the plaintiff has already filed an application under Order XXIII Rule 3A before the same Court, which passed the Compromise Decree. He is also not in a position to dispute that in the said application, the plaintiff can very well make submission on the validity of the Compromise Decree on whatever grounds, which may be available to him including non-compliance of Order XXXII Rule 7 CPC.

5. We have heard the learned counsel appearing on behalf of the respective parties at length.

6. At the outset, it is required to be noted that in the present case, the Trial Court rejected the plaint of O.S. No.537 of 2018 in exercise of powers under Order VII Rule 11 CPC on the ground that the said suit would not be maintainable in view of specific bar under Order XXIII Rule 3A CPC. The High Court by the impugned judgment and order has set aside the said order and has remanded the matter to the Trial Court by observing that while passing the order rejecting the plaint, the Trial Court had not considered the provisions of Order XXXII Rules 1 to 7 CPC. However, it is required to be noted that while passing the impugned judgment and order, the High Court has not at all dealt with and considered the provisions of Order XXIII Rule 3A CPC and has not considered at all whether in fact the suit challenging the Compromise Decree and/or for the reliefs sought in the suit would be maintainable or not. What was required to be considered by the High Court was whether the independent suit questioning the Compromise Decree would be maintainable or not. The aforesaid crucial aspect has not been dealt with by the High Court at all and High Court has gone into the validity of the Compromise Decree in view of Order XXXII Rule 7 CPC. At the stage of deciding the application under Order VII Rule 11 CPC, the only thing which was required to be considered by the High Court was whether the suit would be maintainable or not and that the suit challenging the Compromise Decree would be maintainable or not in view of Order XXIII Rule 3A CPC and at this stage, the High Court / Court was not required to consider on merits the validity of the Compromise Decree.

7. Now, so far as the main issue whether the Trial Court rightly rejected the plaint in exercise of powers under Order VII Rule 11 CPC on the ground that an independent suit challenging the Compromise Decree would be barred in view of Order XXIII Rule 3A CPC is concerned, on plain reading of Order XXIII Rule 3A CPC, the Trial Court was justified in rejecting the plaint. Order XXIII Rule 3A CPC, which has been inserted by amendment in 1976 reads as under:-

“3A. 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.”

8. Therefore, on plain reading of Order XXIII Rule 3A CPC, no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. Identical question came to be considered by this Court in the case of R. Janakiammal (supra). It is observed and held by this Court that Rule 3A of Order XXIII bars the suit to set aside the decree on the ground that the compromise on which decree was passed was not lawful. It is further observed and held that an agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and the bar under Rule 3A shall be attracted if compromise on the basis of which the decree was passed was void or voidable. In this case, this Court had occasion to consider in detail Order XXIII Rule 3 as well as Rule 3A. The earlier decisions of this Court have also been dealt with by this Court in paragraphs 53 to 57 as under:-

“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, (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, (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*, (2014) 15 SCC 471 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, (2020) 6 SCC 629, 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.” That thereafter it is specifically observed and held 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.

9. In view of the above decisions of this Court, the Trial Court was absolutely justified in rejecting the plaint on the ground that the suit for the reliefs sought challenging the Compromise Decree would not be maintainable.

10. Now, so far as the submission on behalf of the plaintiff that in the suit the plaintiff has not specifically prayed for setting aside the Compromise Decree and what is prayed is to declare that the Compromise Decree is not binding on him and that for the other reliefs sought, the suit would not be barred and still the suit would be maintainable is concerned, the aforesaid cannot be accepted. 10.1 As held by this Court in a catena of decisions right from 1977 that a mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise would not be maintainable and/or barred by law. It has been consistently held by this Court that if clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.

10.2 In the case of T. Arivandandam Vs. T.V. Satyapal, (1977) 4 SCC 467, it is observed and held as under;-

“5. We have not the slightest hesitation in condemning the petitioner for the gross abuse of the process of the court repeatedly and unrepentantly resorted to. From the statement of the facts found in the judgment of the High Court, it is perfectly plain that the suit now pending before the First Munsif's Court, Bangalore, is a flagrant misuse of the mercies of the law in receiving complaints. The learned Munsif must remember that if on a meaningful — not formal — reading of the complaint it is manifestly vexatious, and meritless, in the sense of not disclosing a clear right to sue, he should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searchingly under Order 10 CPC. An activist Judge is the answer to irresponsible law suits.” 10.3 In the case of Ram Singh v. Gram Panchayat Mehal Kalan, (1986) 4 SCC 364, this Court has observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of limitation.

11. If we consider the reliefs of declaration of title, recovery of possession, cancellation of revocation of Gift Deed, declaration for DGPA and Deed of Assignment-cum-DGPA, the said reliefs can be granted only if the Compromise Decree dated 13.01.2016 passed in O.S. No.1750 of 2015 is set aside. Therefore, by asking such multiple reliefs, the plaintiff by clever drafting wants to get his suit maintainable, which otherwise would not be maintainable questioning the Compromise Decree. All the aforesaid reliefs were subject matter of earlier suits and thereafter also subject matter of O.S. No.1750 of 2015 in which the Compromise Decree has been passed. Therefore, it is rightly held by the Trial Court that the suit in the present form and for the reliefs sought would be barred under Order XXIII Rule 3A CPC and therefore the Trial Court rightly rejected the complaint in exercise of powers under Order VII Rule 11(d) of the CPC. The High Court has erred in setting aside the said order by entering into the merits of the validity of the Compromise Decree on the ground that the same was hit by Order XXXII Rule 7 CPC, which was not permissible at this stage of deciding the application under Order VII Rule 11 CPC and the only issue which was required to be considered by the High Court was whether the suit challenging the Compromise Decree would be maintainable or not.

12. As observed hereinabove and it is not in dispute that as such the respondent No.1 – original plaintiff has already moved an appropriate application before the concerned Court, which passed the decree setting aside the compromise Decree by submitting an application under Order XXIII Rule 3A CPC therefore the said application will have to be decided and disposed of in accordance with law in which all the defences / contentions which may have been available to the respective parties on the validity of the Compromise Decree would have to be gone into by the concerned court in accordance with law and on its own merits.

13. In view of the above and for the reasons stated above, the present appeals succeed. The impugned judgment and order passed by the High Court allowing the appeal and quashing and setting aside the order passed by the II Additional District Judge, Ranga Reddy District passed on

02.05.2019 in I.A. No. 108 of 2019 in O.S. No.537 of 2018 is hereby quashed and set aside. The order passed by the Trial Court dated 02.05.2019 in I.A. No.108 of 2019 in O.S. No. 537 of 2018 rejecting the plaint is hereby restored. However, it is observed that we have not expressed anything on merits on validity of the Compromise Decree and the same shall have to be decided and considered by the Court which passed the decree in an application under Order XXIII Rule 3A CPC, which as observed hereinabove has been filed by the original plaintiff and the said application be decided and disposed of by the concerned Court in accordance with law and on its own merits and the contentions/defences which may be available to the respective parties on the validity of the Compromise Decree are kept open to be considered by the concerned Court in accordance with law and on its own merits.

Present appeals are allowed accordingly. However, in the facts and circumstances of the case, there shall be no order as to costs.

Pending application(s), if any, also stand disposed of.

..... J.
[M.R. SHAH]

NEW DELHI;
FEBRUARY 09, 2022.

..... J.
[SANJIV KHANNA]