

the impugned order, dismissed the second appeal.

3. Following are the facts leading to the Civil Suit in question:

On 27.12.1979, Mansha Ram, Dev Raj, Khazana Ram, Ramji Das and Bihari Lal (hereinafter referred as “Mansha Ram and others”) filed a suit (Civil Suit No. 43 of 1983) for declaration and permanent injunction against Julfi Ram, Tihru Ram, Bakshi Ram- all three are sons of Khajana, Prem Chand-son of Julfi Ram, Kartar Chand-son of Bakshi Ram and Dharam Singh son of Nighu. Plaintiffs were the landowners and defendants were the co-tenants of the land. The Plaintiffs sought a declaration that they are owners in possession of suit land measuring 7 kanals 9 marlas. They also sought permanent injunction restraining defendants from interfering in the land in suit. The defendants contested the suit and stated that they are in cultivatory possession as tenants on payment. Thus, they claimed to be owners by virtue of tenancy.

4. Trial Court by order dated 11.04.1983, decreed the suit in favor of plaintiffs- Mansha Ram & others granting them both the reliefs of declaration and permanent injunction by holding that they are owners in possession. Aggrieved, all six defendants preferred an appeal before the District Judge. As one of the plaintiffs -Dev Raj had died during the pendency, his widow Asha Devi and his son Suresh Kumar were arrayed as Respondents in the First Appeal.
5. During the pendency of appeal, on 22.08.1983 Mansha Ram and others executed a sale deed in favour of Kartar Chand, Sansar Chand and Rajinder Kumar- three sons of Bakshi Ram for consideration of Rs. 12,500/-. The first Appellate Court, by order dated 20.08.1984, allowed the appeal, setting aside the decree of Trial Court in light of statements made by plaintiffs before the court. It noted that 'the plaintiffs have compromised the case and stated that they do not want to pursue with the suit and it to be dismissed.' Before the first Appellate Court, Julfi Ram, Tihru Ram, Bakshi Ram,

Prem Chand and Kartar Singh made a joint statement on 20.06.1984 that they have reached a settlement with Respondents. They have also paid money to Mansha Ram and others and they shall be the owners and hold possession of the land in dispute. Thus, Suit filed by Plaintiffs be dismissed. Dharam Singh-son of Nighu recorded a separate statement to the same effect. On the other hand, Bihari Lal, Suresh Kumar (son of Devraj and holder of General power of attorney of Asha Devi), Ramji Das and Dhyan Chand made a statement that they have reached a settlement and have received money. Thus, possession and ownership of the land shall be with appellants/defendants. Mansha Ram and Khazana Ram also recorded their statements on 20.06.1984, that they have reached a settlement and the suit may be dismissed. These four statements are on record of the High Court and of this Court.

6. Appellants submit that Bakshi Ram's three son got exclusive possession and mutation in revenue records by virtue of the sale deed dated

22.08.1983. However, the Respondents submit that by virtue of dismissal of suit by first Appellate Court, all four brothers- Julfi, Tihru, Bakshi and Nighu became owners and the sale deed executed in favour of the three sons of Bakshi Ram shall be subject to compromise decree passed by first Appellate Court.

7. On 23.02.1988, the present suit (Civil Suit No. 41 of 1988) was instituted by Respondents/Plaintiffs- Julfi Ram, Prem Chand, Dharam Singh, Premi Devi, Atmi Devi, Asha Devi, Subhash Chand and Gian Chand- two sons of Nighu represented by their mother Premi Devi (hereinafter referred as “Julfi Ram and others”) against appellants/Defendants- Bakshi Ram(since deceased), Tihru Ram, Amro Devi (wife of Bakshi Ram), Sansar Chand, Kartar Chand, Rajinder Kumar (minor son of Bakshi Ram), Mansha Ram, Khazana Ram, Ramji Das, Bihari Lal and Asha Devi- widow of Suresh Kumar (hereinafter referred as “Bakshi Ram and others”). Thus, the erstwhile owners Mansha Ram and others were also impleaded as defendants. The suit was filed for declaration

and permanent prohibitory injunction claiming that plaintiffs are owners in possession of half share i.e. 3 kanals 15 marlas in the suit land as per the compromise between parties in Civil Appeal decided by District Court on 20.08.1984. Plaintiffs also stated that they continued to be in possession and they were cultivating the land. However, in June 1987 the defendants started interfering with the land in suit stating that they have purchased the land and plaintiff cannot continue to cultivate. Only at this stage plaintiffs claim to have received knowledge about mutation entries where only the names of defendants have been recorded.

