

[2012] 3 S.C.R. 1

HORIL

v.

KESHAV & ANR.

(Civil Appeal No. 776 of 2012)

JANUARY 20, 2012

[AFTAB ALAM AND RANJANA PRASAD DESAI, JJ.]

Code of Civil Procedure, 1908 – Or.XXIII, r.3-A – Suit – Maintainability – Appellant filed suit seeking declaration that decree passed by the Assistant Collector, Class-I, in a suit u/ ss.176, 178 and 182 of the Land Reforms Act was fraudulent, inoperative and not binding upon him – Allegation that decree passed by Assistant Collector was based on a fraudulent compromise petition – Defendants-respondents questioned the maintainability of the suit – Whether suit filed by appellant was barred in terms of Order XXIII Rule 3-A CPC – Held: A compromise forming the basis of the decree can only be questioned before the same court that recorded the compromise and a fresh suit for setting aside a compromise decree is expressly barred under Order XXIII Rule 3-A – However, in the instant case, the compromise decree alleged to be fraudulent was passed not by a civil court but by a revenue court in a suit u/s.176 of the Land Reforms Act – Revenue courts are neither equipped nor competent to effectively adjudicate on allegations of fraud that has overtones of criminality and the courts really skilled and experienced to try such issues are the courts constituted under the CPC – Further, under s.9 of CPC, the civil court has inherent jurisdiction to try all types of civil disputes unless its jurisdiction is barred expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority – Nothing in Order XXIII Rule 3-A bars the institution of a suit before the civil court even in regard to decrees or orders passed in suits and/or proceedings under

A *different statutes before a court, tribunal or authority of limited and restricted jurisdiction – In the facts of the case, provision of Order XXIII not a bar against the suit filed by the appellant – Uttar Pradesh Zamindari Abolition and Land Reforms Act, 1950 – ss. 176, 178, 182, 331 and 341 and Schedule II.*

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The appellant filed suit seeking a declaration that the decree passed by the Assistant Collector, Class-I, in a suit under sections 176, 178 and 182 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 was fraudulent, inoperative and not binding upon him. It was alleged that the decree passed by the Assistant Collector was based on a fraudulent compromise petition. The defendants-respondents questioned the maintainability of the suit raising the contention that it was barred under the provisions of Order XXIII Rule 3-A of CPC. The trial court dismissed the objection and held that the suit was maintainable. The defendants-respondents took the matter in revision which was dismissed by the District Judge. The respondents thereafter filed writ petition before the High Court which allowed the same holding that the suit filed by the appellant was not maintainable being barred in terms of Order XXIII Rule 3-A CPC.

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Allowing the appeal, the Court

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HELD: 1.1. A compromise forming the basis of the decree can only be questioned before the same court that recorded the compromise and a fresh suit for setting aside a compromise decree is expressly barred under Order XXIII Rule 3-A. The expression “not lawful” used in Rule 3-A of Order XXIII also covers a decree based on a fraudulent compromise hence, a challenge to a compromise decree on the ground that it was obtained by fraudulent means would also fall under the provisions of Rule 3-A of Order XXIII. [Para 6] [6-H; 7-A]

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1.2. However, a significant distinguishing feature in

this case is that the compromise decree which is alleged to be fraudulent and which is sought to be declared as nullity was passed not by a civil court but by a revenue court in a suit under section 176 of the U.P. Zamindari Abolition & Land Reforms Act, 1950. [Para 8] [9-B-C]

Banwari Lal v. Chando Devi (1993) 1 SCC 581: 1992 (3) Suppl. SCR 524 – distinguished.

2.1. Section 331 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 bars the jurisdiction of the civil court and provides that a suit under the Act can be entertained by no court other than that the courts specified in Schedule II to the Act. A reference to Schedule II would show that the court of original jurisdiction for a suit under section 176 of the Act for division of a holding of a Bhumidhar is Assistant Collector, First Class and the courts of First Appeal and Second Appeal are Commissioner and the Board of revenue respectively. Section 341 of the Act, of course, provides that unless otherwise expressly provided by or under the Act, the provisions of the Indian Court Fee Act, 1870, the Code of Civil Procedure, 1908 and the Limitation Act, 1963, including section 5 thereof would apply to the proceedings under the Act. [Para 9] [9-D-F]

2.2. Though the provisions of the Code of Civil Procedure have been made applicable to the proceedings under the U.P. Zamindari Abolition & Land Reforms Act, 1950 but that would not make the authorities specified under Schedule II to the Act as 'court' under the Code and those authorities shall continue to be "courts" of limited and restricted jurisdiction. [Para 10] [9-F-G]

