

SUPREME COURT OF AZAD JAMMU AND KASHMIR

(APPELLATE JURISDICTION)

PRESENT:

Mohammad Azam Khan, C.J.
Raja Saeed Akram Khan, J.

Civil appeal No.181 of 2016
(PLA filed on 07.04.2016)

1. Nusrat Tanvir,
2. Zahida Bibi daughters of Abdul Majeed,
r/o Ward No.20, Muzaffarabad.

....APPELLANTS

VERSUS

1. Javaid Aziz son of Muhammad Aziz, r/o
Naloochi, Ward No.20, Muzaffarabad.

.... RESPONDENT

2. Kausar Yasmeen daughter of Abdul
Majeed, r/o Naloochi, Ward No.20,
Muzaffarabad.

....PROFORMA RESPONDENT

(On appeal from the judgment and decree of
the High Court dated 12.02.2016 in civil
appeal No.197 of 2013)

FOR THE APPELLANTS: Syed Nazir Hussain
Shah Kazmi,
Advocate.

FOR THE RESPONDENT: M/s Muhammad
Maqsood Mughal and
Maqbool-ur-Rehman
Abbasi, Advocates.

Date of hearing: 05.12.2016

JUDGMENT:

Raja Saeed Akram Khan, J.— This appeal by leave of the Court has been directed against the judgment and decree of the High Court dated 12.02.2016, whereby the appeal filed by the respondent, herein, has been accepted.

2. The facts as emerged from this appeal are that the respondent, herein, filed a suit for specific performance of a contract with the prayer for perpetual injunction in the Court of District Judge, Muzaffarabad on 02.03.2012. It was averred in the plaint that the plaintiff purchased the land bearing *khewat* No.187,

survey No.259, measuring 12 *marla* along with a built-up house through a written agreement-to-sell dated 15.02.2012, in lieu of Rs.5,00,000/- from Kausar Yasmeen, proforma respondent, herein. It was further averred that as per agreement-to-sell, the vendor was under obligation to execute the sale-deed in favour of the vendee, but she failed to discharge her part of performance. A prayer was made to issue a decree for specific performance of agreement-to-sell in favour of the plaintiff. During the pendency of proceedings, the parties entered into a compromise. The learned District Judge, after due process of law, issued a compromise decree in favour of the plaintiff. Appellant No.1, herein, filed an application under section 12(2), C.P.C. for setting aside the compromise decree on the ground that the same has been obtained by way of fraud. The learned District

Judge while accepting the application set aside the compromise decree dated 29.05.2012, vide its judgment dated 27.09.2013. The respondent, herein, filed an appeal before the High Court. The learned High Court while accepting the appeal set aside the judgment of the District Judge dated 27.09.2013 and restored the compromise decree, hence, this appeal by leave of the Court.

3. Syed Nazir Hussain Shah Kazmi, Advocate, the learned counsel for the appellants argued that the impugned judgment is against law and the facts of the case which is not sustainable in the eye of law. He contended that on the same subject, appellant No.1, herein, filed a suit on 10.02.2012, which was subjudice before the Court. The respondent filed a suit for specific performance of agreement-to-sell dated 15.02.2012, on 02.03.2012 in which it was prayed that Kauser

Yasmeen, proforma respondent, herein, be directed to execute the sale-deed on the basis of agreement-to-sell. During pendency of proceedings, the respondent and proforma respondent, herein, filed an application that matter has been compromised and obtained the compromise decree with the ulterior motive to deprive the appellants of their vested rights. The compromise decree was challenged by appellant No.1 by filing application under section 12(2), C.P.C. The learned District Judge accepted the application and set aside the compromise decree while assigning the strong reasons and reopened the matter for further proceedings under law, but the learned High Court without any justification set aside the well reasoned judgment passed by the District Judge. He contended that the learned High Court has not considered the fact that through the impugned

judgment the compromise decree has been restored which amounts to non-suit the appellants. The suit of the appellants was subjudice before the trial Court even prior to the suit in which the compromise decree has been passed. If the compromise decree is restored the suit of the appellants will become infructuous, but the learned High Court ignored this important aspect of the case. The consequences of the impugned judgment are of serious nature which amount to deprive the appellants of their vested legal rights.

