



2025:DHC:21



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\* **IN THE HIGH COURT OF DELHI AT NEW DELHI**

% *Judgment Pronounced on: 07.01.2025*

+ **RFA 150/2021**

ANURADHA PRASAD

.....Appellant

versus

MIRA KULKARNI

.....Respondent

**Advocates who appeared in this case:**

For the Appellant : Mr. Arvind Kumar and Mr. Divyanshu Nautiyal, Advocates.

For the Respondent : Ms. Rohini Musa, Mr. Nipun Katyal, Mr. Suresh Kumar and Mr. Nischay Johri, Mr. Zafar Inayat, Advocates

**HON'BLE MS. JUSTICE TARA VITASTA GANJU**

**TARA VITASTA GANJU, J.**

1. The present Appeal impugns the Judgment and Decree dated 14.10.2019 passed by the learned ADJ-05, (South), Saket Courts, New Delhi [hereinafter referred to as the "Impugned Judgment"]. By the Impugned Judgment, Application filed by the Respondent under Order VII Rule 11 of Code of Civil Procedure, 1908 [hereinafter referred to as "CPC"] being IA No. 19633/2013 was allowed, and the Application filed by Appellant under Order VI Rule 17 CPC being IA No.19/2014 was dismissed.



**BRIEF FACTS:**

2. Briefly, the facts are that a suit being *CS (OS) No. 1772/2005* captioned *Mira Kulkarni v. Anuradha Prasad & Ors.*; [hereinafter referred to as the “first suit”] was filed before this Court seeking a decree of permanent injunction from restraining Defendants (including Appellant herein) from parting with possession of, dealing with, encumbering, alienating or selling any part of the property being N-126, Panchsheel Park, New Delhi-110017 [hereinafter referred to as the “suit property”]. The prayers in the first suit read as follows:

*“a) a decree for permanent injunction in favour of the plaintiff and against the defendants and thereby restraining the defendants, their agents, and any other person(s) acting on their behalf from parting with the possession of, dealing with and/or disposing of and/or encumbering and/or alienating, transferring and/or selling any part of the said suit property bearing N-126, Panchsheel Park, New Delhi-110017 in any manner whatsoever”*

3. By an Order dated 26.12.2005 in the first suit, while issuing Notice in the matter, the Vacation Judge directed that the possession of the Respondent will not be disturbed and the Appellant will not part with the possession of the suit property.

4. Subsequently, by an Order dated 21.04.2006, the Court disposed of the first suit directing that both parties will not disturb the possession of each other and will not sell, alienate or transfer to a third party without consent of each other, until the suit property is partitioned by metes and bounds.

5. On 23.03.2007, parties entered into a settlement and executed a Memorandum of Family Settlement [hereinafter referred to as “family



settlement”]. In pursuance thereof, a joint Application being IA No. 13058/2007 under Section 151 CPC was filed by the parties seeking modification of order dated 26.12.2005 passed in the first suit.

6. The joint Application was disposed of by the Order dated 16.11.2007 in the first suit, which directed that the family settlement be taken on record and that the parties shall abide with the terms of the family settlement.

7. On 12.03.2013, the Appellant filed a suit being *CS(OS) 548/2013* captioned *Ms. Anuradha Prasad v. Ms. Mira Kulkarni* [hereinafter referred to as the “second suit”] after the lapse of 6 years seeking a declaration as to her rights in the suit property. The second suit was initially filed before this Court and, thereafter, on account of change of pecuniary jurisdiction<sup>1</sup>, was heard and adjudicated by the District Courts, Saket, New Delhi.

8. In essence, it was the case of the Appellant that, although the Appellant executed the family settlement, the settlement was obtained by misrepresentation, fraud and undue influence exercised upon her. The Appellant, thus, disputed the family settlement and the other documents executed.