2.3. Revenue courts are neither equipped nor competent to effectively adjudicate on allegations of fraud that has overtones of criminality and the courts really

A skilled and experienced to try such issues are the courts constituted under the Code of Civil Procedure. [Para 11] [9-H; 10-A]

B 3. It is also well settled that under section 9 of CPC, the civil court has inherent jurisdiction to try all types of civil disputes unless its jurisdiction is barred expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority. There is nothing in Order XXIII Rule 3-A to bar the institution of a suit before the civil court even in regard to decrees or orders passed in suits and/or proceedings under different statutes before a court, tribunal or authority of limited and restricted jurisdiction. In the facts of the case, the provision of Order XXIII shall not act as a bar against the suit filed by the appellant. The order of the High Court is accordingly set aside. As a consequence, the suit will be restored before the trial court. [Paras 12, 13] [10-B-D]

Case Law Reference:

E 1992 (3) Suppl. SCR 524 distinguished Para 7

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 776 of 2012.

F From the Judgment & Order dated 11.11.2003 of the High Court of Judicature at Allahabad in Civil Misc. Writ Petition No. 8107 of 1988 and order dated 16.02.2005 in Civil Misc. (Review) Application No. 40253 of 2004 in Civil Misc. Writ Petition No. 8107 of 1988.

G Virag Gupta, Pallavi Sharma, (for Praveen Swarup) for the Appellant.

Ujjal Singh, J.P. Singh, Parvinderjit Singh (for R.C. Kaushik) for the Respondents.

H The Judgment of the Court was delivered by

AFTAB ALAM, J. 1. Leave granted.

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2. This appeal is directed against the judgment and order dated November 11, 2003 passed by the Allahabad High Court by which it allowed the writ petition filed by respondent nos. 1 and 2, set aside the order passed by the District Judge, affirming the order of the Munsif, and held that the suit filed by the appellant was not maintainable being barred in terms of Order XXIII Rule 3-A of the Code of Civil Procedure.

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3. The appellant filed a suit (No. 43 of 1980) in the court of Munsif, Karwi (Banda) seeking a declaration that the decree passed by the Assistant Collector, Class-I, in a suit under sections 176, 178 and 182 of the U.P. Zamindari Abolition & Land Reforms Act was fraudulent, inoperative and not binding upon him. According to the appellant, the defendants had instituted the suit before the Assistant Collector in which his father namely Chunkai was made as one of the opposite party. In that suit, a compromise petition was filed on October 7, 1971 with the fake signature of Chunkai and on that basis a compromise decree finally came to be passed on April 25, 1979. It is the case of the appellant that no notice of the suit was ever served upon his father Chunkai. He never appeared in the proceeding and was not even aware of it. He did not sign any compromise petition and his alleged signature on the compromise petition dated October 7, 1971 was faked. He had died much earlier and was not even alive in 1979 when the decree was passed. The appellant, accordingly, sought a declaration that the decree dated April 25, 1979 passed by the Assistant Collector, Class-I, Karwi, may be cancelled or it may be declared as void *ab initio*, inoperative and not binding upon him.

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4. The defendants (respondents 1 and 2 before this Court) filed a written statement in which they questioned the maintainability of the suit as well. It was contended on their behalf that as the suit related to agricultural lands it was beyond the jurisdiction and competence of the civil court and it could

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A only be tried by the revenue authorities. The Munsif by his order dated October 1, 1985 upheld the defendants' objection and held that the suit was not maintainable before a civil court. Against the order passed by the Munsif, the appellant preferred an appeal (M.C.A.No.21 of 1985) which was allowed by the
B judgment and order dated April 14, 1987 passed by the Additional District Judge, Karwi, (Banda). The Additional District Judge rightly pointed out that the suit filed by the appellant was based on the allegation that the decree passed by the Assistant Collector was based on a fraudulent
C compromise petition and it did not involve any adjudication of rights or interests in the agricultural lands. Hence, the suit was maintainable before a civil court. It, accordingly, set aside the order passed by the Munsif and directed him to proceed with the suit in accordance with law.

D 5. When the matter came before the Munsif on remand, the defendants once again objected to the maintainability of the suit, this time raising the contention that it was barred under the provisions of Order XXIII Rule 3-A of the Code of Civil Procedure. The Munsif by his order dated January 7, 1988
E dismissed the objection and found and held that the suit was maintainable. The defendants-respondents took the matter in revision (Civil Revision No. Nil of 1988) which was dismissed by the District Judge, Banda, by his order dated February 17, 1988. Against the orders passed by the Munsif and the District
F Judge, the defendants preferred a writ petition before the High Court and the High Court, as noted above, allowed the writ petition holding that the suit was not maintainable. It is a brief order in which the High Court referred to the provisions of Order XXIII Rule 3-A, and relying upon a decision of the Allahabad
G High Court allowed the writ petition.