8. On the other hand, defendants (Bakshi Ram and others) submitted a written statement on 28.01.1992, contending that there was no compromise in earlier proceedings since no compromise deed was executed and placed on record before the Court in appeal. They also claimed that they have spent Rs. 9,000/- on improvement of suit land after the purchase.
9. The Trial Court, by order dated 19.12.1992, dismissed the suit. It held that for proceeding

under Order XXIII Rule 3 of Code of Civil Procedure, 1908¹ the existence and production of written compromise between the parties duly signed by them is most important. It relied upon the ruling of this Court in ***Gurpreet Singh vs Chaturbhuj Gopal***². Since the said compromise was not presented in written form duly signed by the parties, the mandate under Order XXIII Rule 3 CPC is not fulfilled and thus it lacks legal force. The Trial Court also held that statements before the District Court cannot be treated as agreement or compromise. On the fact of possession, the Trial Court noted that plaintiffs could not prove that they were in possession and in cultivation of the land in suit as pleaded.

10. As the Trial Court dismissed the suit, Julfi Ram and others preferred Civil Appeal No.17/1993 before the District Judge, Hamirpur. By order dated 21.12.2001, the District Judge, allowed the appeal thereby decreeing the suit. It held that the Trial Court

¹ CPC

² AIR 1988 SC 400.

had no occasion to comment upon the legality of compromise because neither parties challenged the compromise decree by filing an appeal under Order 43 Rule 1-A of CPC. Thus, it operated as *res judicata* and could not have been re-opened in a subsequent suit. The said compromise would be binding on parties. On merits, it observed that the sale was clandestinely executed by the vendors (Mansha Ram and others) in favour of sons of Bakshi Ram. It further stated that even if the sale deed is considered to be valid, the same cannot be allowed to be acted upon as it has been executed during the pendency of Civil Appeal No. 64 of 1993 between the parties.

11. The Appellants/defendants preferred a Regular Second Appeal No. 55 of 2002 before the High Court. The High Court, by the impugned order, dismissed the same and confirmed the decree passed by the first Appellate Court dated 21.12.2001. The High Court held that execution of sale deed does not either abrogate, detract or dilute the effect of a previous conclusive determination comprised in

the decree of 1984. Thus, the rights of plaintiffs remained intact to the extent of one-half share in the suit land. The sale deed is thus hit by the doctrine of *lis pendens*.

12. We have heard learned counsel for the parties and perused the material on record. The question to be determined in the present case is as to what is the status of the so called compromise order dated 20th August 1984 in the first round of litigation. The plaintiffs in the second round of litigation were the defendants whereas the Mansha Ram and others were plaintiffs in the first round of litigation. The first suit was for declaration and for permanent injunction on account of interference by the defendants therein. The plaintiffs were already recorded in the revenue records. Their suit was decreed by the Trial Court on 11.04.1983. At the time of execution of sale deed, on 22.08.1983, in favour of present appellants (defendants in second suit, Mansha Ram and others) were fully competent to execute the sale deed. It is true that when the said sale deed was executed, the

first appeal was pending before the first Appellate Court.

13. Before the first Appellate Court, the plaintiff-respondent therein Bihari Lal gave a short statement to the effect that they had reached a settlement, received money and that possession and ownership of the land would be with the appellants. Mansha Ram and Khazana Ram stated that they had reached a settlement with the appellants, they agreed to the statement of the appellant that suit may be dismissed. At the same time appellants Julfi Ram and others stated that they have reached a settlement with the respondents, they had paid money to Mansha Ram and others, that they shall be owners in possession of the land in dispute and that the suit be dismissed.

14. Based on these statements, the District Judge, Hamirpur by order dated 20.08.1984 accepted the appeal, set aside the judgement and decree of Trial Court and dismissed the suit. It further directed that decree sheet be prepared and file be consigned to the record. The effect of this decree would be that the suit

of the plaintiffs was dismissed. No declaration was granted to the defendants in the said suit. There was no written compromise deed between the parties, there was no verification as such of any written document.

15. At best, under the alleged compromise order of dismissal of suit the defendants therein could have claimed to be in possession of the land in suit and no further. The ownership could not have been transferred because of the dismissal of the suit. Even assuming for the sake of argument that ownership rights were also transferred under the alleged compromise deed, the sale deed executed prior to the said compromise will not be affected in any manner as the plaintiffs were not only recorded as land owners but also had a decree of declaration and permanent injunction in their favour at the time when sale deed was executed.