8.1 It is apposite at this stage to extract the prayers in the second suit which are below:

*“a) pass a decree of permanent injunction, thereby restraining the Defendant from selling, encumbering or otherwise creating third party interest in the suit property bearing No.N.-126, Panchsheel Park, New Delhi, without the consent of Plaintiff*

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<sup>1</sup> Notification no.27187/DHC/Orgl. dated 24.11.2015



*until and unless the property is partitioned by metes and bounds;*

*(b) pass a decree of Declaration, thereby declaring that the GPA, bearing Document No. 648, Addl. Book No. IV, Vol. No. 2979 on pages 109 to 112 on 22.2.2007, registered with Sub-Registrar, New Delhi, GPA, SPA, MOU dated 22.3.2007, joint application in High Court bearing I.A. No. 13058/2007 in CS(OS) No. 1772/2005 Memorandum of Settlement, Release Deed, Will, GPA, SPA of August 2008, are, null and void, cancelled, unenforceable and ineffective;*

*(c) in the alternative of prayer (b) pass a decree of Declaration, thereby declaring GPA, bearing Document No. 648, Addl. Book No. IV, Vol. No. 2979 on pages 109 to 112 on 22.2.2007, registered with Sub-Registrar, New Delhi, GPA, SPA, MOU dated 22.3.2007, joint application in High Court bearing I.A. No. 13058/2007 in CS(OS) No. 1772/2005 Memorandum of Settlement, Release Deed, Will, GPA, SPA, of August 2008, are legally cancelled/terminated and the Defendant has no right in the share of the Plaintiff in the suit property;*

*(d) pass a Decree of Declaration thereby declaring the Order dated 16.11.2007 passed by this Hon'ble Court in I.A. No. 13058/2007 in CS(OS) No. 1772/2005 Is without any consequence and does not confer any right, title or interest in favour of the Defendant, In the share of the Plaintiff in the suit property; .... ”*

9. The Respondent filed an Application under Order VII Rule 11 CPC, which was listed as IA No. 19633/2013 in the second suit. The grounds taken by the Respondent in its Application for rejection of plaint were:

(i) Non-disclosure of a cause of action as it was contended that the plaint as a whole does not disclose a real cause of action. It was further contended that the execution of the documents are not disputed, but an objection has been raised on the basis of undue influence and misrepresentation after 6/7 years of their execution.



(ii) The suit is barred by law under Order VI Rule 4 CPC as the Plaintiff is required to set out detailed particulars in respect of allegations of fraud, misrepresentation or undue influence and the same were not set out.

(iii) The suit is barred under Order XXIII Rule 3/3A CPC as the order dated 16.11.2007 is a consent order and could only be set aside/modified by the particular Court that passed the order.

10. The Appellant filed an Application being IA No. 19/2013 under Order VI Rule 17 CPC in the second suit seeking an amendment of pleadings to include details of the Respondent's alleged fraudulent sale of the Appellant's 25% undivided share in a jointly-owned Uttarakhand property through sale deeds in 1991 and 1992, without her consent. The Appellant contended that both the New Delhi (suit property) and Uttarakhand property disputes stem from the same fraudulent scheme, involving coercion and manipulation by the Respondent.

11. As stated above, by the Impugned Judgment, the learned Trial Court rejected the plaint under Order VII Rule 11 CPC holding that the second suit was barred by law and that the documents executed between the parties were executed pursuant to a compromise which was accepted by an order dated 16.11.2007 in the first suit and that the challenge cannot be maintained by way of a separate suit in terms of Order XXIII Rule 3A CPC. It was further held by the learned Trial Court that prayers (b), (c) and (d) were barred under this provision.



Since the prayers (b), (c) and (d) were held to be barred, the Appellant would have no right to seek the relief in prayer (a).

12. So far as concerns, the Application for amendment filed by the Appellant under Order VI Rule 17 CPC, the learned Trial Court, by the Impugned Judgment directed that by way of the said amendment, the Appellant sought to add the relief of partition in the present suit with respect to joint property of the parties located at Uttarakhand and such a relief would change the nature of the suit which was initially filed as a suit for declaration and permanent injunction which cannot be converted into a suit for partition.

12.1 It was further held that the relief of partition is *qua* the property at Uttarakhand and this Court has no jurisdiction over the said area in terms of Section 16 of the CPC. Thus, the Impugned Judgment dismissed the Application under Order VI Rule 17 CPC filed by the Appellant.

