2025 INSC 570

REPORTABLE

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 6681-6682 OF 2023

SAKINA SULTANALI SUNESARA (MOMIN) **....APPELLANT (S)**

VERSUS

SHIA IMAMI ISMAILI MOMIN JAMAT SAMAJ & ORS. **....RESPONDENT(S)**

J U D G M E N T

PRASANNA B. VARALE, J.

1. These appeals filed by Sakina Sultanali Sunesara ("the appellant") assails the judgment dated 28.08.2019 rendered by a Larger Bench of the High Court of Gujarat on a reference

arising out of Appeal from Order[1] Nos. 16 and 33 of 2017 and cognate AOs. The High Court concluded that a litigant who was already a party to the suit, but disputes the existence or validity of a compromise recorded under Order XXIII Rule 3 of the Code of Civil Procedure, 1908[2] must first approach the Trial Court; a First Appeal under Section 96 of the CPC, it held, is available only to a person who was not on the record of the suit. Following that pronouncement, the Single Judge of the High Court dismissed every pending AO on 06.09.2019 for want of maintainability. Both the reference judgment and the consequential order are impugned in these appeals.

2. The factual matrix giving rise to the appeal is as follows:

2.1. Three contiguous parcels of non-agricultural land at Siddhpur, District Patan, city survey Nos. 321, 322 and 323, together 36,354 sq. m., originally belonged to Moosabhai Mooman. On his death they devolved on his widow

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[1] AO

[2] CPC

Noorbanu, his sons Sultan and Shaukatali (respondent no. 3) and his daughter Mumtaz (respondent no. 7). Sultan predeceased, leaving behind the appellant and two children, Salma (respondent no. 5) and Altaf (respondent no. 6) as his legal heirs.

2.2. Mumtaz executed an irrevocable General Power of Attorney[3] in favour of Hassan Ali Lad (respondent no. 4) on 15.02.2002; a second joint PoA dated 08.02.2005 in his favour was signed by the appellant, Salma, Altaf and Noorbanu.

2.3. On 09.03.2007, Shaukat Ali and Hassan Ali (purporting to act for all other co-owners) agreed to sell 28,978.51 sq. m. ("the suit land") to ten individuals styling themselves 'Shia Imami Ismaili Momin Jamat, Siddhpur' (respondent no. 1) for ₹ 2.51 crore. Only ₹ 15 lakh was paid; a notice terminating the agreement issued in August 2011.

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[3] PoA

2.4. Up until 2012, Salma, Altaf and Mumtaz conferred individual PoAs on the appellant; two of the original ten proposed purchasers had by then died. On 10.01.2013 the eight survivors executed a deed cancelling the agreement to sell and an indemnity bond. The appellant asserts custody of the originals of both joint PoAs, the agreement, the cancellation deed and the bond.

2.5. Later in 2013, Shaukat Ali, Salma, Altaf and Mumtaz relinquished their undivided interests in favour of the appellant; four mutation entries were certified, leaving her the sole recorded owner.

2.6. In August 2015, the appellant executed three registered sale deeds: two dated 10.08.2015 conveying 3,272 sq. m. and 6,385 sq. m. to Platinum Tradex Private Limited and one dated 12.08.2015 conveying 6,567 sq. m. to four individuals. Two of those individuals had themselves been among the original ten vendees.

2.7. Later in 2015, Hassan Ali, accompanied by two of the original vendees, persuaded another member of that group, Kurban Momin, to revive the terminated transaction. On 24.11.2015 three revenue appeals were filed before the Deputy Collector, Siddhpur, challenging the mutation entries reflecting the appellant's sale deeds. The appellant and Shaukat Ali were cited as respondents.

2.8. Regular Civil Suit No. 5 of 2016 ("the first suit") was instituted on 5 January 2016, seeking a declaration that respondent no. 1 possessed the suit land. On 21.01.2016 respondent no. 1, through Kurban, filed Special Civil Suit No.6 of 2016 ("the second suit") in Patan for specific performance of the cancelled agreement, showing the appellant and her two children through Hassan Ali and joining Shaukat Ali personally.

