

**Rehan Ahmed (D) Thr. Lrs.
v.
Akhtar Un Nisa (D) Thr. Lrs.**

(Civil Appeal No. 5218 of 2024)

22 April 2024

[Vikram Nath* and Satish Chandra Sharma, JJ.]

Issue for Consideration

Matter pertains to the correctness of the order passed by the High Court allowing the objections u/s. 47 CPC filed by the respondent no. 1, setting aside the order passed by the Executing Court and holding that the decree passed by the trial court in the suit was inexecutable and a nullity.

Headnotes

Code of Civil Procedure, 1908 – s. 47 – Questions to be determined by the Court executing decree – Objections u/s. 47 – Property originally owned by defendant No.1 – Execution of agreement to sell the property by the brother of defendant No.1-defendant No.2 and also the power of attorney of defendant No.1, for himself and for the principal defendant No.1 with the plaintiff – Pursuant thereto, the vendor not executing the sale deed – Suit for specific performance by the plaintiff against defendant no.1 and no.2 – During pendency, the parties entered into a compromise and the suit was decreed – Execution petition by the plaintiff – Objections by the defendant no. 1 – Objections dismissed and in the meantime the defendant no. 1 died – Thereafter, order dismissing the objections challenged by the son of defendant no. 2, and legal heir of defendant No. 1 claiming rights under a sale executed by defendant no 1, which was dismissed – Special Leave Petition thereagainst also dismissed – However, new round of objections u/s. 47 initiated by respondent no. 1-wife of defendant no. 2 – Dismissed by the executing court – In revision petition, the High Court set aside the order passed by the Executing Court and held that the decree passed by the trial court was inexecutable and a nullity – Correctness:

Held: High Court erred in setting aside the Executing Court's order and in declaring the trial court's decree void – High Court's

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reasoning rests on the erroneous assumption that the property was jointly owned by defendants No. 1 and No. 2, and that the absence of defendant No. 2's signature on the compromise invalidated the decree – However, defendant No. 2 consistently acknowledged that he had no ownership rights over the property – Compromise, signed by defendant No. 1 and the plaintiff and later verified by defendant No. 2 through an application, substantiates that defendant No. 1 was the sole owner – These facts were upheld by the High Court and this Court in previous proceedings – Defendant no. 2 had limited rights of being in possession of the third floor of suit property – Due to the said reasons, the plaintiff and defendant no. 1 were the only necessary parties needed for the compromise – High Court also incorrectly held that the provisions of Ord. XXIII, r. 3 were not adhered to, whereas the trial court correctly recorded and verified the compromise, fulfilling the requirements of Ord. XXIII, r. 3 – Recording of the compromise and the consequent decree, although appearing procedurally delayed, adhered to the process required under CPC – Furthermore, the High Court overlooked the fact that legal heir of defendant No 2, had previously objected to the execution proceedings, which was dismissed – Subsequent appeals before the High Court, including a Special Leave Petition were also dismissed – Thus, similar objections by respondent No. 1, in her capacity as one of the legal heirs of defendant No. 2 would not be maintainable and would amount to abuse of process of law – Executing Court rightly rejected the objections u/s. 47 filed by the respondent no. 1 – Impugned judgment of the High Court is set aside and that of the executing court is restored – Ord. XXIII, r. 3.

List of Acts

Code of Civil Procedure, 1908.

List of Keywords

Objections; Execution of agreement to sell; Sale deed; Suit for specific performance; Compromise.

Case Arising From

CIVIL APPELLATE JURISDICTION: Civil Appeal No. 5218 of 2024

From the Judgment and Order dated 21.03.2014 of the High Court of Judicature for Rajasthan at Jaipur in SBCRP No. 95 of 2007

Digital Supreme Court Reports**Appearances for Parties**

Puneet Jain, Ms. Christi Jain, Ms. Pratibha Jain, Advs. for the Appellants.

