

IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

CMPMO No. 574 of 2023

Reserved on: 01.07.2025

Decided on: 08.07.2025

Ramzan and others

.....Petitioners

Versus

Dilshad and others

.....Respondents

Coram

The Hon'ble Mr. Justice Satyen Vaidya, Judge

Whether approved for reporting?¹No

For the Petitioners : Mr. Ashok K. Tyagi, Advocate.

For the Respondents : Mr. Karan Singh Kanwar, Advocate, for
respondents No. 1 to 16, except for
respondents No. 5 (f) & 5 (g).

Mr. Mukul Sharma, Advocate, for
respondents No. 5 (f) and 5 (g).

Satyen Vaidya, Judge

The instant petition has been filed under Article 227 of the Constitution of India against orders dated 16.08.2023 and 17.08.2023 passed by learned Additional District Judge, Paonta Sahib, District Sirmaur, H.P.

2. The petitioners had filed an application under Section 151 of the Code of Civil Procedure (for short. "Code") before learned Additional District Judge, Paonta Sahib, District Sirmaur, H.P. with a prayer to set-aside

¹ Whether reporters of print and electronic media may be allowed to see the order?

compromise decree dated 08.05.2014 passed in Civil Appeal No. 20-N/13 of 14/12 titled Chura Khan vs. Sher Khan and others.

3. The petitioners are successors of Fateh Mohd. Respondent No.8 Sureiya and respondent No.16 Tahir Khan are also successors of Fateh Mohd.

4. The ground of challenge to decree dated 08.05.2014 passed by learned Additional District Judge, Nahan, Camp at Paonta Sahib in Civil Appeal No. 20-N/13 of 14/12 was that the compromise on the basis of which decree was passed, was executed at the back of the petitioners. Only respondents No. 8 and 16 had compromised the subject matter of the appeal, who were neither authorized nor competent to compromise the matter on behalf of the petitioners.

5. During the pendency of the aforesaid application, the petitioners filed an application under Order 22 Rule 4 read with Section 151 of the Code for bringing on record the legal representatives of deceased Respondent No.5 Foozen wife of late Sarwar Ali on the ground that the said respondent had died on 01.04.2021. Another application

was filed under Order 1 Rule 10(2) of the Code for deletion of the name of respondent No.6 Chura Khan.

6. Learned Additional District Judge, Paonta Sahib dismissed the application under Order 22 Rule 4 read with Section 151 of the Code for bringing on record the legal representatives of deceased respondent No.5 Foozen vide impugned order dated 16.08.2023 on the ground that such an application was not maintainable in the proceedings taken on an application under Section 151 of the Code. The other application under Order 1 Rule 10 (2) of the Code was allowed.

7. On the next day i.e. 17.08.2023 learned Additional District Judge, Paonta Sahib dismissed the main application of the petitioners under Section 151 of the Code for setting aside the decree dated 08.05.2014 by passing the order in the following terms:

“In view of my findings on applications under Order 22 Rule 4 read with Section 151 C.P.C., the present application under Section 151 of the CPC being not maintainable is also dismissed. The file after due completion, be consigned to record room”.

8. Both the impugned orders appear to have been passed by ignoring the basic principles of law. Order 23 Rule 3 (a) of the Code bars challenge to a compromise decree by a separate suit. The only recourse to a person intending to challenge a compromise decree is to approach the same Court which passed the decree. Thus, to say that the application under Section 151 of the Code for setting aside a compromise decree was not maintainable, is highly illegal. Reference can be made to judgment passed by Hon'ble Supreme court in **Pushpa Devi Bhagat (dead) through L.R. Sadhna Rai (Smt.) vs. Rajinder Singh and others (2006) 5 SCC566**, in which it has been held as under:-

“17. 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 will 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. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21.8.2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27.8.2001), filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by second defendant was not maintainable, having regard to the express bar contained in [section 96 \(3\)](#) of the Code.”

9. Similarly, learned Additional District Judge, Paonta Sahib has passed the impugned orders by ignoring the provision of Section 141 of the Code which makes the procedure provided in the Code with respect to suit, applicable in all proceedings in any Court of civil jurisdiction as far as it can be.

10. Strangely, learned Additional District Judge, Paonta Sahib allowed the application under Order 1 Rule 10 (2) of the Code for deletion of one of the respondents, by applying different parameter altogether.

11. The impugned orders being against law, cannot be sustained. The petition is allowed and the orders dated 16.08.2023 and 17.08.2023 passed by learned Additional District Judge, Paonta Sahib, District Sirmaur, H.P. are set-aside. Learned Additional District Judge, Paonta Sahib, District Sirmaur is directed to decide all the applications of the petitioners afresh strictly in accordance with law.

12. The petition stands disposed of, so also the pending application(s), if any.

8th July, 2025
(GR)

(Satyen Vaidya)
Judge