

HIGH COURT OF MADHYA PRADESH : JABALPUR

SB : HON'BLE MS. JUSTICE VANDANA KASREKAR.

Civil Revision No.217/2015

Mukesh and Others

vs.

Dharam Singh & Others

Shri Ankit Saxena, learned counsel for the petitioners.
Mohammad Ali, learned counsel for respondent no.1.

ORDER
(11/04/2017)

The petitioners have filed this revision under Section 115 of CPC challenging the order dated 02.03.2015 passed by Ist Additional District Judge, Astha in Civil Suit No. RCS 2-A/2012.

2. Respondent no.1 had filed a civil suit for declaring the judgment and compromise decree dated 31.10.2008, as not binding on the plaintiff and consequential relief of injunction.

3. The petitioners/defendants no.11, 17 & 18 filed their written statement and also filed an application under Order 23 Rule 3(a) of CPC, stating that the suit is not maintainable as the compromise decree cannot be challenged by way of separate suit. The Court below had framed the issues and decided the preliminary issue "whether the suit is maintainable" and "whether the court is having the jurisdiction to hear the suit". The learned court below had decided both the issues in favour

of the respondents and close the right of the petitioners to file the written statement. Being aggrieved by that order, the petitioners have filed the present revision.

4. Learned counsel appearing on behalf of the petitioners submit that the trial Court has erred in holding that as the previous Court was not competent to decide the suit and therefore, the suit which is filed before this Court is competent to decide the same. He further submits that as per the provisions of Order 23 Rule 3(a) of the CPC, the suit for setting aside the compromise decree is maintainable only before the Court who passed the compromise decree and not to any other Court. He further argues that the respondents had valued the suit on the basis of sale consideration of the year 2010. He further relied on the judgment passed by the Apex Court in the case of ***Pushpa Devi Bhagat (D) by LR Vs. Rajinder Singh and Ors*** reported in ***AIR 2006 SC, 2628*** as well as the judgment passed by Division Bench of this Court in the case of ***Brajesh Kumar Awasthi and Anr Vs. State of M.P. and Ors.*** reported in ***AIR 2007 Madhya Pradesh, 139*** .

5. On the other hand, learned counsel appearing on behalf of the respondents supports the order passed by the trial court. He submits that the previous Court which have passed the compromise decree is not competent to decide the suit and, therefore, the subsequent suit for setting aside the compromise decree is not maintainable before the previous Court. He submits that looking to the sale consideration of sale-deeds i.e. 95,000/- and 75,000/- respectively, the Court of Civil Judge Class-I was not competent to decide the suit. In view of the

aforesaid, he submits that the trial Court has not committed any error in deciding this preliminary issue in favour of the respondent.

6. I have heard learned counsel for the parties and perused the record as well as the order passed by the trial Court. Rule 3 of Order 23 deals with withdrawal and adjustment of the suits. The said rules reads as under:-

(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 as decree in accordance therewith [so far as 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 not 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.]

7. As per the said rule the parties can entered into the compromise wholly or in part by any lawful agreement and compromise [in writing and signed by the parties]. The Court shall order such agreement or

compromise to be recorded and pass the decree accordance therewith. However, if any party is aggrieved by the said compromise decree then for setting aside the compromise decree, party 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. Thus, the party wants to set aside the compromise decree on the ground of fraud or any other ground which has been given under Order 23 of the CPC can file an application for setting aside the compromise decree before the Court who passes the decree. The Apex Court in the case of *Pushpa Devi Bhagat (D) by LR Vs. Rajinder Singh and Ors* reported in *AIR 2006 SC 2628* in paragraph 12 has held as under-:

12. 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) 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 3A.

(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 of 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 with 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.

8. The Division Bench of this Court also passed an order in the case of *Brajesh Kumar Awasthy (supra)* has held as under:-

“11. The Court before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that Court has to decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3 and as such not lawful. The learned subordinate Judge was perfectly justified in

entertaining the application filed on behalf of the appellant and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the Court could have recorded such agreement or compromise on February 27, 1991. Having come to the conclusion on the material produced that the compromise was not lawful within the meaning of Rule 3, there was no option left except to recall that order.”

9. In light of both the judgments the suit for setting aside the compromise decree is to be filed before the Court which passes the compromise decree. However, in the present case, the suit has been filed for setting aside the compromise decree as well as for setting aside the sale-deeds dated 19.04.1993 and 12.04.1993 and the sale consideration of these sale-deeds is Rs.95,000/- and 75,000/- respectively. Thus, looking to the valuation of the said sale-deeds, the Court of Civil Judge Class-I was not a competent Court to decide the suit and pass a compromise decree. Thus, the trial Court has rightly decided the said issues in favour of the respondents.

10. In view of the aforesaid, I do not find any reason to interfere into the order passed by the trial court. Thus, the revision filed by the petitioners is hereby dismissed.

(MS. VANDANA KASREKAR)
JUDGE

C.R. No.217/2015