13. The only challenge raised by Appellant before this Court is to the dismissal of the suit and allowing of the Application under Order VII Rule 11 CPC. No submissions were made by either party with respect to that portion of the order which dismissed the Application under Order VI Rule 17 CPC.

### **Contentions of the Appellant**

14. At the outset, learned Counsel for the Appellant submits that family settlement, which forms the foundational ground of the dismissal of first suit, was obtained by fraud. It is averred that the



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Appellant was not aware of what she was signing as she was in a state of depression and was coerced into signing the family settlement.

14.1 Learned Counsel of the Appellant submits that the learned Trial Court incorrectly presumed that the Order dated 16.11.2007 passed in first suit was a compromise decree, and that the Appellant had sought to set aside that compromise decree in the second suit. It was contended that the Order dated 21.04.2006 in first suit uses the expression "*it is thus agreed*" in the order, without recording a lawful agreement or compromise in writing signed by the parties, thus, it does not constitute as a compromise decree. Reliance was placed on the judgment in the *Banwari Lal v. Chando Devi (Smt) (Through LRs) & Anr.*<sup>2</sup> in this regard.

14.2 Learned Counsel for the Appellant while relying on Supreme Court judgment in *Amro Devi & Ors v. Julfi Ram (Deceased) thr. Lrs. & Ors.*<sup>3</sup>, submits that Order XXIII Rule 3 CPC, in unambiguous terms sets out that for a compromise to be valid there has to be a lawful agreement or compromise in writing and signed by the parties which would then be required to be proved to the satisfaction of the Court. Learned Counsel of Appellant asserts that the adjustment envisaged in Order XXIII Rule 3 CPC generally pertains to adjustments made before the suit is finally disposed of and primarily deals with the compromise of suits during the pendency of litigation. Thus, the Order dated 16.11.2007 passed after the disposal of the suit cannot be considered a compromise decree.

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<sup>2</sup> (1993) 1 SCC 581

<sup>3</sup> 2024 SCC OnLine SC 1715



14.3 Further, the Appellant contends that the joint application in the first suit sought modification of an earlier interim Order dated 26.12.2005, which had already been nullified by the final Order dated 21.04.2006. Thus, once first suit was disposed of, all interim orders passed previously would stand automatically vacated. Reliance was placed on the judgment in *Kanwar Singh Saini v. High Court of Delhi*<sup>4</sup> to further this contention.

14.4 Lastly, it is submitted that the inherent powers of the Court under Section 151 CPC should be exercised to meet the ends of justice and prevent abuse of the Court's process. The Appellant contends that these powers cannot be used to re-open or alter a judgment or decree already passed, except in rare and exceptional circumstances. Neither the Order dated 16.11.2007 nor 21.04.2006 qualify as a compromise decree, hence the principle of Order XXIII Rule 3A CPC would not be applicable.

### **Contentions of the Respondent**

15. Learned Counsel for Respondent, on the other hand, contends that on 23.03.2007, the parties entered into a family settlement, which was filed before the Court and an order was passed thereupon on 16.11.2007. The Respondent argues that while the Appellant does not deny executing these documents or filing the joint application to take on record the compromise by way of a family settlement, the Appellant now, for the first time after 6 years, claims these were obtained by misrepresentation, fraud, and undue influence.

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<sup>4</sup> (2012) 4 SCC 307





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15.1 Learned Counsel of the Respondent submits that pursuant to the Memorandum of Family Settlement/family settlement, the Appellant received Rs. 8 crores in cash as well as a separate property was purchased for her by the Respondent, in the same colony, where the Appellant is residing even today. Thus, it is contended that the family settlement was acted upon by both parties, despite which, the Appellant is seeking to have it set aside.

15.2 Learned Counsel of the Respondent relies upon a judgment of the Supreme Court in *Anita International v. Tungabhadra Sugar Works Mazdoor Sangh & Ors.*<sup>5</sup>, to submit that it is a well-established principle of law, that neither parties to a *lis* nor any third parties have the authority to unilaterally determine the validity or voidness of a Court order. The Respondent submits that the Appellant, if aggrieved with the consent decree passed by the Order dated 16.11.2007, was required to approach a Court of competent jurisdiction, which is the Court which passed the consent decree to have the said order set aside under the provisions of Order XXIII Rule 3 of the CPC.

