

6ITEM NO.9 COURT NO.8 SECTION XIV
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).30142/2008
(From the judgement and order dated 10/12/2008 in RSA No. 127/2006
of The COURT OF DELHI AT N. DELHI)

SOM NATH SETIA Petitioner(s)

VERSUS

RAVI SETIA & ORS. Respondent(s)
(With appln(s) for exemption from filing O.T. and prayer for interim
relief and office report)(for final disposal)

Date: 07/10/2009 This Petition was called on for hearing today.

CORAM :
HON'BLE MR. JUSTICE MARKANDEY KATJU
HON'BLE MR. JUSTICE ASOK KUMAR GANGULY

For Petitioner(s) Mr. Rakesh Dwivedi, Sr. Adv.
Mr. Ranjeet Kumar, Sr. Adv.
Mr. Vinay Garg, Adv.
Mr. Shantanu Krishna, Adv.
Mr. Rahul Dua, Adv.
Mr. Amit Singh, Adv.

For Respondent(s) Mr. Anoop G.Choudhary, Sr. Adv.
Mr. Ashok Mehta, Adv.
Mr. Samir Ali Khan, Adv.for
Mrs Rani Chhabra, Adv.

Dr. (Mrs.) Vipin Gupta ,Adv

Mr. Ashwani Kumar ,Adv

UPON hearing counsel the Court made the following
O R D E R

Leave granted.
The Appeal is allowed in terms of the signed order.
No costs.

(Parveen Kr. Chawla) (Indu Satija)
Court Master Court Master

[Signed Order is placed on the File]

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO.6863 OF 2009
(Arising out of S.L.P.(C) No.30142 of 2008)

Som Nath Setia ..Appellant

versus

Ravi Setia & Others ..Respondents

O R D E R

Leave granted.

This Appeal has been filed against the impugned judgment of the High Court of Delhi dated 10th December, 2008 passed in R.S.A. No. 127 of 2006.

The facts of the case are that one Surendra Kumar, who is respondent No.2 in this appeal, had filed a suit before the Civil Judge, Junior Division, Pili Banga, Rajasthan being C.O. No.25 of 1996 (hereinafter referred to as the 'Rajasthan suit') alleging that there was a family settlement in respect of the joint property belonging to the parties entered into on 5.11.1993 between the parties. A copy of the plaint is Annexure P-1 to this appeal. A written statement was filed in the said suit on behalf of the present appellant purporting to have been filed by one Madan Lal, who claimed to have a Power of Attorney from the

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appellant. True copy of the said written statement is Annexure P-4 to this appeal. The said written statement reads as under:

"The written statement of the defendant No.1 is as under:

1. The contents of para 1 of the plaint are accepted except the fact that the plaintiff has invested the money in the business as per his own wish. Rest of the contents are admitted.
2. Admitted.
3. The contents of para 2 of the plaint are admitted except the fact that the Plaintiff never requested the Defendant to get the settlement implemented in the govt. record and the Defendant never avoided or made any excuse.
4. Admitted.
5. Admitted.
6. Admitted.
 - (a) Admitted.
 - (b) Admitted.
 - (c) Admitted.
 - (d) Admitted.

Therefore, upon filing the written statement, the Defendant No.1 prays that if any relief is passed in favour of the Defendant No.1, the same may kindly be passed by this Hon'ble Court."

Subsequently, the present appellant filed a suit being Suit No.257 of 2001 before the Civil Judge, Delhi.

True copy of the plaint in the said suit is Annexure P-7 to this appeal. In the said suit, it was alleged that there was no family settlement and that Madan Lal was an impostor

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and he had never been authorised by the appellant to make any admission on behalf of the appellant.

By the judgment dated 18th May, 2005, the Civil Judge, Delhi dismissed the said suit No.257 of 2001 on the ground of the bar of Order 23 Rule 3A CPC. That judgment was upheld by the District & Sessions Judge, Delhi in the first appeal vide judgment dated 24th March, 2006. Against that judgment, a second appeal was filed in the High Court which has been dismissed by the impugned judgment on the ground that the suit was barred by Order 23 Rule 3A, CPC.

In our opinion, the judgments of the courts below are not correct for the following two reasons:

1. It has been held by a three Judge Bench of this Court in A.A.Gopalakrishnan vs. Cochin Devaswom Board & Others (2007) 7 SCC 482 vide paragraph 11 that where there is an allegation that the compromise was reached on the basis of fraud, the bar of Order 23 Rule 3A, CPC will not apply. We are bound by the aforesaid three Judge Bench judgment and we respectfully agree with the same.
2. It has been held by this Court in Bhoop Singh vs. Ram Singh Major & Others (1995) 5 SCC 702 and Jineshwar Das vs. Jagrani & Another (2003) 11 SCC 372 that there

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is distinction between a decree based on a compromise and a decree based on admission. We respectfully agree with the aforesaid two decisions.

In view of the position explained above, the impugned judgments of the High Court and courts below are

set aside and the matter is remanded to the trial Court
which shall decide the suit in accordance with law
expeditiously. All questions of law and fact are open to
both the parties to be raised before the trial Court except
the plea of Order 23 Rule 3A, CPC,since we have held that
the bar under that provision does not apply in this case.

The Appeal is allowed accordingly. No costs.
.....J.
[MARKANDEY KATJU]

NEW DELHI;J.
OCTOBER 07, 2009. [ASOK KUMAR GANGULY]