

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

Petition(s) for Special Leave to Appeal (Civil) No(s).5358/2006

(From the judgement and order dated 07/11/2005 in RSA No. 815/2004 of The  
HIGH COURT OF KARNATAKA AT BANGALORE)

LINGOJIRAO

Petitioner(s)

VERSUS

ISWAR

Respondent(s)

(With prayer for interim relief and office report )

Date: 08/12/2006 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE S.B. SINHA

HON'BLE MR. JUSTICE MARKANDEY KATJU

For Petitioner(s)

Mr.Basava Prabhu S.Patial, Adv.

Mr. V.N. Raghupathy,Adv.

Mr.B.Subrahmanya Prasad, Adv.

Mr. Narayan P. Kengasur, Adv.

For Respondent(s)

Mr.S.K. Kulkarni, Adv.

Mr. Vijay Kumar,Adv.

UPON hearing counsel the Court made the following

O R D E R

Leave granted.

Appeal is allowed in terms of the signed order.

(Meenu Sethi)

Court Master

(Pushap Lata Bhardwaj)

Court Master

Signed order is placed on the file

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. OF 2006

(Arising out of S.L.P. (C) No.5358/2006)

Lingojirao

...Appellant

Versus

Iswar

...Respondent

O R D E R

Leave granted.

This appeal is directed against the judgment

and order dated 7.11.2005 passed by the learned Single Judge of the High Court of Karnataka at Bangalore in RSA No. 815/2004 whereby and whereunder the Second Appeal filed by the appellant herein from the judgment and order dated 4.6.2004 passed by the Civil Judge(Sr. Division), Muddebihar in FDP No.4/2001 was dismissed.

Admitted fact of the matter is that the parties

herein are co-sharers. A Suit for partition was filed wherein

a preliminary decree was passed declaring the half share of the plaintiff-respondent herein. The Assistant Director of Land Records was appointed as a Commissioner in terms of Order XXVI

Rule 13 of the Civil Procedure Code. He submitted a report.

In the

report, the properties were purported to have been divided into two Strips, namely, Strip A and Strip B marked therein.

The respondent herein filed a Memo on 9.8.2002 praying that

Strip A may be allotted in his favour. Learned advocate appearing on behalf of the appellant herein endorsed "No objection" thereon on 7.10.2002.

It is not in dispute that the appellant himself appeared before the learned Civil Judge in the said final decree proceedings saying:

".....No copy of the said memo is furnished to this respondent. No objection is filed earlier"

He, furthermore, filed an application on the same day praying that the purported concession made by the learned counsel be ignored and the matter be proceeded with in accordance with law. In his aforementioned application, the appellant has specifically raised a contention that a valuation

of the open site and house structures standing on the land show that Strip A was available and thus the same should be sold in auction.

By reason of the impugned judgment dated 4.6.2004,

the

learned Civil Judge, however, ignoring the said applications filed by the appellant herein allotted Strip A to the respondent stating:

" D-1B files objection on 2.9.2003 to the memo filed by petitioner dated 9.8.2002 contending that, house property sought

for, by plaintiff is very valuable and if the same is allotted to the plaintiff, then much hardship and loss would be caused to the defendant and that, no copy of the said memo is furnished to this defendant and no objection is filed earlier.

On perusal of order sheet dated 7.10.2002, it goes to show

that. The learned counsel for defendant No.1B has orally submitted that, he has no objections to draw final decree, on the basis of the report of the Court Commissioner and that he has no objections to draw final decree as per memo of proposal submitted by Shri CRJ(learned counsel for plaintiff).

In view of this submission noted in order sheet dated 7.10.2002, the contention of defendant that copy of the memo is not furnished to him and no objection is filed to the said memo cannot be accepted. Further, in view of the fact that, the defendant No.1B has not stated as to how loss and hardship would be caused to him on the allotment of schedule-A properties to the plaintiff as Strip A and Strip B are equal in area. Hence I hold that, this contention also be

accepted. Further, the court commissioner have made two equal strips by taking into consideration of total area of all the suit properties. Therefore, even if A schedule properties are allotted to the plaintiff, Defendant No.1B is entitled to equal area of suit properties and as area of A strip and B strip are equal. Accordingly, this contention of Defendant No.1 B is not accepted. Accordingly, I hold point No.1 in the affirmative."