15.3 Reference in this regard is made by the learned Counsel for the Respondent to judgment in *Pushpa Devi Bhagat (dead) through LR Smt. Sadhna Rai v. Rajinder Singh and others*<sup>6</sup> which has been filed by the Appellant to submit that the Order dated 16.11.2007, admittedly being a consent order, could only be set aside/modified by the very same Court that passed the said order, as no independent suit can be filed for setting aside a compromise decree on the ground that

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<sup>5</sup> (2016) 9 SCC 44

<sup>6</sup> 2006 (5) SCC 566



the compromise was not lawful in view of the bar contained in Order XXIII Rule 3A CPC.

15.4 The learned Counsel of Respondent submits that learned Trial Court has correctly rejected the plaint under Order VII Rule 11 CPC. The plaint filed in the second suit had no cause of action, and is even barred by law in terms of Order VI Rule 4 CPC, as a party cannot claim defence of fraud, misrepresentation or undue influence, without furnishing particular details to substantiate such claims. Reliance is placed on the cases of *Gayatri Devi and Others v. Shashi Pal Singh*<sup>7</sup>, *Afsar Sheikh & Anr. v. Soleman Bibi & Ors.*<sup>8</sup> and *Bishundeo Narain & Anr. v. Seogani Rai & Anr.*<sup>9</sup>, in support of this contention.

16. Learned Counsel for the Respondent has also stated that the cases cited by the Appellant being *Amro Devi* case, *Banwari Lal* case and *Gurpreet Singh v. Chatur Bhuj Goel*<sup>10</sup> are all cases where oral settlements were entered into between the parties and are inapplicable to the facts of the present case where a written compromise deed existed which was filed in Court through a joint Application and signed by both parties.

### **The Impugned Judgment**

17. The Impugned Judgment simultaneously decided two Applications filed by parties. The first Application under Order VII Rule 11 CPC was filed by the Respondent while the second Application under Order VI Rule 17 CPC was filed by the Appellant.

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<sup>7</sup>2005 (5) SCC 527

<sup>8</sup>AIR 1976 SC 163

<sup>9</sup>AIR 1951 SC 280

<sup>10</sup> (1988) 1 SCC 270



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As stated above, the Impugned Judgment found that the suit was barred by the provisions of Order XXIII Rule 3A CPC and that once a compromise has been reached in a suit, no suit challenging such compromise shall be filed. The learned Trial Court, on a reading of Order XXIII Rule 3 and Rule 3A CPC, found that where a compromise is lawful, no separate suit shall lie against it.

17.1 The Application under Order VI Rule 17 filed by the Appellant was also dismissed by the Impugned Judgment in view of Section 16 CPC, since the joint property which is sought to be partitioned is located in Uttarakhand and thus the competent Court for such suit would be the Courts at Uttarakhand alone. The Impugned Judgment held that by the said Application the suit initially filed for declaration and permanent injunction would be converted into a suit for partition, thereby changing the nature of the suit which is not permissible under the provisions of Order VI Rule 17 CPC.

18. As stated above, the Appellant did not make any submissions with respect to the challenge on the aspect of the rejection of his Application seeking amendment of the plaint. The challenge was confined by the Appellant to the rejection of the plaint by the learned Trial Court.

19. On 15.10.2024, the file of the proceedings in the first suit was also requisitioned by this Court. The record reveals that a joint Application being IA No. 13058/2007 was filed by the Appellant and the Respondent on 30.05.2007 seeking modification of the Order dated 26.12.2005 [hereinafter referred to as "Joint Application"]. The



Application also sets out the reason for such filing. It is stated therein that since an Order was passed by the Court on 26.12.2005 directing the parties not to dispose of the suit property without the consent of each other and now that the parties have settled the matter amicably, the Application was requisite. It is further stated in the Joint Application, that in terms of the family settlement, the Appellant had transferred and conveyed all her rights in respect of the suit property in favour of the Respondent and that a first floor flat at No. E-15 in Panchsheel Park, New Delhi has been purchased for the Appellant by the Respondent. In addition, it is stated that the Appellant has been provided other facilities and financial help as has been agreed between the two sisters [Appellant and the Respondent]. Paragraph 3 and 4 of the Joint Application is reproduced below:

