

IN THE COURT OF THE I ADDITIONAL SENIOR CIVIL JUDGE
& J.M.F.C., HUBBALLI

Present:
Sri. Ganapathi Prashanth M.,
B.A.LL.B.,
I Addl. Senior Civil Judge & J.M.F.C., Hubballi.

O.S. No.167/2015

Dated this the 13th day of March, 2023

Plaintiff/s : Smt. Anasuya W/o Kallappa Katti and
others.

(By Sri. S.S. Khateeb, Advocate)

Vs.

Defendant/s : 1. Smt. Basavva W/o Shivappa
Huttakkanavar
(since deceased by her Lrs.) and
others.

(By Sri. M.S. Banad, Advocate)

ORDERS ON COMPROMISE PETITION DATED:07.01.2023

This order arises in respect of acceptability of Compromise petition, entered into between the defendant No.1(a) to 1(d), defendant No.2, defendant No.3(a) to 3(h), defendant No.4 to 8, filed on 07.01.2023.

2. The plaintiffs have seriously opposed the acceptability of the Compromise and filed objections.

3. Heard both side, perused the pleadings and materials materials placed on record.

4. The points for consideration are:

1. Whether the Compromise Petition can be held as lawful ?
2. What order ?

5. The above point No.1 is answered in the negative and point No.2 as per final order, for the following:

REASONS

6. **Point No.1:** The learned counsel for the plaintiffs has relied upon the decision reported in *AIR 2005 Supreme Court 3799 (Kishun @ Ram Kishun Vs. Bihari)*, wherein it is observed as follows:

(B) Civil P.C. (5 of 1908), O. 23, R.3; S.96(3) – Decree passed on compromise – When appealable – Compromise set up by one party disputed by other party – Court adjudicating whether there was compromise or not and passing decree – It cannot be termed as decree passed on basis of consent of parties – Bar of S.96(3) would not be applicable – Decree would be appealable.

7. He has also relied upon the decision reported in *2022(3) KCCR 1971 (Laleeta Vs. Basavaraj)*, wherein it is observed as follows:

B. Civil Procedure Code, 1908 – Order 23, Rule 3 – Compromise decree- Scope and ambit.

A compromise decree is good unless and until it is set aside according to law. It is the duty of the Court to see whether the compromise in question contains any illegal terms; if it does contain such terms the Court has not only the right but has the duty to refuse to make it a decree of Court. But if it accepts a compromise and makes it a decree of the Court then the compromise ceases to be contract simpliciter, it becomes a decree of Court. It may be got set aside within the period of limitation prescribed, on grounds which may be sufficient to invalidate contract. But so long as it is not set aside, a party to it cannot urge that as it embodies as illegal terms it should be ignored.

8. He has also relied upon the decision reported in *AIR 2012 Supreme Court 2858 (Badami Vs. Bhali)*, wherein it is observed as follows:

Civil P.C. (5 of 1908) O.23 R.3, S.33, O.15, R.1 – Fraudulent decree- suit for permanent injunction restraining defendant from alienating suit property – Suit based on alleged family arrangement in which defendant gave her exclusive property to plaintiff with possession – Plaint and written statement filed on same day – Defendant rustic illiterate lady who had earlier refused plaintiff's request to not interfere with possession, admitting plaintiff's claim – Her statement recorded and signature taken in haste – And decree passed within 3 days – Procedure followed and facts of case clearly point out foul play – Decree passed held vitiated by fraud – Moreover even alleged family arrangement does not appear to be bonafide as it is absolutely irrational that defendant having a married daughter would give everything to plaintiff in lieu of nothing and suffer a consent decree.

9. He has also relied upon the decision reported in *AIR 2015 Supreme Court 706 (R. Rajanna Vs. S.R. Venkataswamy)*, wherein it is observed as follows:

Civil P.C. (5 of 1908), O. 23, Rr.3, 3A – Compromise decree – Party disputing lawfulness of compromise – Court which passed decree alone can consider lawfulness of compromise – It cannot direct party to file separate suit – Party on rejection of its suit for setting aside of compromise decree applying to court that

passed decree to consider lawfulness of compromise –
Rejection of such application with direction to party to pursue its
suit – Is against provisions of R.3, 3A of O.23.

10. He has also relied upon the decision reported in *AIR*
1984 ORISSA 213 (Sanyasi Jena Vs. Mina Jena), wherein it is
observed as follows:

(A) Civil P.C. (5 of 1908), Order 23, Rule 3 – Partition suit –
Compromise decree- Decree by consent of only some of parties
would be ineffectual.

A compromise of a partition suit would be ineffectual (generally)
unless all the necessary parties to the action having interest in
the property and likely to be prejudicially affected by the
compromise joint it. Therefore, when in a suit for partition by a
co-sharers were set ex parte for non-appearance, a
compromise decree passed on the basis of the compromise
petition filed by the other defendants and the plaintiff without the
consent of the ex parte defendants who were necessary parties
to the suit would be ineffectual and invalid.