Anuj Bhandari, Gaurav Jain, Rajat Gupta, Mrs. Disha Bhandari, Mrs. Anjali Doshi, Ms. Preetika Dwivedi, Abhisek Mohanty, Advs. for the Respondents.

Judgment / Order of the Supreme Court**Judgment**

Vikram Nath, J.

Leave granted.

2. This appeal, by the Decree Holder, assails the correctness of the judgment and order dated 21.03.2014 passed by the Rajasthan High Court, Jaipur Bench at Jaipur in S.B. Civil Revision Petition No.95/2007, Smt. Akhtar Un Nisa vs. Rehan Ahmed, whereby the revision filed under Section 115 of the Code of Civil Procedure, 1908¹ challenging the order of the Executing Court dated 03.05.2007 rejecting the objections under Section 47 CPC, has been allowed. The order impugned therein passed by the Executing Court was set aside and it was held that the decree dated 09.05.1979 passed by the Trial Court in Suit No.13/72 was inexecutable and a nullity and accordingly, the objections under Section 47 CPC, were allowed.
3. The factual matrix giving rise to the present appeal is as follows:
 - 3.1 The dispute relates to property being Municipal Nos.52-57, *Maniharon Ka Rasta*, Jaipur which was originally owned by Ghulam Mohiuddin (Defendant No.1). An agreement to Sell dated 04.10.1967 was executed for sale of the suit property by Saeeduddin – Defendant No.2 (brother of Defendant No.1) and also the power of attorney of Defendant No.1, for himself and for the principal Defendant No.1.
 - 3.2 Pursuant to the aforesaid agreement to sell, as the vendor was not executing the sale deed, the appellant (plaintiff) instituted a Civil Suit for specific performance registered as Suit

1 CPC

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No.13/72 impleading Ghulam Mohiuddin as Defendant no.1 and Saeeduddin as Defendant No.2. During the pendency of the Suit, the parties entered into a compromise dated 11.05.1978 and presented the same before the Trial Court, a copy of which is filed as Annexure P-4. The terms of the Compromise Deed are briefly set out below:

“ANNEXURE P-4

IN THE COURT OF ADDL. DIST. JUDGE, CLASS-1,
JAIPUR CITY, JAIPUR

IN THE MATTER OF:

Rehan Ahmad S/o. Sh. Sultan Ahmad, aged about 22 years, Caste Muslim, R/o. Chaukadi Modikhana, Rasta, Maniharan, H. No. 57, Jaipur-3

... Plaintiff

VERSUS

1. Gulam Mohiuddin Khan, aged about 58 years S/o. Sh. Badiuddin Khan, Caste Muslimn, R/o. Mohalla Kamnagran, Badayun (U.P)
2. Saiduddin Khan aged about 52 years S/o. Sh. Badiuddin Khan, Caste Muslim, R/o. House of Abdulramham Khan, Gali Aatishbazi Rampur (U.P)

...Defendants

3. Ahsan Ahmad S/o. Sh. Sultan Ahmad aged about 32 years, Caste Muslim, R/o. Chaukadi Modikhana, Rasta Maniharan, H.No. 57, Jaipur-3

...Pro forma Defendant

Suit for specific performance of the contract regarding house and shop situated at Modikhana, Rasta Maniharan, Jaipur
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Most respectfully sheweth:

In the above civil suit, a compromise has been arrived at between the parties on under mentioned

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conditions, therefore, the suit may be decreed as per the compromise.