2.9. A compromise dated 12.03. 2016, signed by respondent nos. 1 and 2 (a trust said to represent the Jamat) on one side and Shaukat Ali and Hassan Ali on the other, was

recorded on 15.03.2016, resulting in a first consent decree. Relying on that decree, the plaintiff withdrew the first suit unconditionally on 23.04.2016.

2.10. Respondent no. 1 then instituted Special Civil Suit No. 19 of 2016 ("the third suit"), again suing the appellant and her children through Hassan Ali. A further compromise dated 12.11.2016 led to a second consent decree on 17.12.2016.

2.11. The appellant maintains that she had no notice of either compromise and that both decrees were procured by fraud. She therefore filed AO No. 16 of 2017 against the first consent decree and AO No. 33 of 2017 against the second, invoking Order XLIII Rule 1-A. Transferee purchasers lodged parallel AOs.

2.12. The Single Judge of the High Court, noting conflicting Division Bench views on the powers of Rule 1-A, referred three questions to a Larger Bench, which held that a party to the suit must first invoke the proviso to Order XXIII Rule 3 and that Rule 1-A itself creates no independent right of appeal. Acting on

that pronouncement, the Single Judge dismissed all AOs on 06.09.2019.

3. Being aggrieved by the decision of the Larger Bench dated 28.08.2019, the appellant has filed the present civil appeal claiming that Section 96 of the CPC permits a direct First Appeal even where the compromise itself is in dispute.

4. Mr. Huzefa Ahmadi, learned Senior Counsel for the appellant has rendered the following submissions in brief:

4.1. Prior to the 1976 amendment to the CPC, Order XLIII Rule 1(m) permitted an Appeal from Order against an order recording or refusing a compromise under Order XXIII Rule 3. Amendment Act No.104 of 1976 deleted that clause and, in the same breath, introduced Order XLIII Rule 1-A(2). The new rule shifts the challenge to the decree and preserves a first appeal under Section 96; no separate Appeal from Order now lies.

4.2. The impugned judgment accords two avenues to a non-party (review or First Appeal with leave under Section 96)

but limits a party on record to an application under the proviso to Order XXIII Rule 3. Such a view defeats the purpose of Rule 1-A(2), enacted to ensure that any litigant disputing a compromise may contest it directly in appeal.

4.3. The counsel for the appellant has further submitted that the ratios laid down in the case of ***Pushpa Devi Bhagat Vs. Rajinder Singh and others***[4], ***Banwari Lal Vs. Chando Devi and another***[5] and ***Triloki Nath Singh vs Anirudh Singh***[6] are not correctly and completely considered by the Larger Bench of the High Court. It is submitted that in the case of ***Banwari Lal* (supra)** this Court in Paragraphs 9 and 13 has observed as follows:

> *" 9.[.....]But after the amendments which have been introduced, neither an appeal against the order recording the compromise nor remedy by way of filing a suit is available in cases covered by Rule 3A of Order 23. As such a right has been given under Rule 1A(2) of*

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[4] (2006) 5 SCC 566

[5] (1993) 1 SCC 581

[6] (2020) SCC Online SC 444

> *Order 43 to a party, who challenges the recording of the compromise, to question the validity thereof while preferring an appeal against the decree. Section 96(3) of the Code shall not be a bar to such an appeal because Section 96(3) is applicable to cases where the factum of compromise or agreement is not in dispute.*
> .....
> *13. [.....] Even Rule 1(m) of Order 43 has been deleted under which an appeal was maintainable against an order recording a compromise. As such a party challenging a compromise can file a petition under proviso to Rule 3 of Order 23, or an appeal under Section 96(1) of the Code, in which he can now question the validity of the compromise in view of Rule 1A of Order 43 of the Code."*
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> ***(emphasis supplied)***

