

**IN THE COURT OF THE ADDL. DISTRICT JUDGE –CUM- SPECIAL
JUDGE, C.B.I.-II, BHUBANESWAR.**

PRESENT:

Dr. A.K.Mishra,
Addl. District Judge –cum-
Special Judge, C.B.I.-II, Bhubaneswar

R.F.A. No. 3/620 OF 2015/2014.

(Arising out of Judgment and decree dated 29.10.2013
passed by the learned Civil Judge (Junior Division)
Bhubaneswar in Civil Suit No. 310 of 2013)

Bansidhar Barik , aged about 76 years,
s/o. late Bhajani Barik, Vill. Nischintipur,
P.O. Dalakasauti, P.S. Balipatna, Dist. Khurda.

... Appellant.

Versus.

Manjulata Barik, aged about 39 years,
w/o. Guru Charan Barik, Vill. Nischintipur,
P.O. Dalakasauti, P.S. Balipatna, Dist. Khurda.

... Respondent.

For the Appellant : Sri N.K.Rath & Associates, Advocates.
For the Respondent : Sri D.Das & Associates, Advocates.

Date of Argument : 20.1.2016.

Date of Judgment : 21.1.2016.

JUDGMENT

Challenge in this appeal is the judgment and decree dated 29.10.2013 passed by learned Civil Judge (Jr.Dvn.) Bhubaneswar in C.S.No. 310 of 2013 in dismissing the suit for permanent injunction simpliciter ignoring the compromise accorded and recorded between the parties . The sole plaintiff is the appellant while the lone defendant is the respondent.

2. Facts necessitating the disposal of this appeal may be recapitulated thus: On 17.6.2013 plaint was presented praying for permanent injunction against the defendant in respect of suit land measuring Ac.0.06 decimals

appertaining to plot no.182 under consolidation Khata No.112 vide ROR published in the year 1980 Ext.1. The said khata stands recorded in the name of plaintiff and his mother Radhi Barik and one Rama Barik stated to be the vendor of defendant. In the suit khata, the plaintiff claimed to have 2/3rd share while Rama Barik had 1/3rd share. The son of Rama Barik, Babula had sold Ac.0.03 decimals of land to defendant and when defendant attempted to take possession, the action in suit was initiated. The defendant appeared on 21.10.2013 on which date a compromise petition signed by both parties as well as their respective advocates was filed. As per order sheet, parties did not choose to go ahead with compromise and refused to record their statement u/o.X Rule-1 CPC and for that the court on the same day accepted respective affidavit evidence and allowed the parties to be examined and cross examined as P.W.1 and D.W.1 and posted the case to 24.10.2013 for judgment. In course of examination of plaintiff, four documents including the original compromise petition Ext.4 were exhibited. Thus, in absence of written statement or framing of issue, the impugned judgment passed recording disposal on contest.

3. Learned counsel for appellant vehemently contended that when a compromise petition was filed and admitted in the evidence recorded on the same day, the dismissal of suit showing as contested is nothing but prejudicial to the parties and contravention of the provisions of u/o.XXIII Rule-3 CPC. It is further urged that the dismissal of the suit on the ground that the land allotted in the compromise is unidentifiable does not stand to the reason when sketch map is furnished vide Ext.3. Learned counsel for respondent does not counter the above contention.

4. The point for determination in this appeal is :

Whether the impugned order suffers from illegality by not decreeing the suit as per compromise arrived at between the parties?

5. The silent features of the proceeding in the lower court unfold the contravention of order XXIII rule-3 CPC. On 21.10.2013 compromise petition signed by both parties was filed and on the same day their evidences were recorded in which both parties

have admitted compromise referring the document Ext.4. If this is so, the court had no occasion to doubt the consent of the parties for the compromise under Ext.4. The compromise petition was not rejected. In the impugned judgment, the description of the suit land and its allotment in the compromise petition is stated to be ambiguous. The said reason assigned by learned lower court is not acceptable. On the other hand, when learned advocates for the respective parties have admitted before this court that compromise Ext.4 should be given effect to pass a decree, this court does not find any fault therein. The terms and conditions mentioned in the compromise petition Ext.4 is lawful. The learned lower court has not rejected the same nor this court find any justified reason to disregard the same. The jurisdiction of the appellate court to accept compromise under order XXIII rule-3 CPC can be invoked u/s. 107 (2) CPC. The law is reiterated in the decision reported in **1988 (1) S.C.C. Page-270**, Gurpreet Singh vs. Chatur Bhuj Goel, where the Hon'ble Apex Court concluded thus:

"10. Under Rule 3 as it now stands, when a claim in suit has been adjusted wholly or in part by any lawful agreement or compromise, the compromise must be in writing and signed by the parties and there must be a completed agreement between them. To constitute an adjustment, the agreement or compromise must itself be capable of being embodied in a decree. When the parties enter into a compromise during the hearing of a suit or appeal, there is no reason why the requirement that the compromise should be reduced in writing in the form of an instrument signed by the parties should be dispensed with."

6. Since the impugned judgment is passed in contravention of the order XXIII Rule-3 CPC, the same cannot be sustained in the eye of law and on being reversed a decree is required to be passed in terms of compromise filed by the parties vide Ext.4. Hence, it is ordered.

ORDER

The appeal is allowed on contest without cost. The impugned judgment and decree dated 29.10.2013 passed by the learned Civil Judge (Junior Division) Bhubaneswar in C.S. No. 310 of 2013 is set aside. Let a decree be

passed as per terms and conditions of the compromise petition vide Ext.4. The compromise petition shall form the part of the decree.

Addl. District Judge -cum-
Special Judge, C.B.I.-II, Bhubaneswar.

Dictated and corrected by me. Judgment is pronounced in the open court today this the 21st day of January, 2016.

Addl. District Judge -cum-
Special Judge, C.B.I.-II, Bhubaneswar.