

THE HIGH COURT OF SIKKIM : GANGTOK
(Civil Revisional Jurisdiction)

SINGLE BENCH: THE HON'BLE MR. JUSTICE BHASKAR RAJ PRADHAN, JUDGE

C.R.P. No. 03 of 2022

Prameela Gurung
W/o Late Kumar Thapa,
Aged about 54 years,
Resident of Sadam, Melli,
P.O. & P.S. Melli,
South Sikkim,
Pin No. 737 128.

..... Revisionist

Versus

1. Urmila Manger,
D/o Ujarman Manger,
Aged about 38 years,
R/o Subheney Dara,
Rongli, East Sikkim.
Pin No. 737 131.

2. Bhima Chettri,
W/o Late Kumar Thapa,
R/o Ranipool,
Near M.P.C.S Co-operative,
Ranipool,
East Sikkim, Pin No. 737 102.

.....Respondents

**Civil Revision Petition under Section 115 read with
section 151 of the Code of Civil Procedure, 1908.**

*(Revision Petition against the Order dated 13.04.2022 passed by the Learned
Civil Judge, East Sikkim at Gangtok in Civil Misc. Case No. 14 of 2020 titled
as Prameela Gurung vs. Bhima Chettri (Thapa) and Anr.)*

Appearance:

Mr. Tarun Choudhary, Advocate for the Revisionist.

Mr. B. Sharma, Senior Advocate (Pro Bono, Legal Aid
Counsel) with Mr. Safal Sharma, Legal Aid Counsel for
the Respondent no.1.

Ms. Lidya Pradhan, Advocate for Respondent no.2.

Date of Hearing : 07.03.2024

Date of Judgment : 03.04.2024

J U D G M E N T

Bhaskar Raj Pradhan, J.

1. Two questions arise for consideration in the present revision petition. An application for setting aside the compromise deed entered between the parties in Title Suit No. 12 of 2018 and the decree passed by the learned Civil Judge, East Sikkim at Gangtok in Civil Misc. Case No.14 of 2020 was rejected. The revisionist seeks to assail the same under section 115 of the Code of Civil Procedure, 1908 (CPC). The proviso to section 115 of the CPC prohibits this Court from varying or reversing any order made, or any order deciding an issue, in the course of a suit or other proceeding, where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings. The revisionist submits that as the Pension Act, 1871 provided that the pension would be paid to the wife of the deceased person, the respondents who were not legally wedded wives would not be entitled to the same as such the compromised deed entered between the revisionist and the respondents was liable to be set aside as being barred by law. Thus, in the

facts of the present case the two questions which arises are:

- (i) Is the present revision petition maintainable under section 115 of the CPC?
- (ii) Whether the Pension Act, 1871 barred the revisionist from entering into a compromise deed?

2. The revisionist seeks to assail the Order dated 13.04.2022 passed by the learned Civil Judge, East Sikkim at Gangtok in Civil Misc. Case No.14 of 2020 rejecting the application filed by the revisionist under Order XXIII Rule 3 read with section 151 of the CPC holding that the compromise deed dated 19.12.2019 is not in contravention to the provisions of section 4 and section 11 of the Pension Act, 1871 and that the compromise deed is not void and unlawful. The revisionist also seeks the setting aside of the compromise decree passed in Title Suit Case No. 12 of 2018 as being unlawful.

3. In the year 2018 Title Suit case No. 12 of 2018 was filed by the respondent no.2 against the respondent no.1. In the said suit an application under Order I Rule 10 of the CPC was filed by the respondent no.1 to implead the revisionist, which was allowed. The parties to the present revision petition claimed to be the wives of late Kumar

Thapa. During the proceedings of the Title Suit the matter was referred to mediation vide Order dated 05.09.2019. The matter was amicably settled between the parties. A compromise deed dated 19.12.2019 was entered between them. The Title Suit was thereafter, disposed of by the learned Trial Judge on 27.02.2020 pursuant to which a decree was passed. The respondent no.1 thereafter, filed Civil Execution Case No. 10 of 2020. It was at this stage after receipt of summons from the executing court that the revisionist moved an application under the proviso of Order XXIII Rule 3 read with section 151 of the CPC for setting aside the compromise deed as being unlawful and barred by law. The revisionist therefore prayed that the compromise entered between her and the respondents as well as the decree and order dated 27.02.2020 be set aside and further the Title Suit may be restored to its stage prior to the compromise/settlement. By the impugned Order dated 13.04.2022 this application of the revisionist was rejected. The revisionist thereafter, filed the present revision petition seeking to invoke the powers of this Court under section 115 of the CPC.