1. That, plaintiff and defendant No.3 executed an agreement for sale with the real brother and general power of attorney of Def. No.2 named Saiduddin Khan on 4.10.1967 in writing in respect to houses and shops No. 52 to 57, situated at Circle No.1, Chaukadi Modikhana, Jaipur, whose full description is given under, for a sale consideration of Rs.40,000/- in his own capacity and in the capacity of general power of attorney of Def. No.1, which was not accepted earlier by the defendant No.1 and 2, but now the Def. No.1 admits that agreement for sale was executed on 4.10.1967 on behalf of Def. No.2 in his own capacity and on behalf and consent of Def. No.1.
2. That, Def. No.1 also admits that a sum of Rs. 10,000/- out of entire agreed sale consideration was received in respect to the disputed property on 4.10.1967 and a sum of Rs.1,000/- was received on 1.1.69 and Rs.500/- on 22.1.69 i.e. a total of Rs.11,500/- was received by def. No. 2 on behalf of Def No. 1 which is liable to be adjusted from the total consideration of the property, but the plaintiff and defendant No.3 have alleged to spent Rs.6,500/- in the repairing of house etc, which amount shall not be adjusted from the sale consideration because all these repairing and construction was done after the above agreement by the plaintiff and Def. No.3. besides this, the Def. No.1 has received Rs. 1500/- on 17.10.88, and Rs.1000/- on 24.10.77 and Rs.1000/- on 11.11.77 from the plaintiff towards the cost of this property.
3. That, the Def. No.1 shall get executed and registered sale-deed of the above described houses and shops in favor of plaintiff Rehan Ahmad till 1.7.1978 and shall receive remaining

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sale consideration amount of Rs.25,000/- . If the Def. No. 1 fails to execute sale deed in this period then the plaintiff Rehan Ahmad shall be entitled to get the sale-deed executed and registered in his favor through the Court. Entire cost of registry would be borne equally by the plaintiff Rehan Ahmad and Def. No.1 Gulam Mohiuddin. In this respect when the Def. No.1 will ask for half cost for this from the plaintiff Rehan Ahmed then the plaintiff Rehan Ahmad shall pay the same taking receipt from him and because of this the Def. No.1 shall not be entitled to get the period agreed for registry extended. The def. No.1 has received today the half cost of registry i.e. Rs.1,000/- from the plaintiff Rehan Ahmad. Complete responsibility to receive N.O.C. shall be of the Def. No.1.

4. That, Def. No.2 is residing in the third floor of disputed property which would be got vacated by defendant No.1 and the physical possession will be given to the plaintiff Rehan Ahmed prior to registration, and shall get the rent notes executed by the tenants who are presently occupying the disputed property in favour of Rehan Ahmed.
5. That, pro forma defendant No.3 has relinquished his entire right in respect to the disputed property in favor of plaintiff Rehan Ahmad on 28.6.1977 through a deed of Relinquishment, which was. ordered by the court on 28.09.1977. Therefore, pro forma defendant no.3 shall have no connection now with this sale.
6. That, the. def. No.2 Saiduddin Khan, himself has admitted that he did not have right to sell or to execute agreement for sale of the disputed property, but now, the defendant No.1, who is the real owner of this disputed property, admits this agreement, therefore, now there is no hindrance in passing decree.

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7. That, cost of this suit shall be borne by the parties respectively.

DESCRIPTION OF PROPERTY

Pucca House comprising of three storeys and One chauk including entire internal houses of three storeys and five shops outside, out of which two shops are situated towards south of Sadar Darwaja and three shops are situated towards north of Sadar Darwaja along with staircase adjoining the shops towards the north on which Municipal No, written on the pole of House is 54/1 and Municipal Number of shops situated towards south are 52 and 53 and Municipal Number of shops situated towards north are 55, 56 and 57, Circle 1 and no number is assigned to the staircase i.e. entire property including house and shops having municipal number 52 to 57, Circle No.1 and boundaries of these houses and shops are as under:

In East: Rasta Maniharan Government.

In west: House of Sindhi in between which littered Government street is situated.

In north: Temple of Digambar Jain

In south: House and shops of Tirthdas Shyamiani.

Therefore, it is prayed that compromise be verified and decree be passed in accordance with the compromise.

