

2025 LiveLaw (SC) 446

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION**

SUDHANSHU DHULIA; J., AHSANUDDIN AMANULLAH; J.

APRIL 21, 2025. 12

CIVIL APPEAL NO(S). OF 2025 [@ SPECIAL LEAVE PETITION (CIVIL) NO(S). 4812 OF 2023]

**MANJUNATH TIRAKAPPA MALAGI AND ANR *versus* GURUSIDDAPPA TIRAKAPPA
MALAGI (DEAD THROUGH LRS)**

Code of Civil Procedure, 1908; Order 23 Rule 3 - A suit by legal heirs to set aside a compromise decree under Order 23 Rule 3 CPC is not maintainable if the original party did not file a recall application. The Court reaffirmed that the only remedy against a compromise decree is a recall application, as per Order 23 Rule 3A CPC, which bars suits to challenge the legality of such decrees. Appeal dismissed where appellants failed to show that their father, the original party, challenged the decree. (Paras 11 & 12)

[Arising out of impugned final judgment and order dated 23-09-2022 in RFA No. 1295/2007 passed by the High Court of Karnataka Circuit Bench at Dharwad]

For Petitioner(s): Mr. C. M. Angadi, Adv. Mr. Rameshwar Prasad Goyal, AOR

For Respondent(s): Mr. Sanket M. Yenagi, Adv. Mr. Nikhil Jain, AOR Ms. Divya Jain, Adv. Mr. Chinmay Deshpande, Adv. Mr. Anirudh Sangarneria, AOR

J U D G M E N T

SUDHANSHU DHULIA, J.

1. Leave granted.

2. The present appeal arises out of pure civil proceedings initiated at the hands of the present appellants in the year 2003. The appellants filed a suit for declaring a compromise decree entered into between the respondents (defendants) as null and void, and not binding on the appellants. Additionally, the appellants also sought partition of a certain share in the ancestral property, which was in the possession of the defendants. The trial court dismissed the suit of the appellants vide order dated 02.03.2007. Thereafter, the appellants filed the first appeal before the High Court, which has also been dismissed by the impugned order dated 23.09.2022.

3. Since the present matter concerns various suits, we would like to state the facts of the matter in short and the same are as follows:

(a) In 1974, a family partition takes place between brothers and their father, i.e. appellants' father, his five brothers and appellants' grandfather, and the family property was partitioned which was registered.

(b) Thereafter, in the year 1998, the appellants filed a suit (O.S No.219/1998) against their father and mother seeking partition and division of ancestral property by metes and bounds. However, during the pendency of this suit, the grandfather of the appellants filed a different suit (O.S No.58/1999) for partition in which his six sons, including appellants' father, were a party. In that, it was stated that a part of the joint family property (7 acres of land) was mistakenly left out of the 1974 partition. Vide order dated 18.01.2000, Trial Court passed a decree based on a compromise between the defendants under which that 7 acres of land was equally divided amongst the appellants' father, his five brothers and appellants' grandfather. Consequently, 1 acre out of the 7 acres fell to the share of the appellants' father.

(c) Taking into consideration the compromise decree dated 18.01.2000, the Trial Court, vide order dated 02.08.2002, decreed the appellants' partition suit (O.S No.219/1998), and the appellants together received half of the share of their father's property. Consequently, both cases were decided. The 1999 suit was decided on 18.01.2000 by a decree of compromise and later the 1998 suit was decided on 02.08.2002 based on the decree of compromise passed in 1999 suit.

(d) From here, the main dispute arises. In 2003, the appellants filed the present suit (No.1/2003) seeking a declaration that the compromise decree dated 18.01.2000 is null and void as, according to the appellants, the 7 acres of land was their father's property and not the ancestral property. Thus, the appellants' claim that they are entitled to half of the 7 acres of land (hereinafter referred to as 'suit property'). This is the suit with which we are dealing in the present appeal. This suit of the appellants was dismissed by the Trial Court, and then the first appeal filed by the appellants has also been dismissed by the High Court vide the impugned order dated 23.09.2022. Now, appellants are before us.

4. It is the case of the appellants that they are the sons of Tirakappa Gurusiddappa Malagi, who had colluded with his father (appellants' grandfather) and brothers (appellants' uncles) to deprive the appellants of their rights. Appellants contend that the suit property (7 acres of land) was purchased by their grandmother in the name of their father when he was a minor and thus, suit property was rightly not included in the 1974 partition. However, according to the appellants, their father, in collusion with his father and brothers, got the suit property partitioned by a compromise decree, and this has led to the reduction of the appellants' share in the suit property. They further argue that the compromise decree should be set aside as they were never made a party to that suit in which the compromise decree was passed.