4. On the other hand, M/s Muhammad Maqsood Mughal and Maqbool-ur-Rehman Abbasi, Advocates, the learned counsel for the respondent strongly opposed the arguments addressed by the learned counsel for the appellants. They submitted that the learned District Judge committed grave-illegality while accepting the application filed by appellant

No.1, herein, under section 12(2), C.P.C. which has rightly been rectified by the learned High Court while passing the impugned judgment. They contended that the suit filed by the appellants has no concern with the suit which was decided on the basis of compromise. They added that at the time when the compromise decree was passed, the suit of the appellants was not in existence. They contended that the appellants and proforma respondent are the real sisters. The proforma respondent is the owner of the land to the extent of her share and this fact has not been denied by the other side.

5. We have heard the arguments of the learned counsel for the parties and gone through the record along with the impugned judgment. The case established by the appellants is that the proforma-respondent, herein, had already transferred the land in

dispute through agreement-to-sell dated 20.03.2010, in favour of appellant No.1, in this regard appellant No.1 and proforma-respondent, herein, entered into a compromise on 17.04.2012. Later on, the proforma respondent failed to fulfill her part of performance to execute the sale-deed in favour of appellant No.1, within the specified period, whereupon, the appellant constrained to file a suit for declaration-cum-perpetual injunction/specific performance of the agreement-to-sell. The suit was pending before the Court of competent jurisdiction, meanwhile, the respondent and proforma respondent entered into a compromise regarding the alleged agreement-to-sell dated 15.02.2012, through which the proforma respondent admitted the claim of the plaintiff-respondent, herein. On the basis of said illegal agreement-to-sell as well as compromise, the

trial Court issued compromise decree in favour of the respondent without adhering to the fact that regarding the same land the suit filed by the appellants is pending for adjudication. The record reveals that leave was granted to examine the point that what will be the effect of the compromise decree obtained by a party when the suit filed by the other party relating to the same subject matter is subjudice before the Court of competent jurisdiction. To attend the formulated point, we have examined the record minutely. From the scrutiny of the record it appears that proforma respondent, herein, sold the land measuring 12 *marla* while executing an agreement-to-sell in favour of the respondent, herein on 15.02.2012. The respondent, Javaid Aziz, filed a suit for specific performance of agreement-to-sell dated 15.02.2012 on 02.03.2012 and the same was decreed in his favour on the basis of a

compromise on 29.05.2012. It is also spelt out from the record that appellant No.1, herein, filed suit on 10.02.2012, and thereafter withdrew the same on 28.05.2012. Later on, she filed fresh suit on 01.02.2013, meaning thereby that when the compromise decree was passed in favour of the respondent on 29.05.2012, the suit of the appellants was no more in the field as she had withdrawn the same prior to the issuance of the compromise decree. In such state of affairs, it can safely be held that the suit filed by the appellants has no bearing on the compromise decree as the same has been passed prior to the filing of the fresh suit by the appellants. In grounds 3, 4, 5, 7 and 8 of the application under section 12(2), C.P.C., appellant No.1, herein, has taken the stance that her suit regarding the same land is pending before the Court. The learned District Judge also set aside the

compromise decree mainly on the ground that regarding the same subject matter the suit filed by the appellant, herein, was pending before the Court at the time when the compromise decree was passed, whereas, it is clear from the record that no such suit was pending at that time. The learned District Judge without adhering to the correct position and the law on the subject accepted the application filed under section 12(2), C.P.C. and set aside a valid compromise decree. Moreover, the learned District Judge has also not adhered to the fact that the ownership of proforma respondent to the extent of land measuring 2 *kanal* 13 *marla* is even admitted by the appellants while filing the suit. In this way, the proforma respondent was fully competent to transfer the land measuring 12 *marla* from her share to the respondent, herein. The learned High Court attended all the

points involved in the matter and resolved the same in accordance with law and has not committed any illegality; hence, interference by this Court is not warranted under law.

The nub of the above discussion is that this appeal being devoid of any force is hereby dismissed with no order as to costs.

Mirpur,

JUDGE

CHIEF JUSTICE

___ .12.2016