

**IN THE HIGH COURT OF JAMMU & KASHMIR AND LADAKH**  
**AT SRINAGAR**

*Reserved on: 19.07.2023*

*Pronounced on: 25 .08.2023*

OWP No. 16/2016

Mst. Raja ...Petitioner(s)  
Through: Mr G. Q. Bhat, Advocate.

**Vs.**

Mst. Fazi and Ors. ...Respondent(s)  
Through: Mr W. M. Shah, Advocate.

**CORAM:**

**HON'BLE MR JUSTICE JAVED IQBAL WANI, JUDGE**

**JUDGEMENT**

1. The Supervisory Jurisdiction of this Court enshrined under Article 227 of the Constitution is being invoked by the petitioner seeking quashment of order dated 11.12.2015 (for short the impugned order) passed by the Court of Sub Judge Special Mobile Magistrate, Anantnag, (for short the trial Court) in case titled as "***Mst. Raja Vs. Mst. Fazi and Others***".
2. The seminal facts which are relevant for present purpose and the circumstances in which it arises and stated in the instant petition are that the petitioner herein claimed to be successor in interest (daughter) of one Ahad Parray along with respondent 1 herein and mother of respondents 2 to 4 herein. The said Ahad Parray is stated to have left a landed property entitled to be inherited by his legal heirs named above.
3. It is being further stated that in the year 1970 the petitioner herein was a minor of the age of 12 years and the respondent 1 herein and mother of respondents 2 to 4 herein allegedly obtained a fraudulent and alleged decree from the Court of Munsiff Anantnag in a suit titled as "***Mst. Hajra and anr. Vs. Mst. Raja***" (in file no. 388) on the basis of a compromise, in order to deprive the petitioner of her share in the estate of her father Ahad Parray.
4. It is being next stated that after coming to know about the said compromise decree on 03.05.2000 the petitioner herein challenged the same before the Munsiff Anantnag in suit being file no. 110/N on

07.05.2001 impleading respondent 1 herein besides the mother of the respondents 2 to 4 as party defendants which suit came to be decreed on 11.09.2003 in ex-parte setting aside the under compromise judgement and decree dated 09.02.1970

5. It is being further stated that respondents herein aggrieved of the judgment and decree dated 11.09.2003 preferred an appeal before the District Judge Anantnag on 09.09.2004 which came to be allowed remanding back the suit to the trial Court, whereafter the trial Court in terms of judgement dated 31.08.2006 dismissed the suit of the petitioner herein on the premise that a party challenging a compromise can file a petition under proviso appended to order 23 Rule 3 CPC for questioning the validity of the compromise in view of the order 43 Rule 1-A CPC.
6. It is being further stated that the petitioner herein aggrieved of the judgement dated 31.08.2006, preferred an appeal on 04.11.2006 before the Additional District Judge, Anantnag which Court while concurring the judgement passed by the trial court dismissed the appeal, however provided an opportunity to the petitioner herein to take appropriate proceedings, if available, under law for setting aside of the compromise decree whereafter, it is being stated that an application under Order 23 Rule 3 CPC came to be maintained by the petitioner herein before the trial Court seeking setting aside of the compromise decree dated 09.02.1970 and which application came to be dismissed by the trial Court in terms of the impugned order.
7. The petitioner has questioned the impugned order inter-alia on the grounds that the same has been passed without providing her an opportunity of hearing to produce her witnesses and that the trial Court passed the impugned order in absence of the counsel for the petitioner.
8. **Response** to the petition has been filed by respondents wherein it is being inter-alia stated that the petition is not maintainable and that the trial Court has rightly dismissed the application for want of proof and the application filed under Order 23 Rule 3 was not maintainable, as such, an application would lie only when a suit is pending before the Court.

