JINESHWARDAS (D) THROUGH LRS. AND ORS. A

v.

SMT. JAGRANI AND ANR.

SEPTEMBER 26, 2003

[DORAISWAMY RAJU AND ARIJIT PASAYAT, JJ.] B

Code of Civil Procedure, 1908 :

Order XXIII, Rule 3 read with Order III Rule 1—Compromise of suit—Dispute settled in second appeal on basis of admission made by counsel for parties—Held, while construing the words "in writing and signed by the parties" as inserted in Rule 3 of Order XXIII by CPC (Amendment) Act, 1976, effect necessarily has to be given to Rule 1 of Order III—Besides, a judgment or decree passed as a result of consensus arrived at before court cannot always be said to be one passed on compromise—It may at times be a judgment on admission, as in the instant case. C D

Words and Phrases :

Words "in writing and signed by the parties"—Occurring in r.3 of Order XXIII, CPC—Connotation of. E

Predecessor-in-interest of the appellants filed a suit against the respondents for specific performance and recovery of possession on the basis of an alleged agreement of sale of immoveable property. The defendants' stand was that the said document constituted no agreement of sale. The trial court dismissed the suit. The first appellate court affirming the decision, held that there was no agreement of sale and it was only an agreement to repay. However, in second appeal though questions of law were framed, counsel for the parties agreed to amicably settled the matter and in view of the admission made by counsel for the respondents, that respondent would pay a certain amount to the appellants, the High Court disposed of the matter accordingly. The appellants filed a review petition contending that the decision in the second appeal was a compromise decree, but the compromise was not entered into "in writing and signed by the parties" in terms of order XXIII, Rule 3 CPC. The High Court rejected the F G H

review.

In the present appeal filed by the appellants, it was contended for the respondents that before the High Court the counsel appearing for the parties were duly authorized to argue the second appeal on merit and, if necessary, compromise the same.

Dismissing the appeal, the Court

HELD : 1. While construing the words "in writing and signed by parties" as inserted in Rule 3 of Order XXIII of the Code of Civil Procedure, 1908 by C.P.C. (Amendment) Act of 1976, effect necessarily has to be given to Rule 1 of Order III of the Code. That apart, a judgment or decree passed a result of consensus arrived at before court, cannot always be said to be one passed on compromise or settlement and adjustment. It may, at times, be also a judgment on admission, as in this case. [185-F-H, 186-A-B]

Byram Pestonji Gariwala v. *Union Bank of India & Ors.*, [1992] 1 SCC 31, relied on.

Gurpreet Singh v. *Chatur Bhuj Goel,* [1988] 1 SCC 270, relied on.

2. Considering the fact and circumstances of the case, there are no adequate reasons on merits also to call for interference in a second appeal. The so-called questions formulated cannot be considered to be even questions of law and, at any rate, not substantial questions of law, as required under Section 100, CPC. The courts below have concurrently rejected the claim of the plaintiff/appellants on pure findings of fact based upon relevant evidence and nothing survived for consideration at all in such an appeal. Further, respondents side alone appears to have been saddled with additional liabilities under the decision of the High Court, though on the basis of admission made by counsel appearing for the parties. There is nothing said against the counsel, who appeared for parties; nor allegations have been made attributing any impropriety to their action. [186-C-E]

CIVIL APPELLATE JURISDICTION : Civil Appeal Nos. 8104-8105 of 2003.

From the judgment and Order dated 9.5.2002 of the Madhya Pradesh High Court in S.A. No. 693/96 and M.C.C. No. 622 of 2002. A

Prakash Shrivastava for the Appellants.