*“3. That the suit was disposed of by order dated 26.12.2005 passed by Hon’ble Justice Shri Sanjeev Khanna thereby **directing the parties not to dispose off the property without the consent of each other and without partition by metes and bounds.***

*4. That the parties have now resolved the matter amicably and **a Memorandum of Family Settlement has been signed and executed**, copy of which is enclosed as Annexure-1, and as per Memorandum of Family Settlement, the Defendant No. 1 has **transferred and shall convey all her rights in respect of the property No. N-126, Panchsheel Park, New Delhi in favour of plaintiff and a First Floor flat No. E-15 in Panchsheel Park, New Delhi has been purchased for her by Mrs. Mira Kulkarni, the plaintiff herein and she has been provided with various other facilities and financial help as agreed between the two sisters.**”*

[Emphasis Supplied]

19.1 The Joint Application also records in paragraph 5 an undertaking on behalf of both the parties that they would honour the



terms of the family settlement. The Appellant also confirmed and undertook that she has relinquished and renounced her share in the suit property in favour of the Respondent and that the Respondent shall be the exclusive owner of the suit property. The Joint Application further states that in view of the directions passed by the Court on 26.12.2005, the family settlement be taken on record and an appropriate Order be passed in respect thereto.

19.2 Paragraph 5 and the prayer clause of the Joint Application is reproduced below:

*“5. That the parties undertake to this Hon’ble Court that they will sincerely abide and honour the terms of the Memorandum of Family Settlement and the Defendant No. 1 herein confirms and agrees that the Defendant has already renounced of her share, title and interest in the said property exclusively in favour of the plaintiff. **The Defendant No. 1 further confirms and undertakes to this Hon’ble court that she has already relinquished and renounced her share in favour of the plaintiff and she has signed and executed all necessary papers as may be required either by the Plaintiff or by any other party.** The plaintiff shall continue to be the exclusive and legal owner of the entire property bearing No. N-126, Panchsheel Park, New Delhi and being exclusive owner, she will have all rights, titles to deal with the same in any manner she likes.*

*In view of the fact that parties have resolved their disputes amicably and a Memorandum of Family Settlement has already been executed and **the defendant has already conveyed and relinquished her rights in favour of the plaintiff, it is humbly prayed that order dated 26.12.05 passed in the above mentioned suit may be accordingly modified and Memorandum of Family Settlement as annexed to this application as Annexure A-1 may be taken on records (sic record).**”*

[Emphasis supplied]



19.3 The Joint Application was supported by two affidavits, one each of the Appellant and of the Respondent and was duly executed by both parties and their counsel. The Order dated 16.11.2007 passed in the first suit, also records the presence of Counsel on behalf of both the parties.

20. Order XXIII Rule 3A CPC is a complete bar to a suit to set aside a decree on the ground that a compromise on which the decree is based on was not lawful. While Order XXIII Rule 3 CPC records that where a suit has been adjusted wholly or in part by a compromise in writing or where a defendant satisfies the plaintiff in respect of a whole or a part of the claim, the Court shall order such agreement, compromise to be recorded and pass a decree in terms thereof. A decree is defined under Section 2(2) CPC to mean a formal expression of an adjudication which conclusively decides or determines the rights of the parties. Section 2(2) CPC, Order XXIII Rule 3 and Order XXIII Rule 3A are extracted below:

*“2. Definitions.—In this Act, unless there is anything repugnant in the subject or context,—*

*(2) “decree” means the formal expression of an adjudication which, so far as regards the Court expressing it, conclusively determines the rights of the parties with regard to all or any of the matters in controversy in the suit and may be either preliminary or final. It shall be deemed to include the rejection of a plaint and the determination of any question within [The words and figures “section 47 or” omitted by s. 3, ibid. (w.e.f. 1-2-1977)] section 144, but shall not include—...”*

