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SLP(C)No. 17781 OF 1999
ITEM No.202

Court No.10

SECTION IVA
A/N MATTER

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.17781/1999

(From the judgement and order dated 29/04/1999 in WP 1926/98
of The HIGH COURT OF M.P AT GWALIOR)

RAMPYARI

Petitioner (s)

VERSUS

RAMHIT & ORS
(For Final Disposal)

Respondent (s)

Date : 08/02/2002 This Petition was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE R.C. LAHOTI
HON'BLE MR. JUSTICE S.N. PHUKAN

For Petitioner (s) Mr. A.K. Chitale, Sr. Adv.
Mr. Niraj Sharma,Adv.

For Respondent (s) Mr. S.K. Gambhir, Sr. Adv.
Nos. 1-10 for Mr. Vijay Hansaria,Adv.

No.14 Mr. B.S. Banthia,Adv.
Ms. Pragati Nikhara, Adv.

UPON hearing counsel the Court made the following
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Mr. A.K. Chitale, learned senior counsel for the petitioner argued the matter for 10 minutes. Thereafter, Mr. S.K. Gambhir, learned senior counsel for respondent Nos. 1 to 10 made his submissions for further 10 minutes. After that, Mr. B.S. Banthia, learned counsel for respondent No.14 argued for some time.

Leave granted.

The appeal is disposed of in terms of the signed order.

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Sarita (Radha Rani Bhatia)@@
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Court Master@@
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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1054 OF 2002@@
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(Arising out of SLP(C)No.17781/1999)

Rampyari

...Appellant

VERSUS

Ramhit & Ors.

...Respondents

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The parties to a civil suit are said to have entered into a compromise. A deed of compromise was filed before the trial court, but the trial court refused to record the compromise holding that it was intended to avoid payment of stamp duty and registration, and therefore, was not lawful. The plaintiffs in the trial court preferred a revision before the Court of Additional District Judge (empowered to hear civil revisions under Section 115 of the Civil Procedure Code as it stood then amended in its application in the State of M.P.). Before the revisional court Balwant Singh, the defendant No.1 in the trial court, resiled from the compromise and on 16/10/91 filed a petition in writing stating the grounds on which he claimed not to be bound by the terms of compromise and why, in his submission, the same was not lawful. While the revision was pending in the District ..2/-

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Court, Balwant Singh died on 8/7/92. An application was moved before the District Court proposing to bring the legal representatives on record, based on a Will dated 5/7/92 said to have been executed by Late Balwant Singh in favour of Rampyari. There was a dispute as to whether Balwant Singh was survived by any LRs., and if so, who they were. That controversy was not resolved in revision. By order dated 31/7/98, the learned Additional District Judge formed an opinion that in view of the statements, including that of Balwant Singh having been recorded by the trial court, it could be held that the compromise was voluntarily arrived at by and between the parties to the suit. However, no finding was recorded on the question of impleadment of legal representatives of Late Balwant Singh. The learned Additional District Judge allowed the revision application filed by the plaintiffs and directed the matter to be sent back to the trial court for the purpose of passing a decree in terms of compromise, subject to decision on the application proposing to bring the legal representatives of Late Balwant Singh on record. Rampyaribai claiming herself to be the daughter of Late Balwant Singh, filed a writ petition under Article 227 of the Constitution before the High Court, laying challenge to the order of learned ..3/-

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Additional District Judge, which has been dismissed. Aggrieved by the decision of the High Court, Rampyaribai has filed this petition seeking special leave to appeal. Leave granted.

Having heard the learned senior counsel for the parties, we are of the opinion that there has been no satisfactory disposal of the matter in issue by any of the courts below and therefore, the orders of all the courts below deserve to be set aside with a direction to the trial court to hear and decide the matter afresh on the question of compromise consistent with the provisions of Order 23 Rule 3 of the C.P.C. The trial court did not have an occasion to apply its mind and record a finding on the principal issue contemplated by Order 23 Rule 3 of C.P.C. as to why it felt satisfied that the suit has been adjusted by any lawful agreement or compromise in writing and signed by the parties, the expression as employed in the abovesaid provision. The trial court chose to reject the compromise for other reasons. The learned Additional District Judge, while expressing disagreement with the order of the learned trial court, proceeded to record a finding on the lawfulness of the compromise, but without adverting to and inquiring into the ground of challenge laid by Late ..4/-

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Balwant Singh before it. Before the learned Additional District Judge decided the matter finally, Balwant Singh had expired and an order taking the compromise on record could not have been passed unless and until it was decided whether Late Balwant Singh was survived by any legal representative and, if so, by whom. Till then any order binding the estate of Late Balwant Singh could not have been passed.

The appeal is allowed. All the impugned orders, viz., of the trial court, revisional court and the High Court are set aside. The trial court shall hear the parties on the question whether the compromise filed before it was lawful or not, keeping in view the grounds of objection raised by Late Balwant Singh whereafter only it may take the compromise on record on arriving at the satisfaction in the terms contemplated by Order 23 rule 3 of the C.P.C. or it may not.

The appeal stands disposed of in the abovesaid terms. By way of abundant caution, we would like to make it clear, that we have not expressed any opinion on the merits of controversy relating to compromise. We have only formed and expressed an opinion that the matter as to recording of compromise and disposing of the suit in such terms cannot be said to have been disposed of in the ..5/-

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manner contemplated under Order 23 Rule 3 of the C.P.C. and hence a need for remand. The parties represented before this Court are directed, through their respective counsel, to appear before the trial court on 2nd April, 2002. Such of the parties who are not represented before this Court shall be noticed by the trial court before proceeding ahead with the hearing in the matter.

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.....J.
(R.C. LAHOTI)

New Delhi,
February 8, 2002.

.....J.
(S.N. PHUKAN)