A.K. Sanghi for the Respondents. B

The Judgment of the Court was delivered by

D. RAJU, J. : Special leave granted.

The appellant before this Court was the appellant in Second Appeal No. 693 of 1996 on the file of the Madhya Pradesh High Court at Jabalpur. C The original plaintiff Jineshwardas, whose legal representatives are the appellants in this Court, filed the Civil Suit No.102-A of 1980 before the Court of IV Civil Judge Class-I, Jabalpur, seeking for a decree for specific performance and recovery of the possession of the suit land or in the alternative, damages at market value as may be proved for non-performance D of the contract and for recovery of Rs. 2500 paid by the plaintiff as deposit. The defendants disputed the suit claim by attributing fraud and undue influence as vitiating the agreement stating that it was opposed to public policy as well and really constituted no agreement of sale of immovable property. After trial and on consideration of the materials on record, the E suit filed was dismissed. The matter was pursued on appeal before the VIth Additional District Judge, Jabalpur, and the learned First Appellate Judge also, after an elaborate consideration of the evidence on record, affirmed the findings of the learned Trial Judge by holding that the suit agreement cannot be considered as an agreement for sale of the land. The First F Appellate Judge also noticed the specific fact that the father of the plaintiff was a practicing Advocate and it is in respect of certain amounts spent for the litigation only, the agreement came to be executed and that it was merely an agreement to repay and not to convey the property itself. On that view of the matter, while partly allowing the appeal and affirming the judgment of the Trial Judge denying specific performance and recovery G of possession, decreed the claim of the plaintiff to receive the sum of Rs. 2,500 with interest from 18.8.1963 till the date of filing of the suit, namely, 28.8.1975, at Re.1 per month and thereafter interest at the rate of paise 50 per month. Aggrieved, the matter appears to have been pursued further before the High Court by means of a Second Appeal. From the copy H

A of the order-sheet filed relating to the order made at the time of entertaining the appeal when it came up for admission, it is seen that the Second Appeal was admitted on 27.2.1998 on the following questions of law:-

> 1) Whether the courts below were in error in holding that the
B agreement dated 23.4.63 (Ex. P.2) was not a genuine agreement to sell the property in suit and the same is not enforceable?
>
> 2) Whether the Court below was right in non-suiting the plaintiff also on the ground of limitation?"

C Thereupon, when the Second Appeal came up before the Court for final hearing, before another learned Single Judge, the following order came to be passed on a consensus expressed by both the learned counsel before the High Court at the time of hearing. It would be useful and necessary to set out the said order:-

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> "Both the counsel are in agreement to settle the matter. The learned counsel for the respondents submits that respondents will pay an amount of Rs. 25,000 to the appellant within a period of one month, otherwise it will carry interest at the rate of 12% per annum from the date of today. On this agreed submission, this
E appeal is decided and judgment and decree passed by the court below is modified to this extent.
>
> 1. The respondents will pay Rs. 25,000 (Rupees twenty five thousand) to the appellants within a period of one month.
>
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> 2. If this amount is not deposited in the Court on or before 10th June, 2002, the above amount will carry interest @ 12% per annum till its realization.
>
> 3. Cost of the litigation will be borne by both the parties.
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> The appeal is disposed of in view of the above said agreed submissions."

Thereupon, the appellants seem to have filed an application for
H review contending that the order passed on 9.5.2002 disposing of the

appeal is nothing but a compromise decree and since the compromise could, if at all, had been entered into only under Order 23 Rule 3, CPC, and the one in this case has not been so entered into in writing and signed by the parties, the same is not to be made the basis for disposal of the appeal and submissions, if any, made in this regard by the counsel appearing for the appellants in the High Court was without any instructions of the appellants. The learned Judge by an order dated 15.7.2002 rejected the review application observing that the aforesaid settlement was arrived at between the parties in the Court at the time of hearing and if the applicants are aggrieved, they may take appropriate action under law but no case for review has been made out. At this stage, the above appeal has been filed.

Pursuant to the notice ordered, the respondents entered appearance and have filed their counter affidavit contending that in the teeth of the factual findings made by both the courts below that the transaction was not one for sale of any property, there was no merit in the claim to be effectively adjudicated in the appeal before the High Court, that the counsel appearing were duly authorized by their respective parties to argue the Second Appeal on merits and, if necessary, compromise the same and the counsel on either side, who have expressed such a desire to settle, being Advocates of repute with a long standing of more than 35 years at the bar, could not be attributed with any motive and in the absence of any concrete material to show that something illegal has been done, the appellants cannot take advantage of hyper-technicalities to avoid the decree in the Second Appeal, which, if at all, is really more in favour of the appellants in the teeth of the concurrent findings recorded by the courts below.

The learned counsel for the appellants strongly placed reliance upon the decision of this Court reported in *Gurpreet Singh* v. *Chatur Bhuj Goel,* [1988]1 SCC 270, to contend that in the absence of compliance with the provisions contained in Order 23 Rule 3, CPC, the judgment of the High Court could not be sustained. The learned counsel for the respondent reiterated the stand taken in the counter, noticed supra.

