

Reportable

**IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO.2342 OF 2008**

Muni Reddy & Anr.

.....Appellant(s)

VERSUS

C. Nagaraju & Ors.

.....Respondent(s)

J U D G M E N T

Abhay Manohar Sapre, J.

1. This appeal is directed against the final judgment and order dated 02.01.2008 of the High Court of Karnataka at Bangalore in Regular Second Appeal No.804 of 2001 whereby the Single Judge of the High Court dismissed the appeal filed by the appellants herein and affirmed the judgment and

decree dated 02.08.2001 passed by the District & Sessions Judge, Bangalore Rural Dist., Bangalore.

2. In order to appreciate the short issue involved in the appeal, it is necessary to set out few facts *infra*.

3. The appellants are the plaintiffs whereas the respondents are the defendants in the civil suit out of which this appeal arises.

4. The appellants (plaintiffs) filed a civil suit (O.S. No.3/90) against the respondents (defendants) in the Court of 2nd Additional Civil Judge (Sr. Division), Bangalore for cancellation of sale deed dated 24.08.1989. The respondents contested the suit. By judgment/decree dated 16.09.1997, the Trial Court dismissed the suit.

5. The appellants (plaintiffs) felt aggrieved and filed first appeal (R.A. No. 18/97) in the Court of

District and Sessions Judge, Bangalore Rural District. By judgment dated 02.08.2001, the first Appellate Court dismissed the appeal and upheld the judgment/decreed of the Trial Court.

6. The appellants pursued the matter further and filed second appeal in the High Court being R.S.A.No.804/2001. Subsequently, the parties compromised the matter and, therefore, the High Court (Single Judge) by order dated 10.04.2002 disposed of the appeal in terms of compromise arrived at between the parties.

7. Thereafter, defendant No. 2 (C Naga Raju), respondent No. 1 herein, filed an application in the disposed of appeal (RSA No. 804/2001) and complained therein that the compromise arrived at between the parties, which resulted in disposal of

the second appeal, is not binding on him and prayed for recalling of the order dated 10.04.2002.

8. The High Court, by order dated 23.07.2002 dismissed the application filed by defendant No. 2 (respondent No. 1 herein). Aggrieved by the said order, defendant No.2 filed appeals by way of special leave in this Court. By order dated 04.08.2003, this Court allowed the appeals (Civil Appeal Nos. 5531-32/2003 etc.etc.) and while setting aside the order dated 23.07.2002 remitted the matter to the High Court for fresh consideration in accordance with law including to decide the question of consideration of the compromise petition. The order reads as under:

“Leave granted.

When a Second appeal came up for consideration before the High Court, it disposed of the same in the following terms:

"Mr. Siddappa, learned counsel files power for respondent No.2. Both the sides have filed the compromise petition. All the parties are present. Advocate for both sides are also present. The compromise petition is allowed. In view of the compromise petition, the appeal stands disposed of. Draw the decree accordingly."

Whether the compromise had really been entered into between the parties or not was not inquired into by the High Court in terms of Order XXIII Civil Procedure Code.

Further, it is not clear as to the impact of the Memo filed before the Court on the appeal as a whole. The same should have been examined by the High Court and a decision should have been taken by it.

Therefore, we set aside the order made by the High Court and remit the matter to the High Court for fresh consideration in accordance with law including the question of consideration of the compromise petition.

The appeals are allowed accordingly."

9. After the remand, the High Court took up the matter and on few dates fixed the case for recording evidence of the parties to decide the question of

genuineness of the compromise as is clear from the order sheets dated 26.07.2006, 03.09.2007, 26.10.2007, 12.11.2007, 18.12.2007 (Annexures P-8/9).