Applicants

Rehan Ahmad, Plaintiff

Rehan (in English)

Gulam Mohiuddin Khan, Def. No.1

sd.Ghulam mohiuddin khan (in English)

Both Parties

Jaipur:

Date: 11.5.78”

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4. In paragraph No.1 of the Compromise Deed, it is mentioned that Defendant No.1, although had earlier not accepted the Agreement to Sell, now admits that the Agreement to Sell dated 04.10.1967 was executed by Saeeduddin–Defendant No.2, not only in his own capacity but also on behalf of Defendant No.1 as Power of Attorney holder. Paragraph No.2 mentions the details of the amount received by the Defendant under the Agreement to Sell as advance until the time the compromise was arrived at. It would be relevant to mention that the total sale consideration was Rs.40,000/- out of which as per paragraph No.2 of the Compromise Deed, Rs.15,000/- had already been received by the Defendants. Paragraph No.3 mentions that the Defendant No.1 will get the Sale Deed executed and registered in favour of the Plaintiff till 01.07.1978 after receiving Rs.25,000/- of the remaining sale consideration. It, however, mentioned that if the Defendant No.1 does not execute the Sale Deed till 01.07.1978, the Plaintiff would be entitled to get the Sale Deed executed and registered in his favour through the Court. The cost of registration would be borne equally by the Plaintiff and Defendant No.1. It was further mentioned that Defendant No.1 had also received half of the cost of registration from the Plaintiff and furthermore, the responsibility to receive the NOC would be of Defendant No.1. Paragraph No.4 mentions that Saeeduddin–Defendant No.2 was residing on the third floor of the suit property which Defendant No.1-Ghulam Mohiuddin would get vacated and ensure that physical possession is delivered to the Plaintiff-Rehan Ahmed prior to registration. Further, the rent notes executed by the tenants who are presently occupying the suit property, would be executed by the tenants in favour of Rehan Ahmed. One Ahsan Ahmed has been impleaded as proforma defendant in respect of whom it was stated in paragraph No.5 of the Compromise Deed that he had relinquished his entire right to the property in favour of the Plaintiff–Rehan Ahmed through a Deed of Relinquishment dated 28.06.1977 which was accepted by the Court vide order dated 28.09.1977. In paragraph No.6 it was stated that Defendant No.2-Saeeduddin admitted that he did not have the right to sell or execute the Agreement to Sell but now Defendant No.1, who was the real owner of the suit property, admits this agreement. Therefore, there is no hindrance in passing the compromise decree. The property was also described in the Compromise Deed to be a *pacca* house comprising of three stories and one *chawk* including the entire internal houses of the three storeys and five shops

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outside along with the staircase adjoining the shops. The house was numbered as 54/1 in the municipal records, whereas the five shops were numbered as 52, 53, 55, 56 and 57. Thus the entire property in question including the house of the five shops having municipal numbers 52 to 57 (except 54), Circle No.1.

5. The Addl.District & Sessions Judge, Court No.1, Jaipur City, Jaipur proceeded with the compromise and required the same to be duly verified for which due time was granted to the parties. On 09.05.1979, initially the suit was dismissed in the absence of the Plaintiff. However, on the same date, upon an application being filed, the case was again taken up on board. The Trial Court recorded that Rehan Ahmed and that Mohiuddin (Defendant No.1) had executed the compromise. The Plaintiff (Rehan Ahmed) further stated that he does not want to pursue any proceedings against Saeeduddin and also Ahsan Ahmed-Defendant Nos.2 and 3, as such the suit was dismissed against Saeeduddin and Ahsan Ahmed. It was decreed against Ghulam Mohiuddin as per the compromise. Accordingly, a decree was drawn. As per the decree, when the defendant did not execute the Sale Deed, the Plaintiff -Decree holder initiated the proceedings for execution. In the execution proceedings Defendant No.1 Ghulam Mohiuddin filed objections stating that the Plaintiff had not paid the balance sale consideration, and had allowed substantial time to pass for about six to seven years, during which time the value of the property had doubled and as such the decree could not be executed now on account of the default of the Plaintiff-Decree holder. These objections were dismissed by the Executing Court by a detailed order dated 09.12.1998 on the findings that before the registration of the Sale Deed, Defendant No.1 was required to fulfil his obligations which included getting the third floor vacated, getting the NOC and also getting the rent deeds transferred in the name of the Plaintiff. As such there was no default on the part of the Plaintiff. In the meantime, the Defendant No.1 Mohiuddin died. The order dated 09.12.1998 was challenged by one General Tariq, s/o. Defendant No.2- Saeeduddin and legal heir of Defendant No.1 Gulam Mohiuddin, claiming rights under a sale executed by Defendant No.1 Mohiuddin by way of S.B.Civil Revision Petition No.55 of 1999. The said revision came to be dismissed by the High Court vide order dated 02.06.2006. General Tariq preferred a Special Leave Petition before this Court registered as S.L.P.(C) No.12463 of 2006, which