We have carefully considered the submissions of the learned counsel appearing on either side. Though, in *Gurpreet Singh's* case (supra) this Court explained the object and purport of Rule 3 of Order 23 CPC, by

A laying emphasis on the words, "in writing and signed by parties", to be necessitated in order to prevent false and frivolous pleas that a suit had been adjusted wholly or in part by any lawful agreement or compromise with a view to protract or delay the proceedings in the suit itself. It was also observed therein that as per Rule 3 of Order 23 CPC, when a claim in the B suit has been adjusted wholly or in part by any lawful agreement or compromise, such compromise must be in writing and signed by the parties and there must be a complete agreement between them and that to constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. The fact that the parties entered C into a compromise during the hearing of the suit or appeal was considered not to be sufficient to do away with the requirement of the said rule and that courts were expected to insist upon the parties to reduce the terms into writing. In *Byram Pestonji Gariwala* v. *Union Bank of India & Ors.*, [1992] 1 SCC 31, this Court while adverting to the very amendment in 1976 to Rule 3 of Order 23 CPC, noticed also the effect necessarily to be given D to Rule 1 of Order 3, CPC, as well and on an extensive review of the case law on the subject of the right of the counsel engaged to act on behalf of the client observed as follows:

> "37. We may, however, hasten to add that it will be prudent for E counsel not to act on implied authority except when warranted by the exigency of circumstances demanding immediate adjustment of suit by agreement or compromise and the signature of the party cannot be obtained without undue delay. In these days of easier and quicker communication, such contingency may seldom arise. F A wise and careful counsel will no doubt arm himself in advance with the necessary authority expressed in writing to meet all such contingencies in order that neither his authority nor integrity is ever doubted. This essential precaution will safeguard the personal reputation of counsel as well as uphold the prestige and dignity G of the legal profession.
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> 38. Considering the traditionally recognized role of counsel in the common law system, and the evil sought to be remedied by Parliament by the C.P.C. (Amendment) Act, 1976, namely, H attainment of certainty and expeditious disposal of cases by

reducing the terms of compromise to writing signed by the parties, A
and allowing the compromise decree to comprehend even matters
falling outside the subject matter of the suit, but relating to the
parties, the legislature cannot, in the absence of express words to
such effect, be presumed to have disallowed the parties to enter
into a compromise by counsel in their cause or by their duly B
authorized agents. Any such presumption would be inconsistent
with the legislative object of attaining quick reduction of arrears
in court by elimination of uncertainties and enlargement of the
scope of compromise.

C

39. To insist upon the party himself personally signing the agreement or compromise would often cause undue delay, loss and inconvenience, especially in the case of non-resident persons. It has always been universally understood that a party can always act by his duly authorized representative. If a power-of-attorney D
holder can enter into an agreement or compromise on behalf of his principal, so can counsel, possessed of the requisite authorization by vakalatnama, act on behalf of his client. Not to recognise such capacity is not only to cause much inconvenience and loss to the parities personally, but also to delay the progress of proceedings in court. If the legislature had intended to make such a fundamental E
change, even at the risk of delay, inconvenience and needless expenditure, it would have expressly so stated.

40. Accordingly, we are of the view that the words 'in writing and signed by the parties', inserted by the C.P.C. (Amendment) Act, F
176, must necessarily mean, to borrow the language of Order III Rule 1 CPC.

> "any appearance, application or act in or to any court, required or authorized by law to be made or done by a party G
> in such court, may except where otherwise expressly provided by any law for the time being in force, be made or done by the party in person, or *by his recognized agent, or by a pleader,* appearing, applying or acting as the case may be, on his behalf: H

A Provided that any such appearance shall, if the court so directs, be made by the party in person."

(emphasis supplied)

We are in respectful agreement with the above statement of law. B Consequently it is not permissible for the appellant, to contend to the contrary. That apart we are also of the view that a judgment or decree passed as result of consensus arrived at before court, cannot always be said to be one passed on compromise or settlement and adjustment. It may, at times, be also a judgment on admission, as in this case.

C Considering the fact and circumstances of the case, we find that there are no adequate reasons on merits also to call for interference in a second appeal. The so-called questions formulated cannot be considered to be even questions of law and, at any rate, not substantial questions of law, as required under Section 100, C.P.C. The courts below have concurrently D rejected the claim of the plaintiff/appellants on pure findings of fact based upon relevant evidence and nothing survived for consideration at all in such an appeal. Further, respondent side alone appears to have been saddled with additional liabilities under the decision of the High Court, though on the basis of admission made by counsel appearing for parties. There is nothing said against the counsel, who appeared for parties, and no allegations have E been made also attributing any impropriety to their action. Therefore, we are not persuaded to agree with the submissions made on behalf of the appellants.

The appeals, therefore, fail and shall stand dismissed. No costs.

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R.P. Appeals dismissed.