5. On the contrary, the other side would argue that the appellants' interest was represented by their father in the suit in which the compromise decree was passed. It has also been argued that the Trial Court and High Court were correct in holding that the appellants' suit was barred by principles of *res judicata* as well as under Order 2 Rule 2 and Order 23 Rule 3A of the Code of Civil Procedure, 1908 (hereinafter referred to as 'CPC').

6. We have heard both sides and perused the material before us.

7. There are concurrent findings of the Courts below against the appellants. The appellants vehemently argue that since the suit property is not an ancestral property, it cannot be partitioned amongst their father, grandfather and father's brothers. However, the appellants miserably failed to prove that the suit property is not a part of the ancestral property. After going through the records, we are of the considered view that the Trial Court correctly concluded that although the suit property was purchased in the name of the appellants' father, it was purchased from the family funds and, thus, it is a joint family property.

8. Since the suit property was not taken into consideration during the partition in the year 1974, the grandfather of the appellants filed a suit seeking partition in which the suit property was equally divided amongst the appellants' father, his brothers and appellants' grandfather. The appellants' interest was represented by their father, and pursuant to the compromise decree, the appellants' father received his part of the share. Subsequently, as per the decree dated 02.08.2002 passed in Suit no.219/1998 filed by the appellants, the appellants have also been held jointly entitled to a half share of their father's share of

the suit property. In other words, appellants were jointly held entitled to 0.5 acres of land. We are unable to understand how the appellants can claim it to be an act of fraud.

9. Through the decree dated 02.08.2002 passed in suit (No.219/1998) filed by the appellants, the entire share of the appellants' father, which he had received in the 1974 partition and by compromise decree, was further partitioned amongst the appellants and their father. This decree was never challenged by the appellants. Nevertheless, they filed a fresh suit in the year 2003 seeking cancellation of the compromise decree and further seeking partition of the suit property. The appellants' ground for challenging the said compromise decree is that the appellants' father was coerced by his brothers and father to enter into the said compromise.

10. Let us discuss the law governing a consent decree. Order 23 Rule 3 of CPC, which deals with compromise decree, reads as follows:

"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:

Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.

Explanation.—An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule"

Thus, a reading of the above provision makes it clear that before passing a decree on the basis of a compromise, the Court has to satisfy itself that the suit has been adjusted by a lawful compromise. Once the Court passes a compromise decree after such a satisfaction, the decree cannot be challenged in an appeal as no appeal lies against a compromise decree¹.

11. Also, a compromise decree cannot be challenged by filing a fresh suit as there is a bar on filing a fresh suit challenging the consent decree on the ground of the legality of the compromise under Order 23 Rule 3A of CPC, which reads as follows:

"3-A. 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."

12. The only remedy against a compromise decree is to file a recall application. This Court in *Pushpa Devi Bhagat v. Rajinder Singh*, (2006) 5 SCC 566 summed up the position of law as follows:

"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.

¹ Section 96(3) of CPC: No appeal shall lie from a decree passed by the Court with the consent of parties.

(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...

(Emphasis Provided)

Thus, even if we accept the contention of the appellants that their father was coerced by his brothers and father (appellants' grandfather) to enter into a compromise, which led to the passing of the consent decree, a fresh suit is still not a valid remedy. In that situation, the appellants' father should have filed a recall application before the Court that had passed the decree. The appellants' father has never done so! Moreover, he had admitted the consent decree and never questioned its validity.

13. Additionally, the appellants' argument that the suit property is not a joint family property but was purchased by their grandmother in the name of the appellants' father and that he is now trying to deprive the appellants from the suit property as their relations have turned sour, is of no help to them. This is because if the appellants' grandmother had purchased the suit property in the name of the appellants' father, and it is not a part of the ancestral property then in that case it would be the property of the appellants' father as of now, since he is alive, and he is at full liberty to dispose of the same as per his wishes. Be that as it may, if the father of the appellants has no grievance against the consent decree, then we are unable to understand how the appellants can be allowed to challenge it.

14. In any case, the appellants' case has no merits. The appellants' suit is also barred under Order 2 Rule 2 of CPC as it did not include all the properties which were part of their earlier suit. The present suit is also hit by the principles of *res judicata* or by constructive *res judicata* as the appellants cannot re-agitate their claim regarding the partition of the suit property, which has already been partitioned as a result of previous litigations. The Trial Court and High Court have dealt with these issues in detail. We are not required to go into the same as we have already given our reasons above for holding that the appellants' suit is bereft of any merits.

15. In view of the above, we see no reason to interfere with the impugned order dated 23.09.2022 passed by the High Court. Accordingly, this appeal is dismissed.

16. Interim order(s), if any, stand(s) vacated.

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