**Heard counsel for the parties and perused the record.**

9. It is significant to note that the application filed by the petitioner before the trial Court wherein the impugned order has been passed though is styled to have been filed under Order 23 Rule 3 CPC, yet, the contents of the application coupled with the prayer made therein would ex-facie suggest that the said application is filed under Order 23 Rule 3-A CPC.
10. Before proceeding further in the matter, a reference to the legal position enunciated by the Apex Court pertaining to the Order 23 Rule 3-A in case titled as ***“R. Janakiammal Vs. S. K. Kumarasamy, reported in 2021 (9) SCC 114”*** being relevant and germane herein becomes imperative wherein at paras 42, 43, 44, and 58 following has been held:-

42. By the same amendment Act No.104 of 1976, a new Rule, i.e., Rule 3-A was added providing:

“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.”

43. Determination of disputes between persons and bodies is regulated by law. The legislative policy of all legislatures is to provide a mechanism for determination of dispute so that dispute may come to an end and peace in society be restored. Legislative policy also aims for giving finality of the litigation, simultaneously providing higher forum of appeal/revision to vend the grievances of an aggrieved party. Rule 3A which has been added by above amendment provides that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful. At the same time, by adding the proviso in Rule 3, it is provided that when there is a dispute as to whether an adjustment or satisfaction has been arrived at, the same shall be decided by the Court which recorded the compromise. Rule 3 of Order XXIII provided 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, the Court shall order such agreement or compromise to be recorded and pass a decree in accordance therewith. Rule 3 uses the expression

“lawful agreement or compromise”. The explanation added by amendment provided that an agreement or a compromise which is void or voidable under the Indian Contract Act, 1872, shall not be deemed to be lawful.”

44. Reading Rule 3 with Proviso and Explanation, it is clear that an agreement or compromise, which is void or voidable, cannot be recorded by the Courts and even if it is recorded the Court on challenge of such recording can decide the question. The Explanation refers to Indian Contract Act. The Indian Contract Act provides as to which contracts are void or voidable. Section 10 of the Indian Contract Act provides that all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.
58. The above judgments contain a clear ratio that a party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not lawful, i.e., it was void or voidable has to approach the same court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.

Thus, the position of law as laid down by the Apex Court in the judgement supra and as emerging from the above, is that Rule 3-A has been introduced in the code to give finality to litigation and to avoid multiplicity of suits by putting bar on new suit on the ground that agreement of which compromise decree was passed in the first suit was not lawful.

11. Reverting back to the case in hand and perusal of the record tends to show that the petitioner herein called in question the compromise decree initially is a suit instituted on 07.05.2001 before the Court of Munsiff Anantnag after claiming to have known about the same in the year 2001 and admittedly has been contesting the said suit till its dismissal came to be upheld by the appellate court in terms of order dated 19.12.2012 whereafter the plaintiff petitioner herein filed application for setting aside of the compromise decree before the trial court on 19.11.2013.

Perusal of the record would thus, reveal that the time spent by the petitioner in pursuing the suit supra till final disposal of the application before the trial Court has been consumed in pursuing the said wrong remedy which fact has been overlooked by the trial court while passing the impugned order.

12. What emerges from the perusal of the impugned order is that the petitioner was never called upon by the trial Court to produce copies of the original document having been taken cognizance by the trial Court for dismissal of the application besides the failure of the petitioner to adduce evidence in support of her case and produce all witnesses in one go in terms of the order dated 19.09.2015.
13. It is settled law that provisions of Code of Civil Procedure are designated to facilitate justice as it is not a penal law to punish a person and normally courts do not refuse to grant just relief merely because there is some mistake, negligence, inadvertence or even infractions of the rules of procedure. The Scheme of the code in essence is completely adjudication of the dispute between the parties and to do the full justice to the case.

Admittedly, the aforesaid underlying object of the Code has been overlooked by the trial Court while dealing with the application of the petitioner herein and in the process the impugned order has been passed manifestly causing failure of justice, thus, warranting exercise of Supervisory Jurisdiction vested in this Court under Article 227 of the Constitution.

14. For what has been considered, observed and analyzed herein above the instant petition succeeds and impugned order dated 11.12.2015 passed by the Court of Special Mobile Magistrate Anantnag is set aside. The matter is remanded back to the trial court for revisiting and reconsidering the case of the petitioner in accordance with law having regard to the aforesaid observations.
15. Disposed of.

**(JAVED IQBAL WANI)**  
**JUDGE**

**SRINAGAR**

25.08.2023

*Ishaq*