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came to be dismissed by this Court vide order dated 11.08.2006. With the dismissal of the Special Leave Petition the innings of the objections under Section 47 CPC filed by the Judgment-debtor – Defendant No.1 Mohiuddin came to an end. General Tariq, s/o. Defendant no.2- Saeeduddin did not carry the matter any further by way of review or otherwise before this court. However, a new round of objections under Section 47 CPC came to be initiated by respondent no.1 – Akhtar Un Nisa, wife of Defendant No.2-Saeeduddin and the mother of General Tariq. The objections by respondent No.1 Akhtar Un Nisa are to the following effect:

- I. The decree dated 09.05.1979 is without jurisdiction and a nullity;
 - II. The property in the suit was a joint property of Ghulam Mohiuddin and Saeeduddin– Defendants No. 1 and 2 respectively;
 - III. The suit having been filed as against both the brothers, the compromise deed could not have been arrived at between the Plaintiff and Defendant No.1 alone;
 - IV. The Trial Court could not have accepted the settlement/ compromise between the Plaintiff and Defendant No.1 regarding Defendant No.2 vacating the third story of the house in question and the rent notes being transferred in favour of the plaintiff.
 - V. Since there was no decree against Saeeduddin, as such Decree holder could not have any right of getting possession of the portion of the property which was admittedly in possession of Saeeduddin and owner. Further, the tenants of Saeeduddin in the disputed property were tenants of the applicant-objector Akhtar Un Nisa-respondent no.1.
6. The Executing Court, vide judgment and order dated 03.05.2007, dismissed the objections under Section 47 CPC filed by Smt.Akhtar Un Nisa.
 7. Aggrieved by the same, Smt.Akhtar Un Nisa preferred a revision before the High Court which has since been allowed by the impugned order giving rise to the present appeal.
 8. After careful consideration of the arguments presented by both sides, this Court believes that the High Court erred in setting aside the Executing Court's order dated 09.12.1998 and in declaring the Trial Court's decree dated 09.05.1979 void. The High Court's

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decision appears to be based on several incorrect assumptions and observations.