11. He has also relied upon the decision reported in *AIR*
1952 (Kar) 323 (Nanjiah Vs. Maregowda), wherein it is observed
as follows:

7. The next point for consideration is whether the decree can
be set aside partially as against one of the parties, allowing it to
be binding on the others. There is not much difficulty in cases
where all the members who have entered into a compromise
are majors. As observed in -- '16 Mys L J 92', a compromise to
which some of the parties to the suit alone are parties is not
necessarily invalid, though on good cause being shown by any
of the other parties the court has a discretion to reject such a
compromise. The courts have a discretion to set aside the
decree only as against the party on whom it is found to be not
binding and to hold that the compromise decree is binding on
others; but this depends upon the nature of the suit and the
decree passed. It was decided in --'brojeswar Banerjee Vs.
Syama Charan', AIR 1919 Cal 727, relied on in -- '16 Mys L J
92', case that inasmuch as in a rent suit, rent could not be
decreed at different rates against different tenants, the court
was justified in not giving effect to a compromise entered into

by some of the defendants to pay rent at a higher rate than what the court would have decreed otherwise as against reasons not parties to the compromise. Sri Venkatasubbarao J. in -- "Thiruvengada Mudaliar Vs. Thangavelu Mudaliar", AIR 1928 Mad 594, also referred to in -- '16 Mys. L. J. 92', gives some instances where it is difficult to give effect to a compromise entered into by some of the parties to the suit, and observes as follows: "Suppose A, B and C are members of a joint family. If the compromise is entered into between A and B under which A gets a half, but as C is not a party to the compromise A gets against him only a third, it would be impossible to recognize such a compromise. Again, suppose B gives up to A under the compromise some specific valuable items of property. It would be open to C, not being a party to the compromise, to urge that he would not agree to those items being taken by A. In such a case it would be futile to ask the Court to enforce the partial compromise. Again, I may vary the illustration by supposing that B admits some items to be joint family properties and on that footing enters into a compromise with A, C who is not a party to the compromise contends that those items are his self-acquisitions. Surely no court would in such a case recognize and enforce the compromise". It may be said that generally speaking as, observed in -- '16 Mys. L. J. 92', a suit for partition cannot be compromised by some of the parties to it alone. The question will get more complicated if some of the parties are minors. If it is found that the consent given by the guardian is not binding on the minors on any ground, nothing comes in the way of the court holding that the decree is binding on the majors, who were parties to the consent though the court has a discretion to set aside the decree as a whole; but this depends again on considerations referred to above. However, it may be taken that usually when, the decree is not binding on the parties who are majors it will be equally found to be not binding on the minors. If for instance as in this case it is found that the consent decree is not binding on the first plaintiff who was a major at the time of the compromise, it cannot be said that he could get any relief in this suit unless it is found that the alienations effected by his father during the minority of the plaintiff was not for legal necessity. Can it be said that the decree is binding on the minors in such a case merely because they were not majors and their mother who was their next friend was foolish enough to enter into a compromise prejudicial to their interest? The answer of the lower appellate court appears to be in the affirmative. If that were the law, it is clear that a minor is in a worse position than a major and has to suffer on account of the vagary of the next friend. It was observed by Vice-Chancellor Malins in -- 'Hoghton's Estate: Hoghton v. Fidday', (1874) 18 Eq. 573 at p. 576: "The question which I have to decide is, whether this infant, on whose behalf a decree was taken by

consent in 1867, is to suffer by any negligence or want of knowledge on the part of her then next friend. I am clearly of opinion she cannot be called upon to endure that inconvenience..... The proposition that an infant of tender years may have her whole fortune wrecked by the neglect of her next friend is so monstrous that I cannot pay attention to it. She is entitled to have a next friend who is diligent and will protect her Interests". Considering the nature of the previous suit and other circumstances there is hardly any doubt that the learned Munsiff used his discretion well in setting aside the decree as a whole when he found that at any rate it had to be set aside against the first plaintiff.

12. The learned counsel for the defendants has relied upon the decision in 2020 (3) AKR 782 and 2019 (4) KCCR 3978. However, he has not produced the copy of the said decisions ready reference. It is argued that in the said decisions it is held that co-parceners can compromise in respect of his undivided share and may also sell or mortgage his property. The said proposition of law is not dispute. It is argued by the learned counsel for the defendants has vehemently argued that in view of the above proposition of law the defendants are at liberty to make a compromise in respect of their shares among themselves and therefore, the plaintiffs cannot object for such a compromise.

13. In the light of the above pleadings and materials on record, this Court has to consider the lawfulness of the compromise. The defendants are only the parties to the compromise and have admitted the terms of the compromise and that appeared to be voluntarily, is already recorded by this Court.

