IN THE HIGH COURT AT CALCUTTA
ORDINARY ORIGINAL CIVIL JURISDICTION
ORIGINAL SIDE

LAST HEARD ON: 14.08.2026

DELIVERED ON:18.09.2026

PRESENT:

THE HON'BLE MR. JUSTICE BISWAROOP CHOWDHURY

I.A. No. GA 6 of 2016 (Old No: GA/1215/2016)

IN

C.S. No. 309 OF 2012

IN

GA/7/2024

IN

C.S. No. 309 of 2012

GA/8/2024

IN

C.S. No. 309 of 2012

SUDHI RANJAN DAS & ANR Vs SURAJIT DAS

Appearance:

Mr. Pourush Bandopadhyay, Adv.

Mr. Dipankar Das, Adv.

...for plaintiffs & respondent.

Mr. Lalratan Mandal, Adv.

...for defendant.

Ms. Sabnam Sutana, Adv.

Ms. Sneha Mondal, Adv.

...for intervenor.

Biswaroop Chowdhury, J.: This application is filed by the Defendant/Applicant with the following prayers:

a) The Terms of settlement dated 29th August 2015 be adjudged and declared nonest and not binding on the petitioner the sole defendant in the suit.

b) The decree dated 08.09.2015 passed on the basis of the Terms of Settlement dated 29th August 2015 be adjudged and declared a nullity and not binding on the petitioner;

c) The Terms of Settlement dated 29th August 2015 be cancelled and/or set aside;

d) The decree dated 8th September 2015 be recalled and/or set aside;

e) Pending disposal of this application the plaintiffs be restrained by an order of injunction from giving effect to or further effect to the Terms of Settlement dated 29th August 2015 and the decree passed on 08.09.2015 in terms thereof in any manner whatsoever;

f) Ad-interim orders in terms of prayers above;

g) Costs of and incidental to this application be borne by the plaintiffs;

h) Such further or other order or orders be passed as to this Hon'ble Court may deem fit and proper.

It is the contention of the petitioner that during pendency of the suit and in end the plaintiffs by themselves and also through the son of plaintiff no-1 who is also an Advocate approached the petitioner for settlement. When the suit was called for hearing on 13th March 2015 for hearing and settlement the nephew of the petitioner informed court that the parties were ready for settlement except dwelling house situated at 77F Karya Road Kolkata-700019. Accordingly order was passed on the basis of the said terms of settlement save and except the said family dwelling house.

It is further contended that on or about third week of August 2015 the petitioner was informed by plaintiff no-1 that after much persuasion the plaintiff arranged for a purchaser desirous to purchase the property situated at Ramkrishnapur Howrah. On 29th August 2015 the petitioner went to the dwelling house at 77F Karaya Road Calcutta – 700019 as he was informed that the Deed of Conveyance with regard Howrah property will be executed. As the petitioner arrived at 44 Karaya Road at 1 P.M. he was informed that apart from signing deed of conveyance other documents are also required to be signed and the petitioner signed the said documents in a hurry without verifying them. Immediately after the petitioner had put his signatures the

Registrar of the District Registry Office at Howrah had left the premises along with original deed of conveyance. The other papers which were signed were kept by the plaintiff no-1 for being handed over to the intending purchaser. It is also contended that taking advantage of the absence of the petitioner at Karya Road some miscreants forcefully entered the Premises for which he lodged complaint before police authority on 2nd February 2016. When the petitioner was running from pillar to post to secure his possession in the premises at Karaya Road he was issued notice by the Decree Department on 11th February 2016 and 23rd February 2016 that Draft Decree dated 8th September 2015 in the above suit to be settled. The petitioner upon obtaining such information contacted his nephew who told him not to bother about the same and advised the petitioner to be more concerned about recovery of possession of the premises at Karaya Road.