On an appeal preferred by the appellant herein the First Appellate Court by its judgment and order dated 19.8.2004 dismissed the same stating:

".....It is significant to be noted that the suit property is household property comprising built up portions surrounded by the open space. The Commissioner appointed by the Court below gave an equitable share both to the plaintiff and defendant. The

plaintiff was given a built up portion and an open area so much so the defendants. Under the circumstance the question is in all the cases where immovable property is to be partitioned ascertaining its monetary value is a must.

According to me it is not a must. The ruling is relied upon by

Shri S.N.Sollapatti particularly with reference to 1985 II.R.

Page 4004. The guiding principle are noted in the said ruling

to be followed by the Commissioner while effecting partition and the points the court to consider or whether method of affecting partition by ascertaining its value is a necessary. It

is said when property cannot be subjected to partition equitably and properly, method of ascertaining market value

might become necessary not in all cases, if the property to be

partitioned is impartible then also methods of ascertaining

the marked value could be reasonable...."

The High Court on an erroneous belief that the counsel for the appellant had again rendered no objection in passing the order on the basis of the Commissioner's Report before the First Appellate Court dismissed the Second Appeal.

The short question which arises for consideration before us is as to whether despite the fact that the appellant has expressly prayed before the learned Court that the purported concession made by the counsel be ignored, the Courts below could have taken the same into consideration.

The concession made by a lawyer having the authority to represent his client in terms of Order III Rule 4 of the Civil Procedure Code could be withdrawn or not has been discussed in detail in Smt. Jamilabai Abdul Kadar Vs.

Shakarlal Gulab Chand

and Ors. - AIR 1975 SC 2202.

A pleader has a requisite competence to enter into a compromise without consent of his client as was held by this Court in Smt. Jamilabai(supra). But therein this Court has put a note of caution in the following terms:

"While we are not prepared to consider in this case whether an Advocate or pleader is liable to legal action in

case of deviance or negligence, we must uphold the actual, though implied, authority of a pleader( which is a generic expression including all legal practitioners as indicated in Section 2(15).Civil P.C.) to act by way of compromising a case in which he is engaged even without specific consent from his client, subject undoubtedly to two overriding considerations:(i) He must act in good faith and for the benefit of his client; otherwise the power fails (ii) it is prudent and proper to consult his client and take his consent if there is time, and opportunity. In any case, if there is any instruction to the contrary or withdrawal of authority, the implicit power to compromise in the pleader will fall to the ground. We need hardly emphasize that the Bar must sternly screen to extirpate the black-sheep among them, for Caesar's wife must be above suspicion if the profession is to command the confidence of the community and the Court."

A concession made by an advocate to a certain extent may be binding on his client but we are not dealing with a concession on a question of law but on the question of allotment of property.

Having regard to the facts and circumstances of this case, in our opinion, the appellant had the last say in the matter. His lawyer might have said no objection to the proposal of the

respondent but the same was not binding on him. He having filed three applications, as noticed hereinbefore, in our opinion the learned Civil Judge misdirected himself in acting

on the basis of the said purported concession of his lawyer.

The Appellate Court fell into the same error. The High Court, unfortunately, on a misconception that another concession was effected before the First Appellate Court refused to entertain the Second Appeal. Ordinarily, we would have remitted the matter back to the High Court for consideration of the matter afresh but keeping in view the position of law, we are of the opinion that it is not necessary to do so as the final decree proceeding must be disposed of by the Civil Judge again.

For the aforesaid reasons, the impugned judgments are set aside and the matter is remitted to the Civil Judge (Sr. Division), Muddebihal. We make it clear that all options/contentions shall remain open. The appeal is allowed. No costs.

.....  
..J.

[ S.B. SINHA ]

.....J.

[ MARKANDEY ]

KATJU]

New Delhi,  
December 8, 2006.