4.4. The observation in ***Banwari Lal* (supra)** has been relied upon and approved in the case of **H.S. Goutham Vs. Rama Murthy and another**[7] as well. The High Court relied on a solitary sentence in paragraph 17 of ***Pushpa Devi* (supra)** that "*the only remedy ... is to approach the court which recorded the compromise*". Counsel contends that the remark is *per incuriam*:

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[7] (2021) 5 SCC 241

it neither notices ***Banwari Lal* (supra)** nor distinguishes the later three-Judge Bench ruling in ***Kishun Alias Ram Kishun (Dead) through LRS. v Behari (Dead) By LRS.***[8], which expressly recognises a first appeal where the compromise itself is disputed.

5. On the other hand, Mr. Rakesh Uttamchandra Upadhyay, learned counsel for the Respondents has made the following main submissions:

5.1. The respondents support the High Court's conclusion that a party to the suit cannot invoke a first appeal. A consent decree, they urge, operates as estoppel and may be questioned only by an application to the Trial Court under the proviso to Order XXIII Rule 3; Section 96(3) bars an appeal and the deletion of Order XLIII Rule 1(m) removes the earlier avenue of an appeal from order.

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[8] (2005) 6 SCC 300

5.2. Reliance is placed on ***Pushpa Devi*** **(Supra)**, especially para 17, which summarises:

- "No appeal is maintainable against a consent decree in view of Section 96(3)."
- "No appeal survives against the order recording the compromise after the omission of clause (m) of Order XLIII Rule 1."

5.3. A three-Judge Bench of this Court in ***Triloki Nath*** Singh **(Supra)**, after considering **Pushpa Devi** (supra) and **R Rajanna** (supra), holds that post 1976 "neither an appeal nor a separate suit is maintainable" to impeach a compromise decree; Order XLIII Rule 1 A(2) is available only when the Trial Court has first decided, under the proviso to Order XXIII Rule 3, whether a compromise exists.

5.4. Any apparent divergence between ***Banwari Lal*** **(supra)** and ***Pushpa Devi*** **(Supra)** was resolved in **Sree Surya Developers & Promoters v. N. Sailesh Prasad and others**[9], which affirmed

[9] (2022) 5 SCC 736

that the Court passing the decree is the proper forum to examine the validity of the compromise. Paragraphs 9 and 13 of ***Banwari Lal* (supra)**-quoted by the appellant-must be read in that light.

6. Having perused the record and having considered the rival submissions, the primary question before us is whether a litigant who was already a party to the suit, yet contests the very fact or legality of a compromise embodied in a decree, is restricted to an application before the Trial Court under the proviso to Order XXIII Rule 3 or may, at her election, maintain a first appeal under Section 96 of the CPC notwithstanding Section 96(3).

7. We believe it is first necessary to look at the impact of the Amendment Act 104 of 1976 to CPC. Prior to 01.02.1977 an order "recording or refusing to record" a compromise was itself appealable under Order XLIII Rule 1(m). The Parliament removed that clause and, in the same breath, introduced four companion provisions:

- **Proviso and Explanation to Order XXIII Rule 3** – obliging the Trial Court to decide, forthwith and itself, any objection to the fact or lawfulness of a compromise;
- **Rule 3-A of Order XXIII** – barring a separate suit to avoid a compromise decree;
- **Order XLIII Rule 1-A** – permitting an appellant who is already in a competent appeal against a decree to contend that the compromise "should, or should not, have been recorded"; and
- **Section 96(3)** (as renumbered) – prohibiting an appeal from a decree "passed with the consent of parties".

8. In our opinion, the interpretation of these provisions is quite clear and coherent. A party that accepts the compromise is bound by it and cannot appeal (Section 96(3)). A party that *denies* the compromise must first raise that dispute before the Trial Court (proviso to Order XXIII Rule 3). A fresh suit is no longer possible (Order XXIII Rule 3-A). If, and only if, the Trial Court decides the objection and passes a decree adverse to the objector, a first appeal lies under Section 96(1); in that appeal

the appellant may, by virtue of Order XLIII Rule 1-A(2), challenge the recording of the compromise.