16. The defendants, in the first round of litigation, were admittedly tenants. They could have become owners of the land in suit either by way of a registered sale deed in their favour or by way of a declaration by the Competent Civil

Court whether on merits or by way of a compromise decree granting such declaration. Neither of the two happened. Merely because some statement of the parties is recorded by the first Appellate Court that they have settled the dispute and that the suit may be dismissed, would not make the defendants therein from tenants to owners. Dismissal of the suit would only mean that their status as tenants would continue.

17. The first Appellate Court and the High Court failed to consider that there was no challenge to the sale deed dated 22.08.1983. The doctrine of *lis pendens* or the restriction imposed under section 52 of the Transfer of Property Act, 1882³ may not be relevant or applicable in present case considering the fact that one of the parties- plaintiffs in the proceedings and respondents in pending appeal having executed the sale deed during the pendency of appeal, by their subsequent conduct of giving a statement that their suit be

³ The TP Act.

dismissed, acted in dishonest and unfair manner. They were fully aware of having executed the sale deed, their subsequent statement would only be termed as collusive and dishonest. The order in the appeal court was not a decree on merits declaring any rights of the defendants to the suit (appellants in the appeal). In such circumstances, the sale deed dated 22.08.1983 could not be said to be hit by doctrine of *lis pendens*.

18. At this juncture, it would be appropriate to note the judicial decision which has been relied upon by the appellants to substantiate their claim that the sale deed is not hit by Section 52 of the TP Act. In ***Thomson Press (India) Ltd. v. Nanak Builders & Investors (P) Ltd.***⁴ it was held that transfer of suit property *pendente lite* is not *void ab initio*, as it remains subservient to the pending litigation. The purchaser of any such property takes the bargain subject to the rights of the plaintiff in pending suit. Therefore,

⁴ (2013) 5 SCC 397.

in the present case the sale deed dated 22.08.1983 is not hit by section 52 of the TP Act.

19. Referring to the second submission of the respondents regarding the compromise decree being valid in law, at the outset, Order XXIII Rule 3 CPC is reproduced:

“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 1 [in writing and signed by the parties] or where the defendant satisfied the plaintiff in respect to 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 2 [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.]

[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.]”

20. A plain reading of the above provision clearly provides that for a valid compromise in a suit there has to be a lawful agreement or compromise in writing and signed by the parties which would then require it to be proved to the satisfaction of the Court. In the present case there is no document in writing containing the terms of the agreement or compromise. In the absence of any document in writing, the question of the parties signing it does not arise. Even the question of proving such document to the satisfaction of the Court to be lawful, also did not arise. Thus, it cannot be said that the order dated 20.08.1984 was an order under Order XXIII Rule 3 CPC.

21. Once it is held that the order dated 20.08.1984 was not an order of compromise of suit under Order XXIII Rule 3 CPC the argument relating to applicability and bar under Order XXIII Rule 3A CPC would have no relevance at all.

22. Additionally, we must also note the case of ***Som Dev v. Rati Ram***⁵ as presented by the appellants to clarify the rigors of Order XXIII Rule 3 of CPC. In this case, it was clarified by this Court that after the amendment of Code of Civil Procedure in 1977, a compromise decree can be passed only on compliance with the requirements of Rule 3 of Order XXIII, otherwise it may not be possible to recognize the same as compromise decree. When a compromise is to be recorded and a decree is to be passed, Rule 3 of Order XXIII of the Code requires that the terms of compromise should be reduced to writing and signed by the parties.

23. In the present case, neither the compromise deed has been reduced to writing, nor it is recorded by the court. Mere statements of the parties before court about such said compromise, cannot satisfy the requirements of Order XXIII Rule 3 of the CPC. Therefore, the compromise decree is not valid.

⁵ (2006) 10 SCC 788.

24. In view of the above analysis, the present Civil Appeal is allowed, the orders passed by the High Court and first Appellate Court are set aside. The judgment and decree of Trial Court dated 19.12.1992 dismissing the suit is confirmed.

25. Pending application(s), if any, is/are disposed of.

.....**J.**
(VIKRAM NATH)

.....**J.**
(PRASHANT KUMAR MISHRA)

NEW DELHI

JULY 15, 2024