4. Heard Mr. Tarun Choudhury, learned counsel for the revisionist. It is his case that the compromise deed dividing the pension between the parties is in violation of the Pension Act, 1871. It is also submitted that the learned

Trial Court acted beyond its jurisdiction in view of the specific bar of the power of the Civil Court to try and entertain any issue relating to pension as mandated in section 4 and 6 of the Pension Act, 1871. Mr. Choudhury further submits that the compromise deed was also void in view of section 12 of the Pension Act, 1871. It is submitted that the learned Trial Court failed to record its satisfaction that the compromise deed was lawful.

5. Mr. Tarun Choudhury, learned Counsel for the revisionist supported his argument by placing reliance upon *Deokinandan Prasad vs. The State of Bihar & Ors.*¹. In the said judgment the Supreme Court held that the right of the petitioner to receive pension is property under Article 31 (1) and by a mere executive order the State has no power to withhold the same. It was also held that the claim was also property under Article 19(1) (f) and therefore, order denying the petitioner right to receive pension affects the fundamental right of the petitioner. It was held that the payment of pension does not depend upon the discretion of the State but is governed by the rules and a Government servant coming within the rules is entitled to claim pension.

6. Mr. B. Sharma, learned Senior Counsel for the respondent no.1 submitted that the impugned order was

¹ 1971 (2) SCC 330

just and legal and may not be interfered with especially in a revision application under section 115 of the CPC. He submits that the compromise deed clearly reflects that the revisionist had consciously signed the same before the learned Mediator and could not be allowed to resile from it on the grounds of violation of the Pension Act, 1871. He further submits that in so far as Sikkim is concerned the Pension Act, 1871 has not been brought into force as yet. It is submitted that Sikkim Government Services (Pension) Rules, 1990 and Sikkim Government Services (Revised Pension) Rules, 2010 would apply and as such the argument that the compromise deed was against the Pension Act, 1871 has no legs to stand on.

7. Mr. B. Sharma, learned Senior Counsel for the respondent no.1 relied upon the judgment of the Supreme Court in ***Tulsa Devi Nirola & Ors. vs. Radha Nirola & Ors.***². In the said case the Supreme Court examined a denial of succession certificate under section 372 of the Indian Succession Act, 1925 by the learned District Judge, East District, Gangtok which was affirmed by this Court. The facts revealed that the appellant no.1 therein was the first wife of the deceased and the appellant nos. 2 and 3 were children born out of the wedlock. The deceased, during the

² 2020 SCC OnLine SC 283

subsistence of his first marriage, solemnized a second marriage with respondent no.1 and three children were born from the second marriage. During his lifetime the deceased executed a settlement deed by which he divided his movable and immovable properties between the two wives before his retirement and thereafter he died. The appellants applied for a succession certificate, which was denied in view of the settlement deed dated 30.06.2008. The appeal was dismissed and the appellants moved the Supreme Court staking their claim for family pension under the Sikkim Government Services (Pension) Rules, 1990. The Supreme Court held that the settlement deed having been acted upon it was not open for the appellant no.1 to now renege from the same. It was further held that the family pension undoubtedly is not part of the estate of the deceased and will be regulated by the pension rules which confer a statutory right in the beneficiary eligible to the same.

8. Ms. Lidya Pradhan, learned counsel for the respondent no.2 supported the impugned judgment and submitted that the compromise deed was entered between all the parties to it including the revisionist and she ought not to be allowed back out from the terms of the compromise deed.