The petitioner thereafter contacted his Advocate on record and on being contacted the Advocate on record informed that he was not aware of any decree dated 8th September 2015, being passed in the above suit. It was further informed by the Learned Advocate on record that though the above suit on the basis of direction given on 26th August 2016, was due to appear in the monthly list of September 2015 as 'For Argument' yet the same did not appear in the monthly list of September 2015 published on 7th September 2015. On that occasion, the said Advocate further informed the petitioner that he did not sign any terms of settlement as the Advocate on record of the petitioner and he was also not given any notice for appearing

before His Lordship the Hon'ble Justice Arijit Banerjee on 8th September 2015. As the petitioner was concerned with the recovery of possession the petitioner did not and could not take any step in the matter of settlement of the decree said to have been passed on 8th September 2015. Under the circumstance the said Advocate-on-Record of the petitioner caused adjournments to be taken before the learned Registrar-in Insolvency of this Hon'ble Court. Such adjournment was taken on 15th March 2016 when the matter was adjourned till 17th March 2016. It is contended that the Advocate on record upon causing necessary search of the records and from the website of this Hon'ble Court, found that a decree was passed on 8th September 2015 by His Lordship the Hon'ble Justice Arijit Banerjee on the basis of a purported Terms of settlement allegedly arrived at between the parties on 29th August 2015 in respect of the said residential property situate at No. 77F, Karaya Road Kolkata – 700019.

It is further contended that on further searches and enquiries it transpired as follows:-

a) The above suit appeared as 'To Be Mentioned' in the list of His Lordship, the Hon'ble Justice Arijit Banerjee on 8th September 2015. No notice of mentioning was given by the Advocate of the plaintiffs either to the petitioner or to his Advocate-on-Record;

b) No notice was given either to the petitioner or to his Advocate-on-Record intimating them that the above suit would appear in the list as To Be Mentioned on 8th September 2015.

c) The above suit appeared in the list of His Lordship the Hon'ble Justice Arijit Banerjee under the heading 'To Be Mentioned' on 8th September 2015 without the name of the Advocate on Record of the Petitioner. However the name of the Advocate on Record of the plaintiffs appeared in the list. Under the circumstances the Advocate on Record of the Petitioner had also missed the matter when the same appeared in the list on 8th September 2015 aforesaid.

d) The petitioner did not brief any counsel or advocate to appear on behalf of the Petitioner before His Lordship the Hon'ble Justice Arijit Banerjee on 8th September 2015. The petitioner has been informed by his Advocate-on-Record that he also did not brief any counsel or advocate to appear on behalf of the petitioner on that day.

It is contended that the Purported consent decree dated 8th September 2015, was obtained by the plaintiffs by perpetrating fraud not only on the petitioner but also on this Hon'ble Court. The petitioner has given particulars of fraud which are as follows:

i) The plaintiffs suggested as a fact that the petitioner had knowingly signed a terms of Settlement which is not true and which the plaintiffs did not believe to be true.

ii) The plaintiffs actively concealed from this Hon'ble Court the fact that the purported Terms of Settlement was not signed by the Advocate of the petitioner though the plaintiffs had knowledge of the said fact;

iii) The plaintiffs actively cancealed from this Hon'ble Court the fact that the petitioner never agreed to relinquish his share in the family dwelling house being premises No. 77F, Karaya Road, Kolkata – 700,019 to sign and never signed any Terms of Settlement to that effect;

iv) No notice of such purported Terms of Settlement was given to the Advocate-on-Record of your petitioner to deceive the petitioner.

v) The decree and order dated 8th September 2015 was obtained behind the back of the petitioner and his Advocate on Record to deceive the petitioner.

The petitioner contends that unless the purported consent decree dated 8th September 2015 is recalled and/or set aside the interest of the petitioner over a very valuable property would be lost.

The plaintiffs filed affidavit in opposition to the petition denying the allegations contained therein;

It is contended that between 08.09.2015 when the decree was passed and 19-04-2015 when the present application was filed and 7 month have elapsed. In between the Defendant acting in terms of the decree moved out of the residential house by locking one room on the third floor. He also received notice regarding drawing up and completion of the decree and he appeared and obtained adjournment through his Advocate before the Registrar. The plaintiffs further contends that the said petition is fraudulent vexatious, harassing and has been made mala fide in abuse of process of Law, upon concealment of facts and making false and misleading allegations therein. The defendant has suppressed various relevant documents in the petition with intention to mislead this Hon'ble Court.