9. The above reading stands affirmed in a catena of judgements passed by this Court. In ***Banwari Lal* (Supra)**, this Court held that, post-1976, the aggrieved party possesses *two concurrent but sequential* remedies:

- an application under the proviso to Order XXIII Rule 3 before the Trial Court; or
- a first appeal under Section 96(1) *after* the Trial Court has recorded its finding.

10. More importantly, in ***Pushpa Devi* (Supra)** this Court, after surveying the amendments, stated four propositions, chief among them that a consent decree is binding "unless set aside by the Court which recorded the compromise *on an application under the proviso to Rule 3*". The relevant paras of ***Pushpa Devi* (supra)** are reproduced hereunder:

> *"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.

Re: Point (ii)

18. Order 23 deals with withdrawal and adjustment of suits. Rule 3 relates to compromise of suits, relevant portion of which is extracted below:

> *"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 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:"

The said Rule consists of two parts. The first part provides that 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, the court shall order such agreement or compromise to be recorded and shall pass a decree in accordance therewith. The second part provides that where a defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the court shall order such satisfaction to be recorded and shall pass a decree in accordance therewith. The Rule also makes it clear that the compromise or agreement may relate to issues or disputes which are not the subject-matter of the suit and that such compromise or agreement may be entered not only among the parties to the suit, but others also, but the decree to be passed shall be confined 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. We are not, however, concerned with this aspect of the Rule in this appeal.

19. What is the difference between the first part and the second part of Rule 3? The first part refers to situations where an agreement or compromise is entered into in writing and signed by the parties. The

said agreement or compromise is placed before the court. When the court is satisfied that the suit has been adjusted either wholly or in part by such agreement or compromise in writing and signed by the parties and that it is lawful, a decree follows in terms of what is agreed between the parties. The agreement/compromise spells out the agreed terms by which the claim is admitted or adjusted by mutual concessions or promises, so that the parties thereto can be held to their promise(s) in future and performance can be enforced by the execution of the decree to be passed in terms of it. On the other hand, the second part refers to cases where the defendant has satisfied the plaintiff about the claim. This may be by satisfying the plaintiff that his claim cannot be or need not be met or performed. It can also be by discharging or performing the required obligation. Where the defendant so "satisfies" the plaintiff in respect of the subject-matter of the suit, nothing further remains to be done or enforced and there is no question of any "enforcement" or "execution" of the decree to be passed in terms of it. Let us illustrate with reference to a money suit filed for recovery of say a sum of rupees one lakh. Parties may enter into a lawful agreement or compromise in writing and signed by them, agreeing that the defendant will pay the sum of rupees one lakh within a specified period or specified manner or may agree that only a sum of Rs 75,000 shall be paid by the defendant in full and final settlement of the claim. Such agreement or compromise will fall under the first part and if the defendant does not fulfil the promise,

the plaintiff can enforce it by levying execution. On the other hand, the parties may submit to the court that the defendant has already paid a sum of rupees one lakh or Rs 75,000 in full and final satisfaction or that the suit claim has been fully settled by the defendant out of court (either by mentioning the amount paid or not mentioning it) or that the plaintiff will not press the claim. Here the obligation is already performed by the defendant or the plaintiff agrees that he will not enforce performance and nothing remains to be performed by the defendant. As the order that follows merely records the extinguishment or satisfaction of the claim or non-existence of the claim, it is not capable of being "enforced" by levy of execution, as there is no obligation to be performed by the defendant in pursuance of the decree. Such "satisfaction" need not be expressed by an agreement or compromise in writing and signed by the parties. It can be by a unilateral submission by the plaintiff or his counsel. Such satisfaction will fall under the second part. Of course, even when there is such satisfaction of the claim or subject-matter of the suit by the defendant and the matter falls under the second part, nothing prevents the parties from reducing such satisfaction of the claim/subject-matter, into writing and signing the same. The difference between the two parts is this: where the matter falls under the second part, what is reported is a completed action or settlement out of court putting an end to the dispute, and the resultant decree recording the satisfaction, is not capable of being enforced by levying execution. Where the matter falls