9. The core of the High Court's reasoning rests on the erroneous assumption that the property was jointly owned by Defendants No. 1 and No. 2, and that the absence of Defendant No. 2's signature on the compromise dated 11.05.1978 invalidated the decree. However, Defendant No. 2 has consistently acknowledged that he had no ownership rights over the property. In his written statement to the Trial Court in Suit No. 13/72, he explicitly stated that the property belonged solely to Defendant No. 1. This was further supported by a family arrangement dated 17.09.1976 and reinforced in Paragraph 6 of the compromise deed. The compromise, signed by Defendant No. 1 and the plaintiff and later verified by Defendant No. 2 through an application dated 14.05.1979, substantiates that Defendant No. 1 was the sole owner. These facts were upheld by the High Court and this Court in previous proceedings. During the challenge to the execution proceedings filed by General Tarik before the High Court, the High Court vide order dated 11.8.2006 had also recorded the finding that Defendant no.2 did not have ownership rights over the suit property which fact was also upheld by this Court. Defendant no. 2 had limited rights of being in possession of the third floor of suit property. Due to the aforesaid reasons, the Plaintiff and Defendant no. 1 were the only necessary parties needed for the compromise dated 11.05.1978 as Defendant no.1 was the sole owner of the suit property.
10. The High Court also incorrectly held that the provisions of Order XXIII, Rule 3 of the CPC were not adhered to, claiming that the Trial Court failed to properly verify the compromise. It is essential to clarify that the compromise was indeed reached on 11.05.1978, with its verification delayed due to various adjournments caused by the absence or illness of Defendant No.1 and other procedural delays. On 09.05.1979, a fresh compromise application containing identical terms was submitted and duly signed by both parties due to the original being misplaced. The Trial Court then correctly recorded and verified this compromise, fulfilling the requirements of Order XXIII, Rule 3 of the CPC.
11. It must be made clear that the compromise between the Plaintiff and Defendant no. 1 was arrived on 11.05.1978 and it was only the procedural requirements of Order XXIII Rule 3 of verifying and the

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compromise before the Court which were eventually completed on 09.05.1979. A perusal of the record of proceedings before the Trial Court reveals that verification of the terms of the compromise was attempted on 11.05.1978 but was not possible as Defendant No.1 was not present. Moreover, on subsequent dates being 11.5.1978, 24.07.1978, 31.01.1979 and 20.03.1979, either due to the illness of Defendant no.1 or due to the Presiding Officer not being present, there were various adjournments before the Trial Court. Finally, on 09.05.1979, Gulam Mohiuddin appeared before the Court and the parties submitted a fresh compromise application was filed because the earlier compromise application submitted on 11-05-1978 was not traceable on the record of the Court containing the same terms and conditions as in the compromise application earlier filed on 11.05.1978. The said application was also duly signed by both the parties. On the basis of the said compromise presented on 09.05.1979, the Trial Court took the compromise application on record, verified the fresh compromise application fulfilling all the terms and conditions of Order XXIII Rule 3 CPC. The terms and conditions of the compromise were read over to the parties and were accepted by them and the signatures of the parties were taken on the compromise application by the Court and thereafter the Court recorded its satisfaction on the compromise application, which is on the record of the Trial Court. The decree dated 09.05.1979 was passed based on this compromise.

12. As far as the terms of the compromise are concerned, which have also been questioned by the High Court, the agreement stipulated that Defendant No. 1 was to execute and register the sale deed in favor of the plaintiff by 01.07.1978, after receiving balance payment of Rs 25,000/-. The decree's execution was contingent upon Defendant No. 1 fulfilling conditions such as obtaining the NOC and ensuring Defendant No. 2 vacating the portion of the property in question in his possession. The recording of the compromise and the consequent decree on 09.05.1979, although appearing procedurally delayed, adhered to the process required under CPC.
13. Furthermore, the High Court overlooked the fact that General Tarik, legal heir of Defendant No. 2, had previously objected to the execution proceedings, which was dismissed on 09.12.1988. Subsequent appeals before the High Court, including a Special Leave Petition to this Court, were also dismissed. Therefore, similar objections by Respondent No. 1, Smt. Akhtar Un Nisa, in her capacity as one of

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the legal heirs of Defendant No. 2 would not be maintainable and would amount to abuse of process of law.

14. In light of the reasons recorded above, this Court finds merit in the appellant-plaintiff's argument and holds that the Executing Court had rightly rejected the objections under Section 47 CPC filed by Smt. Akhtar Un Nisa vide order 03.05.2007.
15. Accordingly, the appeal is allowed. The impugned judgement of the High Court is set aside, and the Executing Court's order dated 03.05.2007 is restored and the objections of Respondent no.1 under Section 47 of the CPC stand rejected.
16. There shall, however, be no order as to costs.

Headnotes prepared by: Nidhi Jain

Result of the case:
Appeal allowed.