H 6. It is true that a compromise forming the basis of the decree can only be questioned before the same court that recorded the compromise and a fresh suit for setting aside a compromise decree is expressly barred under Order XXIII Rule

3-A. It is equally true the expression "not lawful" used in Rule 3-A of Order XXIII also covers a decree based on a fraudulent compromise hence, a challenge to a compromise decree on the ground that it was obtained by fraudulent means would also fall under the provisions of Rule 3-A of Order XXIII.

7. In *Banwari Lal Vs. Chando Devi* (1993) 1 SCC 581, this Court examined the provisions of Order XXIII Rule 3-A in some detail and in light of the amendments introduced in the Code and in paragraph 7 of the judgment came to hold as follows:

"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 Indian 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 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."

It further held in paragraphs 13 and 14 as follows:-

"13. When the amending Act introduced a proviso along with an explanation to Rule 3 of Order 23 saying that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at,"the Court

A shall decide the question”, the Court before which a
 petition of compromise is filed and which has recorded
 such compromise, has to decide the question whether an
 adjustment or satisfaction had been arrived at on basis of
 any lawful agreement. To make the enquiry in respect of
 B validity of the agreement or the compromise more
 comprehensive, the explanation to the proviso says that an
 agreement or compromise “which is void or voidable under
 the Indian Contract Act....” shall not be deemed to be
 lawful within the meaning of the said Rule. In view of the
 C proviso read with the explanation, a Court which had
 entertained the petition of compromise has to examine
 whether the compromise was void or voidable under the
 Indian Contract Act. Even Rule 1(m) of Order 43 has been
 D deleted under which an appeal was maintainable against
 an order recording a compromise. As such a party
 challenging a compromise can file a petition under proviso
 to Rule 3 of Order 23, or an appeal under Section 96(1)
 of the Code, in which he can now question the validity of
 the compromise in view of Rule 1-A of Order 43 of the
 Code.”

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 14.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
 F 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
 G 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,
 H 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.”

8. In light of the decision in *Banwari Lal* it would *prima facie* appear that the High Court was right in holding that the appellant's suit was hit by the provisions of Order XXIII Rule 3-A and was not maintainable. But the significant distinguishing feature in this case is that the compromise decree which is alleged to be fraudulent and which is sought to be declared as nullity was passed not by a civil court but by a revenue court in a suit under section 176 of the U.P. Zamindari Abolition & Land Reforms Act, 1950 (hereinafter the Act).

9. Section 331 of the Act bars the jurisdiction of the civil court and provides that a suit under the Act can be entertained by no court other than that the courts specified in Schedule II to the Act. A reference to Schedule II would show that the court of original jurisdiction for a suit under section 176 of the Act for division of a holding of a Bhumidhar is Assistant Collector, First Class and the courts of First Appeal and Second Appeal are Commissioner and the Board of revenue respectively. Section 341 of the Act, of course, provides that unless otherwise expressly provided by or under the Act, the provisions of the Indian Court Fee Act, 1870, the Code Of Civil Procedure, 1908 and the Limitation Act, 1963, including section 5 thereof would apply to the proceedings under the Act.

10. Though the provisions of the Code Of Civil Procedure have been made applicable to the proceedings under the Act but that would not make the authorities specified under Schedule II to the Act as 'court' under the Code and those authorities shall continue to be "courts" of limited and restricted jurisdiction.

11. We are of the view that Revenue courts are neither equipped nor competent to effectively adjudicate on allegations of fraud that has overtones of criminality and the courts really

A skilled and experienced to try such issues are the courts constituted under the Code of Civil Procedure.

B 12. It is also well settled that under section 9 of the Civil Procedure Code, the civil court has inherent jurisdiction to try all types of civil disputes unless its jurisdiction is barred expressly or by necessary implication, by any statutory provision and conferred on any other tribunal or authority. We find nothing in Order XXIII Rule 3-A to bar the institution of a suit before the civil court even in regard to decrees or orders passed in suits and/or proceedings under different statutes before a court, C tribunal or authority of limited and restricted jurisdiction.

13. In our view in the facts of the case the provision of Order XXIII shall not act as a bar against the suit filed by the appellant. We, accordingly set aside the order of the High Court. D As a consequence, the suit will be restored before the Munsif who is directed to accord it priority having regard to the fact that for the last 31 years it is stuck up on the issue of maintainability. The trial court should try to dispose of the suit without any delay, and in any case, not later than one year from E the date of receipt/production of a copy of this order.

14. In the result, the appeal is allowed but with no order as to costs.

B.B.B.

Appeal allowed.