

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 4777 OF 2009
[Arising out of SLP(C) No. 28356/2008]

DEVI PRASAD AND ORS.

... APPELLANT(S)

:VERSUS:

VISHWA NATH PRASAD AND ORS.

... RESPONDENT(S)

ORDER

Leave granted.

The parties hereto had filed a deed of settlement before the Court of First Subordinate Judge, Bhojpur, Ara, in Title Suit No. 420/2005. Respondent No.1 was shown to be a party to the said compromise deed. He, however, filed an application on or about 25.8.2006 alleging that his signature was forged on the compromise deed and only on that basis, by an order dated 24.7.2009 the learned Subordinate Judge directed as under:

“Heard on objection petition filed on behalf of the defendant against compromise dated 8.5.06 which was filed in the court on 25.8.06. After objection and other defendants impleaded subsequently also filed objection against the compromise and a case law has been filed on behalf of defendant. AIR 1997 Punjab

and Haryana Page-155, Court to not impose compromise on unwilling party and Order 23 Rule 3 where it is proved to the satisfaction of the court that suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of whole or in part of the subject matter of the suit the court shall order such agreement compromise or satisfaction to be recorded and pass decree provided and where alleged by one party and denied by other that adjustment or satisfaction has been arrived at the court shall decide the question but no adjournment shall be done for the purpose of the deciding question and as per explanation and agreement of compromise which is void and voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of this rule.

Objection filed by the defendant prior to filing of compromise on the ground that compromise has been got filed with conspiracy and is forged and plaintiff has obtained signature on pretence of giving land on lease to others due to why they have signed on the plain and stamp paper not binding on him.

As parties are not willing to the compromise, and keep pending the case for decide whether fraud and forgery has been committed or not in compromise which is filed subsequently appears to be not desirable.

In the circumstances, the compromise petition can not be accepted. In the light of this order all objection filed on behalf of defendants are disposed of. To. 7.8.08 for filing documents and framing issues.”

A civil revision application filed thereagainst has been dismissed by the learned Single Judge, saying:

“Heard counsel for the petitioner. In the opinion of this Court, there is no jurisdictional error in the impugned order. Accordingly, this application is dismissed.”

The matter relating to compromise of the suit is governed by Order 23 Rule 3 of the Code of Civil Procedure. The said provision read as under:

“Compromise of suit.- Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be

recorded, and shall pass a decree in accordance therewith so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit;

Provided that where it is alleged by one part and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question, but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.”

In view of the proviso to Order 23 Rule 3 of C.P.C., there cannot be any doubt whatsoever that when the first respondent raised a question alleging that his signature was forged which was denied and disputed by the appellant, it was obligatory on the part of the Court concerned to enquire thereinto and the

impugned orders have been passed without initiating any proceedings in terms of the proviso appended to Order 23 Rule 3 of the C.P.C.

For the reasons aforementioned, the impugned judgment cannot be sustained which is set aside accordingly and the appeal is allowed. However, in the facts and circumstances of the case, there shall be no order as to costs.

The Trial Court shall enquire into the application filed by the first respondent.

NEW DELHI,
JULY 20, 2009.

