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**(Pan Bai & Anr. Vs. Bhanwarlal & Ors.)**

**17/03/2016**

Shri Sameer Kumar Shrivastava, Advocate for the petitioners.

By filing this writ petition, order dated 9/2/2016 passed by the trial Court rejecting the compromise application filed under Order XXIII Rule 3, on a application by defendants under Section 151 CPC, has been put to challenge under Article 227 of the Constitution of India by the petitioners/plaintiffs.

Suit for declaration, partition and mesne profits as well as cancellation of sale deed dated 11/3/2013 on the premise that suit property is an ancestral property of plaintiffs and they being daughter of defendants No. 1, by virtue of amendments in Hindu Succession Act have acquired title since birth and therefore the sale deed executed by defendant No. 1 in favour of defendant no. 2 without partition is bad in law to the extent of shares of plaintiffs. is pending consideration. During pendency of the suit, an application under Order XXIII Rule 3 CPC dated 7/12/2015 was filed and trial Court recorded the statement of parties. Case was fixed for 12/12/2015. However, on 10/12/2015, defendants filed an application for early hearing under Section 151 of CPC inter

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alia contending that by playing fraud, misrepresentation, threat and collusion, plaintiffs dishonestly got the thumb impression of defendants on the alleged compromise and therefore, it was prayed that compromise be rejected.

After referring to the provisions as contained under Order XXIII Rule 3 and proviso appended thereto, trial Court found the compromise application suspicious in nature and therefore, rejected the same declining to pass the decree in terms of compromise and fixed the case for evidence on the next date mentioned in the impugned order.

Learned counsel for the petitioners while criticizing the order impugned contended that once the statement of parties have been recorded in the context of compromise application, the trial Court ought not to have rejected the compromise application filed under Order XXIII Rule 3 of CPC without recording satisfaction and therefore, order impugned suffers from patent illegality.

It is relevant to mention that in the written statement, it is denied that suit property is an ancestral property and instead it is pleaded that in fact the suit property after partition amongst the co-owners had fallen to the share of defendant No. 1 and upon consent being accorded, same has

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been recorded in revenue records in the name of defendants. Hence, defendant No. 1 has exclusive right, title and interest in the suit property and therefore, sale deed executed in favour of defendant No. 2 is a valid transfer of title.

In the application filed under Section 151 of CPC, it is contended that terms of the alleged compromise are different from what was agreed as vividly stated under clause ( क ) of the application; whereas with ill-intentions to cheat the defendant No. 1, different terms and conditions have been incorporated and same are explained in para 3 of the application. Upon consideration of the contents thereof, the trial Court has found that compromise is suspicious in nature. This Court has also perused the averments made in the application and found that the conclusion of the trial Court is proper and there is no illegality or jurisdictional error committed by the trial Court while passing the impugned order. Further, the requirement of holding an enquiry as contended by counsel for the petitioner, as a matter of fact is not stipulated in the provisions itself and the same may be taken recourse to depending upon facts and circumstances of each case for the purpose of the satisfaction of the Court and therefore, contention advanced in this regard cannot be

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countenanced in the given factual matrix.

Provisions as contained under Order XXIII Rule 3 CPC and proviso and explanation appended thereto confer jurisdiction upon the trial Court to look into the compromise and objection thereto bearing in mind the compromise or agreement. Therefore, once the Court finds that agreement is influenced by misrepresentation, fraud and dishonesty, such agreement cannot be given effect to. As such, in the opinion of this Court, trial Court justified having rejected the application under Order XXIII Rule 3 CPC. Hence, no interference under Article 227 of the Constitution of India is warranted. Petition sans merits, is hereby dismissed.

**(Rohit Arya)**  
**Judge**

jps/-