discharge of the accused does not bar a second trial for the same offence on the same facts.

(13) The above cited two cases relate to the discharge of the accused in a warrant-case. Hence, these two decisions are of no avail to the respondent.

(14) For the reasons aforementioned, the petition is allowed and the second complaint is quashed.

H. S. B.

Before : S. P. Goyal & Pritpal Singh, JJ.

RAKSHA RANI,—*Appellant.*

versus

RAM LAL,—*Respondent.*

Regular Second Appeal No. 1288 *of* 1982.

May 27, 1986.

Code of Civil Procedure (V of 1908)—Section 96, Order XXIII, Rule 3—Evidence Act (I of 1872)—Section 3—Parties in a Civil Suit entering into a compromise—Statement of the parties recorded in Court and duly signed by them—Decree passed however not strictly in terms of the compromise—Appeal against such a consent decree—Whether maintainable—Consent decree passed within the jurisdiction of the Court and in terms of Order XXIII, Rule 3—No material irregularity pointed out in the order of the Court passing the decree—Appeal filed against the decree—Whether can be treated as a revision instead.

Held, that sub-section (3) of Section 96 of the Code of Civil Procedure, 1908 is categoric in its terms. It lays down in unambiguous words that no appeal shall lie from a decree passed by the Court with the consent of the parties. The only reasonable interpretation of this provision is that against a consent decree no appeal is maintainable in any circumstances. Even when the trial Court erroneously passes a consent decree which is not strictly on the basis of a compromise arrived at between the parties it remains a consent decree and is not appealable. The error if any which crept in at the instance of the Court passing the decree can be

corrected by competent court in its revisional jurisdiction, but in view of Section 96(3) of the Code no appeal can be filed against that decree, it has, therefore, to be held that a consent decree even if not passed strictly in terms of the provisions of the compromise arrived at between the parties is not maintainable.

(Para 3).

Held, that Rule 3 of Order XXIII of the Code deals with the compromise of suits. All that the first part of the rule visualises is that a lawful agreement or compromise arrived at by the parties should be in writing and signed by them. The requirements of the aforesaid part of the rule are adequately satisfied when the parties make statements before the Court in writing and sign the same. Such signed statements are covered by the definition of "document" given in Section 3 of the Evidence Act, 1872. A plain reading of the definition would show that any matter expressed or described upon any substance by writing is a document. The first illustration given under the definition of "document" also clarifies that "a writing is a document". Thus, by no stretch of reasoning the statements of the parties recorded by the trial Court and signed by them can be considered to be violating the requirements of "in writing and signed by the parties" mentioned in the first part of Rule 3. The trial Court, therefore, did not exceed its jurisdiction in passing the consent decree nor in any manner acted in exercice of its jurisdiction illegally or with material irregularity. In this view of the matter the appeal filed cannot be treated as a revision instead.

(Para 5)

Ashwani Kumar Kaushik *vs.* Ram Rattan and others 1980 R.L.R. 670.

Pyara Singh and others *vs.* Gurcharan Singh and others, 1984 Current Law Journal 442.

(Over-ruled).

Regular Second appeal from the decree of the Court of the Addl. District Judge, Roopnagar dated the 28th day of January, 1982, affirming that of the Addl. Senior Sub-Judge, Ropar, dated the 20th day of January, 1981 decreeing the suit of the plaintiff to the extent of passing a decree for possession of 1/24th share of the suit property excluding the house, bara and Karkhana in favour of the plaintiff and against the defendant with no order as to costs.

V. G. Dogra, Advocate, *for the Appellant.*

Roshan Lal Sharma, Advocate, *for the Respondent.*

JUDGMENT

Pritpal Singh, J.

(1) Ram Rakha was owner of the property in dispute consisting of 1/12th share in land measuring 12 Kanals 3 Marlas, a residential house, a workshop and a Bara situate in village Lohgarh *alias* Fidde, in district Ropar. On his death his daughter Smt. Raksha Rani filed a suit for possession of this property claiming to be the sole heir of the deceased. The suit was opposed by Ram Lal defendant, nephew of the deceased, on the plea that the property in dispute had been bequeathed in his favour by the deceased on the basis of a registered will dated 12th of April, 1978. Some other objections were also taken regarding the maintainability of the suit. On the pleadings of the parties a number of issues were framed by the learned trial Court. Statements of two witnesses of the defendant Ram Lal were recorded by the trial Court on 29th of January, 1981. At that stage Smt. Raksha Rani and Ram Lal arrived at a settlement and their statements were recorded which were signed by them. The statement made by the defendant Ram Lal is as follows:—

> "My will Exhibit D-1 has been accepted to be correct by the plaintiff. Since we are brother and sister, therefore, the land which I have inherited from Rakha Ram, half share thereof I am prepared to give to the plaintiff of which she would be the absolute owner but if she intends to sell that land then she will have to sell it to me. The house, Bara and workshop belonging to Rakha Ram would remain my property and the plaintiff would have no right in respect of the same. The decree may be passed in accordance with this for half share of the land. The decree may be passed for 1/24th share."