It is further contended that the defendant has falsely alleged that he is residing at no. 77F Karaya Road Kolkata-700019. The defendant had moved out of the said house sometime in the year 2009 and shifted to a flat in South City Complex at Prince Anwar Shah Road. Subsequently the defendant sold the said flat at South City Complex and is now residing in a flat on 15th floor Tower VI, Rosedale Garden Complex New Town Rajarhat. It is further contended that defendant is a practicing advocate for 30 years and is very meticulous in examining all documents before the same are signed by him. It is contended that the plaintiffs having their respective residences at different places had locked the residential house at the said property and appointed security guard. Taking undue advantage of absence of plaintiffs, the defendant by taking law in his own hands broke open the padlock,

removed the security guard and trespassed into the said property on 31-01-2016.

It is further contended that the defendant has made allegations against his own counsel who had represented the defendant in various proceedings in P and A Suit no. 309. Of 2012 on several occasions. The said counsel shares the Chamber on ground floor of No. 6 Old Post Office Street Kolkata-700001 with the defendant. It is contended that the defendant has also filed a case for grant of probate to the will of Malati Das which is not a genuine will bequeathing the property at 77F Karaya Road to him and the same is suppressed before this Court.

It is also contended that the defendant has avoided to mention that amongst other properties left behind by their parents their father owned 66666 shares in ITC Ltd. 3500 shares in Brooke Bond in lieu whereof shares in Hindustan Lewer Ltd were allotted along with 1100 shares of Colgate Palmolive India Ltd. The said shares were sold by the defendant without knowledge of the plaintiffs. On the request of the defendant not to insist on accounts as he has lost sale proceeds in speculative transactions, the plaintiffs did not insist on such accounts. The said settlement was a composite settlement with all terms thereof being in consideration of each other.

It is contended that the terms of settlement was not signed at 77F Karaya Road Kolkata-700019, but at the chamber of the defendant at 5 p.m. on 29-08-2015.

The defendant filed affidavit in reply denying the allegations made in affidavit in opposition.

Heard Learned Advocate for the petitioner and Learned Advocate for the plaintiffs and Learned Advocate for the intervenor.

Learned Advocate for the petitioner/defendant submits that from statements in page 11 of the Affidavit in Opposition clearly shows that the first terms of settlement was signed by the parties with an intention to develop the said premises and after obtaining the signatures of the defendant fraudulently by the plaintiffs, the plaintiffs have prepared their game plan to exploit the defendant from to exploit the defendant as it is admitted that after development the defendant shall be given 25% of the allocation of the owner's share and to grab the said value the plaintiff being the brother and sister of the defendant had done such thing which ought not to have been done at all. Learned Advocate relies upon the following judicial decisions.

Palden Bhutia and ors. VS Januka Chettri.

Reported in AIR 2007 Sikkim P-15.

Siddalingeshwar V Virupaxgouda and others.

Reported in AIR-2003 Karnataka P-407.

Bahar Enterprise VS State of Karnataka.

Reported in AIR 2003 Karnataka P-416.

A.A. Gopalakrishnan VS Cochin Devaswam Board and ors.

In Appeal (civil) 3135 of 2007.

M/S Sree Surya Developers and Promoters VS N.Sailesh Prasad and Ors.

In. Civil Appeal No-439 of 2022 with Civil Appeal Nos. 440.441 of 2022.

Bokshi Devi Raj and Anr. VS Sudheer Kumar.

Reported in AIR-2011 S.C. 3137.

Learned Advocate for the plaintiffs/respondents submits that on 08.09.2015 the matter was listed under the caption 'To be mentioned' before the Hon'ble Justice Arijit Banerjee. The signed terms of settlement was filed and this Hon'ble Court was pleased to pass the final decree in the instant suit on the basis of the said terms. Learned Advocate further submits that the Defendant was present alongwith his same Counsel when the matter was taken up. Learned Advocate also submits that the Defendant had engaged Mr. Aryak Dutt as his Counsel since the commencement of the suit in 2012. It is not the practice before this Hon'ble Court that a Counsel is

separately briefed before each date of hearing by the Advocate on record of the concerned party.