9. The revisionist has invoked the revisional jurisdiction of this Court. It is settled law that this Court would invoke the power of revision under section 115 only when it is found that the learned Trial Court has exercised its jurisdiction not vested in it by law, or failed to exercise jurisdiction so vested, or to have acted in exercise of its jurisdiction illegally or with material irregularity. While examining whether or not to exercise the power of revision this Court must also be conscious of the proviso thereto which provides that this Court shall not vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.

10. As noted above the application filed by the revisionist under Order XXIII Rule 3 of the CPC sought the setting aside of the compromise entered between the revisionist and the respondents; the Order and decree dated 27.02.2020 as well as restoration of the title suit to its stage prior to the compromise.

11. In the said application it was pleaded by the revisionist that:-

- (i) During the course of proceedings the case file was forwarded to the Mediation Centre on 05.09.2019.
- (ii) The case file was received from the mediation centre with the report that the matter had been amicably settled between the parties.
- (iii) The title suit was disposed of as compromised in view of the compromise arrived between the parties before the mediation centre vide order and decree dated 27.02.2020.
- (iv) That the revisionist had signed on the compromise deed dated 19.12.2019 without going through its contents.
- (v) That it was the stand of the revisionist in the title suit that the respondents were not legally wedded wives of the late husband of the revisionist.
- (vi) That the revisionist had signed the compromise deed under misrepresentation that all the retirement benefits of her late husband was given to her and that the suit property had been divided by the respondents between them in equal shares.
- (vii) The revisionist came to know about the compromise deed dated 19.12.2019 on 22.11.2020 when she consulted another counsel regarding the Civil Execution case No.10 of 2020.
- (viii) When her new counsel explained to her the contents and effect of the compromise entered by her she was also informed that it was barred by section 14 of the Pension Act, 1871 as also the Sikkim Government Services (Revised Pension) Rules, 2010 making the compromise void in view of the Indian Contract Act, 1872.

12. The learned Trial Court considered the grounds pressed by the revisionist. While considering the allegation of the revisionist that the compromise deed was executed

by her under misrepresentation, the learned Trial Court examined section 18 of the Indian Contract Act, 1872 which defines “misrepresentation”. The learned Trial Court noted that the revisionist had not shown how or by whom she was misrepresented in signing the compromise deed. It was held that mere statement that she was misrepresented would not suffice especially when it was admitted by her that the dispute had been referred to mediation centre for amicable settlement and there was a report from the mediation centre that the matter had been settled amicably between the parties. The learned Trial Court also noted that the Order dated 27.02.2020 revealed that the revisionist and the respondents were present when Title Suit No. 12 of 2018 was disposed of and decree drawn by the Court in terms of the compromise deed. Insofar as the submission that the compromise deed was against the Pension Act, 1871 the learned Trial Court after examining section 4 and 11 of the Pension Act, 1871 concluded that the Title Suit No. 12 of 2018 was for declaration, recovery of possession and other consequential relief in respect of two storied RCC building and not relating to pension and therefore, it could not have been barred under section 4 of the Pension Act, 1871. Reading clause 6 of the compromise deed further the learned Trial Court was of the view that the compromise deed did not contravene the provisions of section 4 and 11

of the Pension Act, 1871. It was held that the compromise deed was not void and unlawful. Accordingly the application under Order XXIII Rule 3 of the CPC was rejected.

13. This Court does not see any illegality or material irregularity of the learned Trial Court while rejecting the application under Order XXIII Rule 3 of the CPC.