> *under the first part, there is a promise or promises agreed to be performed or executed, and that can be enforced by levying execution. While agreements or compromises falling under the first part can only be by an instrument or other form of writing signed by the parties, there is no such requirement in regard to settlements or satisfaction falling under the second part. Where the matter falls under the second part, it is sufficient if the plaintiff or the plaintiff's counsel appears before the court and informs the court that the subject-matter of the suit has already been settled or satisfied."*

11. The path is therefore settled: the proviso to Order XXIII Rule 3 is not optional; it is the *exclusive first port of call* for any party on record who denies the compromise. Order XLIII Rule 1-A does not create a new right of appeal; it merely enables an appellant, already before the Appellate Court, to attack the decree on the ground that the compromise should not have been recorded. When the fact of compromise is not disputed, the bar in Section 96(3) is absolute.

12. The present appellant was a defendant-of-record in Special Civil Suit No. 6 of 2016 and Special Civil Suit No. 19 of 2016. Both decrees rest on written compromise terms signed by counsel who held unquestioned vakalatnamas. The signature of duly authorised counsel is the signature of the party. The decrees are therefore consent decrees within the meaning of Section 96(3). The appellant never invoked the proviso to Order XXIII Rule 3; instead, she lodged Appeals from Orders on the footing of the deleted Order XLIII Rule 1(m). The Larger Bench of the High Court was correct in holding that such appeals are incompetent since 1976.

13. The appellant's submission that allegations of fraud transform a consent decree into an ordinary decree cannot be accepted. Fraud, want of authority or other vitiating elements are precisely the matters that the proviso directs the Trial Court to examine. Unless and until that route is pursued, the statutory bar in Section 96(3) of the CPC remains operative.

14. It must also be noted that the presence of subsequent purchasers does not assist the appellant. Those purchasers were never parties to the suits; they have, with leave, instituted first appeals in the High Court, a course that Section 96(1) of the CPC permits to non-parties. The appellant, by contrast, was a party to the suits and cannot appropriate the remedy reserved for third parties. Both suits were eventually compromised before a Lok Adalat. Section 21(2) of the Legal Services Authorities Act, 1987 interdicts any appeal from the award of a Lok Adalat. The limited supervisory jurisdiction under Article 227 of the Constitution of India remains available, but has not been invoked.

15. We are satisfied that the Larger Bench took the right view. It noticed that the CPC, after the 1976 amendment, works in two distinct ways. If a person was already a party to the suit, and denies that any lawful compromise ever took place, the CPC requires that person to go back to the Trial Court under the

proviso to Order XXIII Rule 3 and ask that Court to decide whether the compromise is valid. On the other hand, someone who was not a party to the suit, but whose rights are hurt by a consent decree, may approach the Appellate Court in a First Appeal under Section 96 of the CPC, but only after obtaining leave. Order XLIII Rule 1-A does not create an independent appeal at all; it merely says that, once an appeal is otherwise before the Court, the appellant may argue that the compromise should, or should not, have been recorded. Seen in that light, the High Court's directions correctly apply the structure of the statute and do not call for interference.

16. For the reasons recorded above, the civil appeals fail and are dismissed.

17. The judgment dated 28.08.2019 of the Larger Bench of the High Court of Gujarat, as well as the consequential order of the Single Judge dated 06.09.2019, are affirmed.

18. It is open to the appellant, if so advised, to invoke the proviso to Order XXIII Rule 3 of the CPC before the Trial Court. We express no opinion on the merits of any such application.

19. There shall be no order as to costs.

20. Pending application(s), if any, shall stand disposed of.

.....J.
[VIKRAM NATH]

.....J.
[PRASANNA B. VARALE]

NEW DELHI;
APRIL 23, 2025.