

CASE NO.:
Appeal (civil) 1211 of 2005

PETITIONER:
Ajad Singh @ Ajad

RESPONDENT:
Chatra and Others

DATE OF JUDGMENT: 14/02/2005

BENCH:
CJI, G.P. Mathur & P.P. Naolekar

JUDGMENT:
J U D G M E N T
(arising out of SLP (C) No. 3884 of 2002)

P.P. Naolekar, J

Leave granted.

The appellant Ajad Singh has filed a suit for declaration and possession of his right, title and interest over the suit property along with Dilawar Singh @ Dilbag Singh and Silak Ram \026 proforma respondents Nos. 4 and 5 and for mandatory injunction against respondent Nos. 1, 2 and 3 for removal of superstructures raised by them over the suit lands and for restraining them from interfering with the possession of the appellant. The case of the plaintiff/appellant is that he and respondent Nos. 4 and 5 are real brothers and the property in suit came to them in partition effected between them and their uncle Puran. The respondent Nos. 1, 2 and 3 have encroached upon the suit lands on 2.1.85 by storing some pucca bricks on the suit land and thereafter have raised some construction over it. The defendant-respondents have not vacated the land in spite of demand by the plaintiff-appellant. The defendants/respondents Nos. 1, 2 and 3, filed their written statements denying the right, title and interest of the appellant over the suit land and claimed that they were in possession of the suit land for the last 60 years which had ripened into ownership by way of adverse possession and the construction made over the land was in exercise of that right. It was further alleged that appellants as well as respondent Nos. 4 and 5 had admitted the possession of respondent Nos. 1, 2 and 3 of the suit property vide compromise dated 14.10.1985 and thus appellant was prevented by his acts and conduct to pursue the present suit.

The trial court appointed a Commissioner for inspection of the suit site and record the evidence of the parties. On the appreciation of the evidence led by the parties and the report of the Commissioner, the trial court decreed the suit filed by the appellant. Aggrieved by the said decree, respondent Nos. 1, 2 and 3 filed an appeal which was heard by the Additional District Judge, Panipat. The First Appellate Court reversed the decree by placing reliance on the compromise (Exhibit \026 D1) dated 14.10.1985 which was said to have been effected between the parties in the police station. In paragraph 9 of the Judgment, the Court has held that the compromise (Exhibit \026 D1) dated 14.10.1985 is a very relevant piece of evidence which admittedly has been signed by Ajad Singh but about which no such plea has been raised by the appellant either in the amended plaint or in

the replication filed by him on 4.6.1987 as would enable him to avoid the compromise. There is also no pleading from the plaintiff-appellant's side that the said compromise (Exhibit \026 D1) was obtained by the police forcibly. He has not stated anything about the compromise in his examination-in-chief and only in the cross-examination he has stated that the compromise was effected by use of force in the police station. On perusal of the compromise, the Court has further held that both the sides have resolved the dispute and respondent No. 1 could remain in possession of suit property, as, according to the compromise, the appellant has already relinquished the right over the site in dispute on 14.10.1985 (Exhibit \026 D1) itself. Thus, it is made out that the trial court has wrongly rejected the said compromise (Exhibit-D1) by observing that no such permission was obtained to effect the compromise in the police station. The Court further summarized the effect of compromise that the appellant has relinquished his right in the suit land in view of the settlement (Exhibit \026 D1) dated 14.10.1985 itself and about which he remained mum and knowingly concealed this fact in the pleadings. Thus, after the examination of the said compromise (Exhibit \026 D1), it is made out that the plaintiff-appellant agreed to withdraw the suit and conceded that Chatra, the defendant No. 1 shall continue to remain in possession of the suit property. On these findings the judgment and decree of the trial court was set aside and the so-called compromise (Exhibit \026 D1) was held to be binding on the parties.

The appellant preferred a second appeal before the High Court which was dismissed in limine. The High Court has reproduced paragraphs 8 and 9 of the judgment of the lower appellate court and concurred therewith dismissing expressing an opinion that the reason given by the first appellate court for dismissing the suit are much weighty, as compared to the reasons given by the trial court which committed patent illegality in decreeing the suit.

In this petition seeking leave to appeal preferred by the appellant before this Court, a notice, limited to the question as to why the matter be not remanded back to the first appellate court for decision afresh, was issued.

We have heard the learned counsel for the parties and we are satisfied that the case deserves to be remanded to the first appellate court for the reasons stated hereinafter. The High Court as well as the first appellate court have not adverted to the various relevant and important aspects of the case while deciding the matter. And, this we say for the several reasons which follow. First, the provision contained in Order 23 Rule 3 of the CPC has been completely overlooked. The date on which the compromise (Exhibit \026 D1) is alleged in the written statement to have been entered into between the parties, the suit relating to the property forming the subject matter of the compromise was pending in the Court. The suit could not have been disposed of except by recording the compromise and that too by following the procedure, and recording the satisfaction, contemplated by Rule 3 of Order 23 of the CPC. Secondly, the first appellate court was not justified in observing that the plaintiff had not raised necessary pleadings either in the plaint or in the replication disputing the factum and legality of the compromise. From a perusal of the written statement, we find that necessary pleadings satisfying the requirement of Order 23 Rule 3 of the CPC have not been raised in the written statement. The written statement makes only a bald reference to the said compromise dated 14.10.1985. The plaintiff can be safely assumed to have denied all the averments made in the written statement. Also,

we find from the judgment dated 5.10.1985 of the trial court that no specific issue was framed on the pleading raised by the defendant regarding the said compromise dated 14.10.1985. The appellate court ought to have taken note of the fact that the said compromise was recorded in the police station and during the pendency of the suit. Thirdly, the first appellate court ought to have been conscious of the fact that the said compromise is on a plain piece of paper, and so, whether such document was required to be stamped or registered or not? Be that as it may, in our opinion, the very fact that the courts below have overlooked the provisions of Order 23 Rule 3 of the CPC is sufficient to vitiate the judgment and the matter needs to be remanded for consideration afresh.

The appeal is allowed. The order dated 26.9.2001 of the High Court dismissing the second appeal in limine as well as the judgment and decree passed by the first appellate court are set aside. The first appeal being Civil Appeal No. 376 of 1999 shall stand restored and is remitted to District Judge, Panipat for re-hearing and deciding it afresh either by himself or assigning it to a Court competent to hear it.

No order as to the costs.