Learned Advocate for the intervenor submits that her client is not aware of the incident which took place before 2024 but sometime around 2024, the Defendant approached the interveners to sell his property being 77F Karaya Road Kolkata-700019. The defendant provided one Registred Deed of Conveyance dated 29/06/1955 executed by one Gopendra Nath Sarkar and Smt. Sarju Sarkar in favour of Malati Das in respect of the said property along with Affidavit Sworn by the said Defendant before Learned First Class Magistrate at Alipore on 02/04/2024 declaring defendant to be sole heir of the said Malati Das, and copies of Mutation Certificates indicating sole name of the Defendant as the owner and tax payer of the property. Learned Advocate further submits that being satisfied with the documents the Interveners decided to purchase the said property. Accordingly Deed of Conveyance was executed, and a letter of possession was issued in favour of the interveners by the Defendant on 02/08/2024. The Interveners after peacefully occupying the property at 77F Karaya Road Kolkata-700019 had to leave the property as he was informed by Police Personnel from Karaya Police Station that in terms of order passed by this Court the interveners are to vacate. Learned Advocate has enclosed the deed of conveyance. It is also submitted that the intervenors being aggrieved by the act of the defendant has lodged a complaint before police Authority and case was started against the defendant and charge-sheet submitted against

the defendant under Sections 318(4) and 316(2) of Bharatiya Nyaya Sanhita 2023.

By Judgment and Order dated 22nd September 2025 the matter was referred to Mediation. As the mediation failed the matter was heard.

Before proceeding to decide on material on record on issue it is necessary to consider the provision contained in Order 23 Rule 3 of the Code of Civil Procedure.

Order 23 Rule 3 of the Code of Civil Procedure provides as follows:-

Rule 3 compromise of suit-Where it is proved to the satisfaction of the Court that a suit has been adjusted in whole 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 in 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 compromises 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.

The Rule gives mandate to the Court to record a lawful adjustment or compromise and pass a decree in terms of such compromise or adjustment. The conditions which normally must be satisfied for validity invoking the provisions of Order 23 Rule 3 of the CPC and for passing of such a decree are as under:-

1. There should be a lawful agreement or compromise.

2. This compromise has to be in writing and signed by the parties.

3. The compromise must be recorded by the Court.

4. Decree such compromise can be passed so far it relates to the parties to the suit but may extend to a special matter which is not the subject matter of the suit.

It is held in different judicial pronouncements that Court can be instrumental in having an agreed compromise effected and finality attached to the same. It should never be party to the imposition of a compromise upon an unwilling party. As compromise decree is an agreement between the parties with the intervention of the Court at the time or passing the

compromise decree the Court records satisfaction that the suit is adjusted wholly or in part by lawful agreement and compromise in writing and as signed by the parties as provided under Rule 3 of Order 23 CPC, which is also done in the instant case.

Rule 3A of Order XXIII CPC clearly provides that suit is barred on the ground that the compromise on which the decree is based was not lawful.

In the case of R. Rajanna VS S. R. Venkastaswamy reported in AIR-2015 S.C. the Hon'ble Supreme Court observed as follows:-

"17…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. The second defendant, who challenged the consent compromise decree was fully aware of this position as she filed an application for setting aside the consent decree on 21-8-2001 by alleging that there was no valid compromise in accordance with law. Significantly, none of the other defendants challenged the consent decree. For reasons best known to herself, the second defendant within a few days thereafter (that is

on 27-8-2001) filed an appeal and chose not to pursue the application filed before the court which passed the consent decree. Such an appeal by the second defendant was not maintainable, having regard to the express bar contained in Section 96(3) of the Code."

Upon considering the Letter and spirit of the provisions contained in Order XXIII Rule 3, and 3A CPC, and the decision of the Hon'ble Supreme Court in the case of R. Rajnna VS S.R. Venkastaswamy (supra) it is clear that the intention of the legislature is to bar separate suit to challenge compromise decree.

As the intention of legislature is to bar separate suit for the purpose of challenging cpompromise decree and as per decision of the Hon'ble Supreme Court in the case of R. Rajanna VS S. R. Venkataswamy (supra) the Court which recorded the compromise will itself consider and decide the question as to whether there was valid compromise or not this Court is of the view that as the compromise decree was passed by his Lordship the Hon'ble Justice Arijit Banerjee in terms of Order XXIII Rule-3 CPC it would be just a reasonable if the matter is placed before his Lordship for necessary decision on the application this application GA-6/2016 for recalling compromise decree, and other connected applications GA 7/2024 and GA-8/2024. Thus the said applications stand released from this list. The matters be placed before the Hon'ble Chief Justice for necessary orders.

(BISWAROOP CHOWDHURY, J.)