

Krishan Lal v. Gulab Ram (R. N. Mittal, J.)

H. S. B.

Before R. N. Mittal, J.

KRISHAN LAL,—Petitioner.

versus

GULAB RAM,—Respondent.

Civil Revision No. 560 of 1983

March 27, 1984

Code of Civil Procedure (V of 1908)—Section 151—Alleged compromise arrived at between parties before Court—One of the parties applying under section 151 for setting aside compromise on the ground of fraud—Court recording a finding that fraud has been committed on the Court as well—Aggrieved party—Whether must file a suit to set aside compromise—Application under Section 151 for setting aside compromise—Whether maintainable.

Held, that if one of the parties to a litigation obtains a favourable order from the Court on the basis of a compromise, which is alleged by the other party to have been obtained by fraud, the wrong party can seek redress by instituting a suit, but if the party r

a fraud on the Court as well, then that very Court has inherent powers to deal with the matter and grant the relief on an application by the wronged party under section 151, Code of Civil Procedure, 1908 and it is not necessary for the said party to institute a suit for getting the wrong undone.

(Para 6).

Petition under section 115, C.P.C...for revision of the order of the court of Shri D. D. Yadav, Senior Sub-Judge, Kurukshetra, dated the 31st January, 1983 setting aside the compromise in dispute.

G. R. Majithia, Sr. Advocate, with Arun Sanghi, Advocate, for the Petitioner.

B. M. Bedi, Advocate, for the Respondent.

JUDGMENT

Rajendra Nath Mittal, J.

(1) This revision petition has been filed by Krishen Lal, one of the decree-holders, against the judgment of the Executing Court, Kurukshetra, dated 31st January, 1983.

(2) Briefly, the facts are that on 29th January, 1962, Ayudhya Parshad entered into an agreement of sale regarding the land in dispute with Gulab Ram, Krishen Lal and Joginder Dev. On the basis of the agreement, Krishen Lal and Gulab Ram filed a suit for specific performance impleading Joginder Dev as a proforma defendant. That suit was decreed by the Court on 29th April, 1968. Krishen Lal got the decree executed against the judgment debtor. Later, Gulab Ram filed an application in the executing Court against Krishen Lal claiming his share in the property. During the pendency of the application, a compromise is alleged to have taken place between them and a writing to that effect was filed in the Court on 25th April, 1979. The application of Gulab Ram in view of the compromise and the statement of Shri A. P. Vij Advocate, who appeared on behalf of Gulab Ram, was dismissed as withdrawn on same day i.e. 25th April, 1979.

It is averred that on 19th May, 1979, the date fixed in the ab Ram came to the Court but his application could not be he was asked by the Reader to come on some other ate. He came to the Court again on 15th June, 1979 and

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he was informed on that day that his application had been dismissed on 25th April, 1979, as withdrawn. He after collecting relevant material made an application for setting aside the order dated 25th April, 1979, on 23rd July, 1979, *inter alia* stating that he did not enter into any compromise with Krishen Lal nor he engaged Shri A. P. Vij, Advocate, to represent him in the case. He further stated that the compromise deed was a false and fictitious document and a fraud had been committed by Krishen Lal. The notice of the application was given to Krishen Lal who appeared and denied the allegations of Gulab Ram. On the pleadings of the parties, the following issues were framed:—

- (1) Whether the present application is maintainable?
- (2) Whether the respondent has committed a fraud as alleged in the application?
- (3) Whether the compromise in question and power of attorney executed in favour of Shri A. P. Vij were false and fictitious?
- (4) Relief.

(4) The learned Executing Court held that the application was maintainable; that Krishen Lal committed a fraud, that Gulab Ram did not engage Shri A. P. Vij as his Advocate in the case and that the powers of attorney in favour of Shri A. P. Vij and the compromise were false and fictitious documents. In view of the aforesaid findings, the Court set aside the order dated 25th April, 1979. Krishen Lal has come up in revision against the said order to this Court.

(5) It is contended by Mr. Majithia, learned counsel for the petitioner, that the appropriate remedy for Gulab Ram was to institute a suit and not to file an application under Section 151 of the Civil Procedure Code for setting aside the order dated 25th April, 1979. He further submits that by adopting that course, the petitioner has been deprived of his remedy of appeals. In support of his contention he placed reliance on *Kewal Krishen v. Shiv Kumar and others* (1).

(6) I have given due consideration to the argument of the learned counsel. The executing Court after considering the evidence

(1) A.I.R. 1970 Pb. & Hary. 176.

came to the conclusion that Gulab Ram did not sign the alleged compromise nor he engaged Shri A. P. Vij, as his Advocate to present the compromise in the Court and get his application dismissed. Shri A. P. Vij, is stated to have been engaged by Gulab Ram in the presence of Krishen Lal and witnesses of the compromise. Shri A. P. Vij appeared in the witness-box and identified Krishen Lal as one of the persons who came to him at the time of handing over the alleged compromise and the power of attorney. However, with regard to Gulab Ram present in Court, he stated that he was not the same person who came to him on 24th April, 1979 with the witnesses and introduced himself as Gulab Ram. He also admitted that the alleged Gulab Ram did not sign the power of attorney and the alleged compromise in his presence. From the above statement and various other circumstances noticed by the Court, it is evident that Gulab Ram did not enter into a compromise with Krishen Lal and the alleged compromise was a fabricated document. It is also evident that Shri Vij was not authorised by Gulab Ram to appear and make a statement before the Court on his behalf. The finding of fact arrived at by the trial Court is, therefore, unassailable. In this situation I am of the opinion that Krishen Lal played a fraud not only on Gulab Ram but also on the Court. It is well settled that if one of the parties to a litigation obtains a favourable order from the Court on the basis of a compromise, which is alleged by the other party to have been obtained by fraud, the wronged party can seek redress by instituting a suit, but if the party plays a fraud on the Court as well, then that very Court has inherent powers to deal with the matter and grant the relief on an application by the wronged party under section 151, Code of Civil Procedure, and it is not necessary for the said party to institute a suit for getting the wrong undone.

(7) In the above view, I am fortified by a Division Bench judgment of Patna High Court in *Chatur Prasad Sah v. Mt. Bishnu Kher and another* (2), wherein it was observed that there is a distinction between a fraud practised upon a party and a fraud practised upon the Court. A Court is not competent either in review or under its inherent powers to set aside a compromise decree on the ground that the consent of the parties to the compromise was obtained by fraud. The only remedy of the injured party is to institute a suit to set aside the decree on the ground of fraud. But where the question is whether there was consent in fact, the Court under its inherent

(2) A.I.R. 1943 Patna 13.

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powers can investigate the matter on an application under S. 151 and set aside a compromise decree if it is found that the aggrieved party had not in fact consented to the compromise. Similar view was taken by this Court in *Shri Bhagwan Sarup Sharma v. Shri Prem Kumar and another* (3) wherein it was held that it is the Court whose order is required to be set aside on the basis of fraud, that is to be moved and that Court has jurisdiction to set aside its own order. I am in respectful agreement with the above observations. *Kewal Krishen's case* (supra) on which reliance has been placed by Mr. Majithia is distinguishable. In that case, the allegation was that the consent had been obtained by coercion. No fraud was alleged to have been played on the Court. In the said circumstances it was held that the proper remedy was to file a suit and not an appeal or an application for review against that decree or an application under S. 151 or Section 152 of the Code. In my view, the learned counsel cannot derive any benefit from the observations therein.

(8) For the aforesaid reasons, I do not find any merit in the revision and dismiss the same. No order as to costs.