14. In view of the proviso to section 115 of the CPC it is seen that if the application under Order XXII Rule 3 of the CPC was made in favour of the revisionist it would not finally dispose of the suit or other proceedings as in the application under Order XXIII Rule 3 of the CPC the revisionist had herself sought *inter alia*, for restoration of the Title Suit No. 12 of 2018 to its stage prior to the compromise deed. In ***Shiv Shakti Coop. Housing Society, Nagpur vs. Swaraj Developers & Ors.***³ the Supreme Court opined that on a plain reading of section 115 as it stands makes it clear that the stress is on the question whether the order in favour of the party applying for revision would have given finality to suit or other proceeding. If the answer is “yes” then the revision is maintainable. But on the contrary, if the answer is “no” then the revision is not

³ (2003) 6 SCC 659

maintainable. Therefore, if the impugned order is interim in nature or does not finally decide the *lis*, the revision will not be maintainable. The legislative intent is crystal clear. As noted above the impugned order if it were to have been passed in favour of the revisionist the suit would continue from the stage prior to the compromise deed as prayed by her and therefore, there would be no finality to the suit.

15. On a query of this Court as to whether the Pension Act, 1871 has been brought into force in Sikkim in view of Article 371F (n) of the Constitution of India it was submitted at the bar that the Pension Act, 1871 had not been extended to Sikkim as yet and therefore, it is the Sikkim Government Services (Pension) Rules, 1990 and Sikkim Government Services (Revised Pension) Rules, 2010. Thus, the contention of the revisionist that the Pension Act, 1871 bars the compromise deed of sharing the pension with the respondents would not assist the revisionist in getting the relief prayed for.

16. The admitted facts recorded by the learned Trial Court reflect that the revisionist had agreed to go in for Mediation. Mediation is a process whereby parties attempt to reach an amicable settlement of their dispute with the assistance of a third person referred to as a Mediator, who does not have the authority to impose a settlement upon

the parties to the dispute. The Mediators are neutral persons who encourage the parties to the dispute to reach an amicable settlement. If after the process of mediation the records reveal that the parties have arrived at a settlement and signed on a compromise deed it must be accepted that the parties negotiated their dispute and arrived at a settlement unless contrary is proved by the revisionist. The revisionist, as held by the learned Trial Court has only alleged that she signed the compromise deed under misrepresentation. Misrepresentation is a positive assertion which must be specifically alleged and proved against a particular person and the bald statement made by the revisionist would not suffice. There is no other material placed by the revisionist which would even remotely give an impression that anybody had misrepresented the facts to the revisionist to compel her to sign the compromise deed. The records also reveal that during the entire process the revisionist was personally present as well as represented by a counsel. The compromise deed is signed by the revisionist herself in the presence of witnesses. The order dated 27.02.2020 records the presence of the revisionist along with her counsel. The decree dated 27.02.2020 also records that the decree was passed in the presence of the parties including the revisionist in the presence of her counsel. As stated in the

application under Order XXIII Rule 3 of the CPC it is evident that the challenge to the compromise deed and the decree was an afterthought when faced with the execution petition and she consulted a new counsel. Even if it is presumed that the revisionist was solely entitled to receive the pension of late Kumar Thapa there would be no bar for the revisionist to share the pension with the respondents in the manner sought to be done under the compromise deed. The compromise deed related not only to the pension but to other movable and immovable properties of late Kumar Thapa. The compromise deed records that the revisionist would be entitled to a portion of the immovable property of late Kumar Thapa and equal share of the benefits of his gratuity and pension.

17. It is held that: (i) the revision petition is not maintainable under section 115 of the CPC; (ii) the Pension Act, 1871 having not been brought into force in Sikkim as required under Article 371F (n) of the Constitution of India is not applicable in the State of Sikkim; (iii) the revisionist had entered upon the compromise deed on her own volition without any misrepresentation; (iv) neither the Pension Act, 1871 nor the Sikkim Government Services (Pension) Rules, 1990 and Sikkim Government Services (Revised Pension) Rules, 2010 prohibited the revisionist from entering upon

such a compromise deed and its terms and conditions are binding upon her.

18. For all the above reasons this Court is of the firm opinion that the impugned order passed by the learned Trial Court need not be interfered with in exercise of the powers of revision under section 115 of the CPC. The revision petition is accordingly dismissed. The parties to bear their own costs. A copy of this judgment be transmitted to the Trial Court forthwith.

**(Bhaskar Raj Pradhan)
Judge**

Approved for reporting : **Yes**
Internet : **Yes**

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