The only aspect that remains for consideration in this order is, whether the said compromise is lawful?. If that requirement of law under Order 23 Rule 3 of C.P.C. is fulfilled, this Court can record its satisfaction and pass a decree in accordance with the terms of compromise. If the compromise can be held to be lawful, the office can be directed to draw compromise decree accordingly and if the same is not lawful the compromise petition can be rejected. However, it may not be proper to keep open the acceptance of compromise petition for passing orders on its acceptability, while deciding the suit on merits, for it may cause unintended consequences.

14. The Explanation to Order 23 Rule 3 of C.P.C. stipulates that an agreement or compromise, which is void or voidable under Indian Contract Act, 1872, shall not be deemed to be lawful within the meaning of this Rule. In the light of this explanation to the Rule 3 of Order 23 of C.P.C., the objection of the plaintiffs has to be considered.

15. Section 23 of the Contract Act, 1872 stipulates that the consideration and objects are not lawful, if the object of agreement involves or implies injury to the person or property of

another. Whether the present compromise would put the rights claimed by the plaintiff in jeopardy has to be considered.

16. The learned counsel for the plaintiff has vehemently argued that there are mutation entries of undisputed point of time wherein the daughters of the propositus had given-up their right to claim share in the property and accordingly the mutation was carried out only in the name of sons and that has given a vested right in favour of the sons and that the plaintiffs are the wife and children of Kallappa, who is the son of the propositus and therefore, if the compromise decree is drawn in accordance with the compromise petition, that would be used as a tool to bypass the right which were settled at an undisputed point of time and therefore, the plaintiffs will be aggrieved persons if the compromise petition is accepted and hence, they will have to seek the cancellation of the compromise decree in accordance with law and it would lead to multiplicity of proceedings and therefore, the compromise petition needs to be rejected. It is also argued that the very terms used in the compromise petition are objectionable (at the instance of the plaintiffs) and if the said agreement is held to be lawful it would prevail unless set aside

and therefore, it would be detrimental to the interest of the plaintiffs and hence, prayed to reject the compromise petition.

17. Per contra, the learned counsel for the defendants has vehemently argued that it is the discretion of the defendants to deal with their rights over the property as per their own volition and the plaintiffs cannot dictate the terms in that regard and that there is no registered partition or a decree by Court of law as mandated under Sec.6A of the amended Hindu Succession Act and therefore, the plaintiffs right is not taken away by the compromise terms and prayed to accept the compromise petition.

18. It is therefore relevant to note that the arguments put forth by the learned counsels for the plaintiffs and defendants disclose that a matter that might be relevant while deciding the suit on merits would be required to be discussed at this preliminary stage, if ever the compromise petition has to be accepted. Therefore, the point of requirement of registered instrument of partition, which cannot be discussed in detail at this stage, cannot be a subject matter of discussion in this order. Therefore, prima-facie it is clear that the plaintiffs have got some right, to seek cancellation of the compromise decree (on the compromise petition now under consideration). Therefore, at this

moment, it might not be possible to hold that prima-facie the compromise is acceptable or that the objections of the plaintiffs are totally devoid of merits. Therefore, considering the proviso to Order 23 Rule 3 of C.P.C. as mentioned supra, as the compromise is voidable at the instance of the plaintiffs at this juncture, it cannot be held that the compromise is lawful. If at all the defendants had got executed any instrument of transfer inter-vivos, that would have been open for appreciation in the course of deciding the rights of the parties in this suit. However, a compromise of the present nature if accepted as lawful at this moment, it would not be possible for this Court to retract from the said observations in this very suit. In such an event, all the terms of the compromise petition will have to be considered as lawful and enforceable under law. Thus, acceptance of the compromise petition might become a hurdle to decide the suit on merits. Therefore, it is not proper to accept such a compromise petition.

19. Under such circumstances, if such document is prima-facie voidable if so executed and registered inter-se among the defendants as agreed upon in the compromise, it might not fit with the term "lawful" contained in Order 23 Rule 3 of C.P.C. The explanation to Order 23 Rule 3 of C.P.C. clearly stipulates that

even an voidable agreement or compromise shall not be deemed to be lawful, for the purpose of Order 23 Rule 3 of C.P.C. Hence, the Court cannot hold that such an agreement or compromise is lawful.

20. Therefore, the compromise petition cannot be held to be lawful and hence, requires to be rejected. Hence, **point No.1 is answered in the negative.**

21. **Point No.2:** In view of findings on point No.1, this court proceeds to pass the following:

ORDER

The compromise petition dated:07.01.2023 entered into inter-se between the defendants is held to be not lawful and hence, it cannot be recorded or compromise decree cannot be passed thereon.

Hence, the prayer to accept the said compromise petition and to draw decree as per its terms is rejected.

(Dictated to the Stenographer, transcribed and computerized by her, script corrected directly on computer and then pronounced by me in the Open Court on this the **13th day of March, 2023**).

(Ganapathi Prashanth.M)
I Addl. Senior Civil Judge and J.M.F.C.
Hubballi