Thereafter the statement of plaintiff Raksha Rani was recorded in the following terms :—

> "I have heard the statement of the defendant. Order be passed in accordance with the same. Statement of the defendant is correct."

In view of the statements of the parties, a decree for possession of 1/24th share in the land in dispute was passed in favour of the

plaintiff. The rest of her suit regarding residential house, workshop and Bara was dismissed. Against this consent decree an appeal was filed by the plaintiff Smt. Raksha Rani which was heard by the Additional District Judge, Ropar. The lower appellate Court held that the consent decree was not appealable and consequently the appeal was dismissed.

2. In the second appeal filed by the plaintiff Smt. Raksha Rani, before this Court, reliance was placed at the motion stage on a judgment of this Court in *Ashwani Kumar Kaushik* v. *Ram Rattan and others,* (1) wherein a learned Single Judge held that an appeal is maintainable against a consent decree when the trial Court does not pass a decree strictly on the basis of compromise and adds something more thereto. It was ruled that once it is held that the decree is not in accordance with the compromise or strictly there is no compromise as such between the parties, such a decree is appealable. The Motion Bench doubted the correctness of this view and, therefore, admitted the second appeal for reconsideration of *Ashwani Kumar Kaushik's case* (supra) by a Division Bench. It is in these circumstances that this case has come up before us for consideration.

3. To appreciate the legal issue which is before us for determination it is necessary to reproduce section 96 of the Code of Civil Procedure (hereinafter referred to as the Code), which runs as follows :—

> "96. *Appeal from original decree.*—(1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any Court exercising original jurisdiction to the Court authorised to hear appeals from the decisions of such Court.
>
> (2) An appeal may lie from an original decree passed *ex parte.*
>
> (3) No appeal shall lie from a decree passed by the Court with the consent of parties.

(1) 1980 R.L.R. 670.

(4) No appeal shall lie, except on a question of law, from a decree in suit of the nature cognizable by Courts of Small Causes, when the amount or value of the subject-matter of the original suit does not exceed three thousand rupees."

Sub-section (3) of this section is categoric in its terms. It lays down in unambiguous words that no appeal shall lie from a decree passed by the Court with the consent of the parties. The only reasonable interpretation of this provision is that against a consent decree no appeal is maintainable in any circumstances. Even when the trial Court erroneously passes a consent decree which is not strictly on the basis of a compromise arrived at between the parties it remains a consent decree and is not appealable. The error if any crept in at the instance of the Court passing the decree can be corrected by a competent Court in its revisional jurisdiction, but one thing is clear that in view of section 96(3) of the Code no appeal can be filed against that decree. We, therefore, respectfully disagree with the view taken by the learned Single Judge in *Ashwani Kumar Kaushik's case* (supra) that a consent decree becomes appealable when it is not passed strictly in terms of the compromise arrived at between the parties. This view of the learned Single Judge is, therefore, overruled.

4. Our attention was then drawn by the learned appellant's counsel to a later Single Bench judgment of this Court in *Pyara Singh and others* v. *Gurcharan Singh and others*, (2). In that case a consent decree was passed by the trial Court in terms of the statements of counsel for the parties. The plaintiffs filed a suit to challenge the compromise decree on the ground that it was illegal and fraudulent. The defendants contested the suit on the plea that the compromise was duly arrived at between the parties and there was no illegality or fraud. The trial Court dismissed the suit holding that the compromise was duly arrived at between the parties and no fraud was proved. In the second appeal filed by the plaintiffs the learned Single Judge held that if the plaintiffs had proved that the earlier compromise decree was obtained by fraud then a separate suit was competent to set aside the decree. But since no fraud had been proved a separate suit was barred under Order XXIII, rule 3A of the Code. An observation was, however, made that under

(2) 1984 Ct. L. J. 442.

the circumstances the proper course for the plaintiff was to file an appeal against the compromise decree. This observation is not based on any discussion and it is manifest that attention of the learned Single Judge was not drawn to the provisions of section 96(3) of the Code which bars the filing of an appeal against a compromise decree. We, therefore, over-rule the aforesaid observation of the learned Single Judge that the proper course for the plaintiffs was to file an appeal against the compromise decree.