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**“ORDER XXIII- WITHDRAWAL AND ADJUSTMENT OF SUITS...”**



*3. **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 satisfied 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.*

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*3A. **Bar to suit**— No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”*

21. It is no longer *res integra* that a settlement between the parties is to be considered as a decree under Section 2(2) CPC. The Supreme Court in *Pushpa Devi Bhagat* case has held that where the Court is satisfied that a suit has been adjusted either wholly or in part by an agreement or a compromise in writing, a decree follows in terms of what is agreed between the parties and that the only remedy available to a party to a consent decree is to approach the Court which recorded the compromise and the said Court would decide the question whether there was a valid compromise or not. The Court held that no separate independent suit can be filed to challenge a compromise decree and only an Application under the proviso to Order XXIII Rule 3 CPC can be filed.

21.1 The relevant extract of the *Pushpa Devi Bhagat* case, sets out the remedy available to challenge a consent decree, in the following manner:

*“17. The position that emerges from the amended provisions of Order 23 can be summed up thus:*



(i) *No appeal is maintainable against a consent decree having regard to the specific bar contained in Section 96(3) CPC.*

(ii) *No appeal is maintainable against the order of the court recording the compromise (or refusing to record a compromise) in view of the deletion of clause (m) of Rule 1 Order 43.*

**(iii) No independent suit can be filed for setting aside a compromise decree on the ground that the compromise was not lawful in view of the bar contained in Rule 3-A.**

**(iv) A consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.**

*Therefore, the only remedy available to a party to a consent decree to avoid such consent decree, is to approach the court which recorded the compromise and made a decree in terms of it, and establish that there was no compromise. In that event, the court which recorded the compromise will itself consider and decide the question as to whether there was a valid compromise or not. **This is so because a consent decree is nothing but contract between parties superimposed with the seal of approval of the court.** The validity of a consent decree depends wholly on the validity of the agreement or compromise on which it is made. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code.”*

[Emphasis Supplied]

22. The Supreme Court in *Amro Devi* case has clarified that where a compromise has not been reduced to writing nor is recorded by the Court, the requirements of Order XXIII Rule 3 CPC are not satisfied. The Appellant has relied upon this judgment to submit that the Order





dated 16.11.2007 is not an order/compromise decree. This contention of the Appellant is without merit. The judgment in *Amro Devi* case was in a case where a compromise was not in writing nor was it recorded by the Court. The relevant extract of the judgment in *Amro Devi* case is below:

*“20. A plain reading of the above provision clearly provides that for a valid compromise in a suit there has to be a lawful agreement or compromise in writing and signed by the parties which would then require it to be proved to the satisfaction of the Court. **In the present case there is no document in writing containing the terms of the agreement or compromise. In the absence of any document in writing, the question of the parties signing it does not arise.** Even the question of proving such document to the satisfaction of the Court to be lawful, also did not arise. Thus, it cannot be said that the order dated 20.08.1984 was an order under Order XXIII Rule 3 CPC.*

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***23. In the present case, neither the compromise deed has been reduced to writing, nor it is recorded by the court. Mere statements of the parties before court about such said compromise, cannot satisfy the requirements of Order XXIII Rule 3 of the CPC. Therefore, the compromise decree is not valid.***

[Emphasis Supplied]

23. As discussed above, in the present case, the Joint Application was filed recording a family settlement. The Joint Application was signed by both the parties and also supported by affidavits of both the parties and also contained a prayer to take the family settlement on record. The parties had annexed the family settlement as Annexure A-1 to the Joint Application. The Appellant was duly represented by a Counsel.