10. However, the High Court then did not pursue the proceedings in relation to the genuineness of the compromise and went on to observe that in terms of this Court's order dated 04.8.2003, once the matter is examined on merits, there is no need to go into the genuineness of the compromise petition. This is what the High Court observed:

“8.....I do not find any need to adjourn the matter to some other date for cross examination of respondent No.2 who has filed his affidavit purporting to be by way of evidence in support of his application for setting aside the compromise petition for two reasons. Firstly, the Supreme Court has itself set aside the judgment/compromise decree passed by this Court on 10.04.2002. Secondly, the Supreme Court has also observed that the matter has to be examined on merits and including the genuineness of the compromise or otherwise.

9. It is obvious that if the matter is to be examined on merits, there is no need for going into the genuineness of the compromise petition or otherwise and therefore I do not propose to look into the contents of the affidavit itself which if at all looked into and is to be accepted requires the necessity for cross examination. Instead, I propose to proceed to judgment on merits of the appeal and, therefore, there is no requirement of cross examination of respondent No.2 as the very affidavit is not looked into.”

11. Having thus observed, the High Court did not consider it necessary to examine the genuineness of the compromise petition impugned by defendant No. 2 in his application dated 23.07.2002 and proceeded to decide the second appeal on merits and by impugned order 02.01.2008 dismissed the second appeal.

12. It is against this order of the High Court, the plaintiffs have felt aggrieved and filed the present appeal by way of special leave in this Court.

13. Mr. Trideep Pais, learned counsel appeared for the appellants and Mr. K. Radhakrishnan, learned senior counsel for the respondents.

14. Having heard the learned counsel for the parties and on perusal of the record of the case, we are inclined to allow the appeal and while setting aside the impugned order remand the case to the High Court for deciding the matter afresh as directed hereinbelow.

15. In our considered opinion, the High Court erred in interpreting the order of this Court dated 04.08.2003 quoted supra. On mere reading of the order dated 03.08.2003, it is clear that this Court remanded the matter to the High Court with a

request to decide it afresh in accordance with law including the question of consideration of the compromise petition. This implied that the question of consideration of compromise petition was required to be decided first. It is for the simple reason that if the compromise was held to be legal and proper, there was no need to decide the second appeal on merits. In other words, the need to decide the second appeal on merits would have arisen only if the compromise would have been held illegal and not binding on the parties concerned.

16. The High Court, therefore, erred in not considering the question of genuineness and legality of the compromise as complained by defendant No. 2 and straightaway proceeded to decide the second appeal on merits. In this process undertaken by the High Court, the question as to whether the

compromise was legal or not could not be gone into on its merits, which it ought to have been gone into in the first instance.

17. In the light of the foregoing discussion, the impugned order of the High Court is not legally sustainable as the same was passed without properly appreciating the purport of the directions of this Court contained in the order dated 04.08.2003. It, therefore, caused prejudice to the rights of the parties.

18. In view of the foregoing discussion, the appeal succeeds and is allowed. Impugned order is set aside. The case is remanded to the High Court for deciding the matter afresh as directed above.

19. The High Court while deciding the question of genuineness of the compromise application, as directed by this Court's order dated 04.08.2003,

may consider it proper to remit the matter to the Trial Court for the purpose of recording evidence of the parties in time bound period. On receiving the evidence from the Trial Court, the High Court would proceed to decide the question in the light of evidence adduced by the parties.

20. In case the compromise is held legal and proper, there will be no need to decide the second appeal on merits. It is for the reason that in such eventuality, the order dated 10.04.2002 disposing of the second appeal in terms of compromise would continue to hold the field as being legal and proper.

21. However, if the compromise is held illegal, the order dated 10.04.2002 will stand set aside. As a consequence thereof, the second appeal will revive for being heard on merits. The High Court will then

proceed to decide the second appeal on merits in accordance with law.

22. The High Court is requested to dispose of the matter, as observed supra, as expeditiously as possible preferably within 6 months.

.....J.
[ABHAY MANOHAR SAPRE]

.....J.
[S. ABDUL NAZEER]

New Delhi,
September 20, 2018.