5. Confronted with the situation in which the consent decree passed by the trial Court has inevitably to be considered non-appealable under section 96(3) of the Code, the learned appellant's counsel contended that this appeal may be converted into a revision. This prayer seems utterly futile because the trial Court did not exceed its jurisdiction in passing the consent decree nor in any manner acted in the exercise of its jurisdiction illegally or with material irregularity. Order XXIII, rule 3 of the Code, which reads as under, deals with compromise of suits :—

> "3. *Compromise of suit.*—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, in writing and signed by the parties or where the defendant satisfies the plaintiff in respect of the whole or any 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 compromise 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."

In the instant case we comprehend no violation of the requirements of this provision of law. All that the first part of the rule visualises is that a lawful agreement or compromise arrived at by the parties should be in writing and signed by them. Admittedly, statements of the parties were recorded by the trial Court containing the terms of the compromise which were duly signed by them. Can it then be said that the compromise should not be considered to be in writing and signed by the parties ? Should terms of the compromise scribed on a piece of paper and signed by them be given preference to their categoric statements made in writing before the Court which they duly signed ? In our candid opinion, the requirements of the first part of rule 3 are adequately satisfied when the parties make statements before the Court in writing and sign the same. Such signed statements are covered by the definition of "document" given in section 3 of the Indian Evidence Act. Therein "document" has been defined as under :—

> " 'Document' means any matter expressed or described upon any substance by means of letters, figures or marks, or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter."

A plain reading of the definition would show that any matter expressed or described, upon any substance, by writing is a document. The first illustration given under the definition of "document" also clarifies that "a writing is a document". Thus, by no stretch of reasoning the statements of the parties recorded by the trial Court and signed by them can be considered to be violating the requirement of "in writing and signed by the parties" mentioned in the first part of rule 3.

6. No doubt in the case of *Ashwani Kumar Kaushik* the parties to the litigation had given statements containing the terms of compromise, and yet it was held that the requirement of rule 3 of Order XXIII of the Code were not fulfilled. However, this conclusion of the learned Judge was based on the admission of the parties that there was no compromise in writing and signed by them. It is not ties had been signed by them or not. In such circumstances this no help.
judgment on the scope and requirement of Order XXIII, rule 3 is of

7. The learned appellant's counsel then placed reliance on *Dalip Singh and another* v. *Raj Mall and others,* (3). A perusal of the judgment would show that it is entirely irrelevant for our purposes. In that case two separate suits filed by the plaintiff with regard to agricultural land measuring 341 Kanals 3 Marlas were dismissed by the trial Court. The plaintiffs appealed against the judgments and decrees of the trial Court. The Additional District Judge in whose Court the appeals were pending fixed 12th of March, 1980, for hearing. A few days before the date of hearing the Additional District Judge took up these appeals at the request of the counsel for the parties on the plea that the matter had been compromised. Besides the statements of the counsel for the parties only the statement of one of the defendants was recorded. On the basis of these statements the appellate Court decreed one of the suits and dismissed the appeal in the other suit. In the second appeal before this Court it was contended that the lower appellate Court had decreed the plaintiffis' suit in derogation of the provisions of Order XXIII, rule 3 of the Code. This plea was rightly accepted by the Court because the parties to the litigation except one defendant had not signed the statements on the basis of which the appellate Court had passed the decree. The requirement of rule 3 was manifestly not fulfilled and consequently the impugned cannot possibly render any help to the present appellant.

8. In the light of what is stated above, we find no merit in this appeal and dismiss the same. The parties are left to bear their own costs.

S. P. Goyal, J.—I agree.

H. S. B.

Before : *G. C. Mital, J.*

ARUNA LUTHRA,—*Petitioner.*

versus

STATE OF HARYANA, and others,—*Respondents.*

Civil Writ Petition No. 5118 *of* 1982

May 28, 1986.

Haryana Urban Development (Disposal of Land and Buildings) Regulations, 1978—*Regulation* 5(5)—*Plot purchased by a person in open auction—Purchaser/allottee required to communicate acceptance or refusal under Regulation* 5(5) *within* 30 *days of*

(3) 1981 P.L.J. 298.