24. A review of the Order dated 16.11.2007 passed in the first suit shows that the family settlement was taken on record and the Court



passed a direction that the parties would abide by the terms of the compromise as contained in the family settlement. This is reflected in the last but one paragraph of the Order. The Order being brief is extracted below:

*“Present: Mr. Ashok Chhabra for the plaintiff.*

*Mr. Nikhil Singla for defendant.*

***IA No. 13058/2007 (under Section 151 CPC) in CS (OS) No. 1772/2005***

***This is a joint application filed by the parties seeking modification of the order passed by this Court on 26.12.2005.***

*The main suit was disposed of vide order passed by this Court on 21.4.2006 directing the plaintiff and defendant no.1 not to disturb the possession of each other and not to sell, alienate or transfer the suit property to a third party without the consent of each other until and unless the property is partitioned by metes and bounds.*

***Consequent to the final disposal of the suit, the parties are stated to have entered into a MOU dated 23.3.2007 settling their disputes regarding the suit property. By way of instant application the parties want this MOU to be taken on record. The MOU annexed with the instant application is taken on record. The parties shall abide by the terms of their compromise contained in the said MOU.***

*The application is disposed of.....”*

[Emphasis supplied]

25. Given these circumstances, for the Appellant to contend that this Order is not a valid compromise order or an order under Order XXIII Rule 3 CPC, is without merit.

26. The Appellant, in the second suit, has taken a plea that the family settlement was signed by coercion and undue influence. The provisions of Order VI Rule 4 CPC provides that where fraud



misrepresentation or undue influence is pleaded, material facts must be pleaded. A perusal of the plaint in the second suit shows that the only ground taken by the Appellant was that the Appellant was under emotional, mental and bodily distress and was manipulated by the Respondent. Several other inconsequential and unflattering averments are set out about the family life of the Appellant and the Respondent. It also states therein that the Appellant was pushed into becoming an alcoholic by the Respondent. The plaint also states that the Appellant was brain washed into signing papers. The plaint however acknowledges that the Appellant shifted to the first floor flat purchased for her by the Respondent. Thus admittedly the family settlement was acted upon.

27. The other contention raised by the Appellant is that the Joint Application sought modification of an Interim Order dated 26.12.2005, however, since the Interim Order had been “nullified” by the final Order dated 21.04.2006, all Interim Orders passed previously would stand automatically vacated.

28. This contention of the Appellant is also misconceived. The Order dated 26.12.2005 was an Interim Order which was subsumed in the final order passed by the Court on 21.04.2006. Since the first suit was a suit for permanent injunction filed by the Respondent against the Appellant, the suit was disposed of recording an agreement between the parties that they would not disturb the possession of each other and will not sell, alienate or transfer to a third party without the consent of each other, until the property is partitioned. Thus, this order



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was required to be modified for the compromise/family settlement to be given effect to.

29. The family settlement records that a separate first floor flat No. E-15 in Panchsheel Park has been purchased for the Appellant. It further records that the Appellant has received financial support from the Respondent and that once the family settlement is executed, the parties shall jointly approach the Court for modification of the Order dated 26.12.2005 passed in the first suit. The Order passed by the Court on 16.11.2007 records that the family settlement is taken on record and that the parties shall abide by the terms as contained therein.

30. For the provision of Order XXIII Rule 3 CPC to be applicable, a lawful agreement in writing and signed by both the parties, should exist as part of the record, which, is present as the family settlement Agreement. It is not disputed that the family settlement has been placed on record and even acted upon. On the basis thereof, a first floor flat has been purchased for the Appellant which has not been denied [by the Appellant] and even substantial monetary consideration has been stated to have been received by the Appellant. Subsequently, the Order dated 16.11.2007 has been passed. The definition of decree under Section 2(2) CPC includes an order which conclusively determines the rights of the parties, and to that extent the Order dated 16.11.2007 is such an Order. It also records a direction that *“the parties shall abide by the terms of the compromise contained in the said family settlement”*.



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31. In these circumstances, the bar as set out in Order XXIII Rule 3A CPC is applicable. As stated in the *Pushpa Devi Bhagat* case, the remedy, if any, of the Appellant was to approach the Court that passed the decree. However, instead the Appellant filed a fresh suit which is impermissible in law and was rightly dismissed by the learned Trial Court under the provisions of Order VII Rule 11(d) CPC.

32. In view of the foregoing discussions, we find no infirmity with the Impugned Judgment. The Appeal is, accordingly, dismissed.

33. The parties shall act based on a digitally signed copy of the judgment.

**TARA VITASTA GANJU, J**

**JANUARY 07, 2025/g.joshi/r**