

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.173 of 2014

In
C.R. 24 of 2013

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Md. Sanjer @ Md. Sanjer Ali & Ors.

.... Petitioners

Versus

Md. Zainul Abdin & Ors.

.... Opposite parties

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Appearance :

For the Petitioners : Mr. Surendra Kumar Singh, Advocate.

For the Opposite parties : Mr. Satish Chandra Mishra, Advocate.

Mr. Dhruv Narayan, Sr. Advocate.

Mr. Mahesh Narayan Parbat, Sr. Advocate.

Mr. Ram Chandra Prasad Bharti, Advocate.

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO

C.A.V. ORDER

9 16-09-2015

This review application has been filed by the petitioners

for review of order dated 18.04.2014 passed by this Court in Civil

Revision No.24 of 2013 whereby the civil revision was dismissed.

2. For deciding this review application the facts in,

short, may be narrated as follows:-

- (a) That the plaintiffs-opposite parties filed Title Suit No.97 of 1979 for partition of the suit property. Written statement was filed raising various pleas;
- (b) Then application under Order 7 Rule 11 C.P.C. was filed by the defendants-petitioners praying for rejection of the plaint;
- (c) It is alleged by the defendants in the application under Order 7 Rule 11 C.P.C. that earlier Title Suit No.46 of 1961 filed by the present plaintiffs' ancestor was decreed in part and two First Appeals were filed. The First Appeal filed by the plaintiffs was dismissed for default whereas the First Appeal filed by the defendants was

compromised and compromise decree was passed, therefore, the suit is barred under Order 23 Rule 3A C.P.C;

- (d) The application was rejected by the court below on 31.10.2012;
- (e) Civil Revision No.24 of 2013 was filed by the defendants before this Court;
- (f) After hearing both the parties by order dated 18.04.2014 civil revision application was dismissed giving various reason referring various decisions.

3. The learned senior counsel Mr. Surendra Kumar Singh, who was on behalf of the petitioners in civil revision, also submitted that at paragraph 8 of the order it has been mentioned by this Court that earlier suit was filed with regard to Schedule II property whereas the present suit has been filed for Schedule V property and nowhere prayer has been made for setting aside compromise decree which is in fact error apparent on the face of the record because Schedule II property is same as that of Schedule V property. According to the learned senior counsel, unless the compromise decree is set aside no partition decree can be granted with respect to the property belonging to Sajrun Nissan. The learned senior counsel further submitted that in compromise application before the High Court in First Appeal the present plaintiffs of this suit filed objection and the High Court held that the objection to the compromise application is frivolous and, therefore, the same matter cannot be agitated again. The learned



senior counsel further submitted that it is settled principles of law as has been held by the Hon'ble Supreme Court in the case of **Sopan Sukhdeo Sable and others Vs. Assistant Charity Commissioner and others, A.I.R. 2004 SC 1801** that the trial court must remember that if on a meaningful and not formal reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, it should exercise the power under Order 7 Rule 11 C.P.C. The learned senior counsel submitted that these aspects of the matter were not considered at the time of dismissal of the revision application.

4. Notices were issued in admission matter and the opposite parties have already appeared. The various opposite parties have supported the submission of the petitioners. The opposite party nos.1 to 3 represented by Mr. Satish Chandra Mishra only contested the case. According to the learned counsel everything has been stated in the plaint and no fact has been suppressed. The plaintiffs clearly stated that Sajrun Nissan died and on her death the present plaintiffs were substituted in her place and they are not party to the compromise. Therefore, while disposing of the First Appeal the High Court recorded the compromise and dismissed the First Appeal against the present plaintiffs. The present plaintiffs alleged that since they are not



party to the compromise, it is not binding on them. Now, therefore, if the compromise decree is not binding on them, they are not required to pray for setting aside the said compromise decree so they have not challenged the compromise decree. In such circumstances, the learned trial court has rightly rejected the application under Order 7 Rule 11 C.P.C. So far the observation of this Court regarding Schedule II and Schedule V property at paragraph 8 of the order is concerned, the learned counsel submitted that even if the property is same then also the plaint cannot be rejected by giving a detailed judgment relying on the various statements and evidences that may be produced by the parties.

5. Perused the order.

6. Now accepting the submission of the petitioners that Schedule II property and Schedule V property are same then also admittedly the present plaintiffs are not party to the compromise decree. Admittedly the First Appeal has been dismissed against the present plaintiffs. Since the plaintiffs have disclosed all the facts entitling them for claim of partition of their share, it cannot be prejudged at this stage by relying upon various statements made in the objections or the orders passed by this Court in First Appeal while disposing of the objections and moreover the appeal



has been dismissed against the present plaintiffs. In the decision relied upon by the petitioners it has been held that for the purpose of deciding application under clause (a) and (d) of Order 7 Rule 11 of the C.P.C., the averments in the plaint are the germane, the pleas taken by the defendants in the written statement would be wholly irrelevant at that stage. In the present case it is the defence of the defendants-petitioners that compromise decree was passed and the plaintiffs had not prayed for setting aside the decree and unless the compromise decree is set aside, no partition decree can be passed. So far this is concerned, it is not a matter to be seen at the time of disposing of Order 7 Rule 11 petition. Admittedly the plaintiffs are not signatories to the compromise application. The compromise is nothing but a contract between the parties.

7. In the said decision relied upon by the petitioners i.e. **Sopan Sukhdeo Sable and others** (supra) it has also been held that from meaningful reading of the plaint if it will appear to the Court that it is manifestly vexatious and meritless in the sense of not disclosing a clear right to sue, the power can be exercised. In the present case, from perusal of the plaint no such finding can be recorded that the plaint is vexatious and meritless or no cause of action is disclosed. Admittedly the property belonged to Sajrun Nissan and on her death the present plaintiffs were substituted.



According to the present plaintiffs, they have a share in the property of Sajrun Nissan. The plaintiffs and the defendants in the earlier suit compromised themselves with respect to the property of Sajrun Nissan. Now, therefore, the question will be whether that compromise will be binding on the present plaintiffs, it cannot be decided in this application under Order 7 Rule 11 C.P.C. because the evidence is required to be adduced by the parties in support of their respective cases and at the time of disposing of the application under Order 7 Rule 11 C.P.C. the Court cannot prejudge the result of the suit. The question that rejection of objection to compromise will operate as *res-judicata* or not is not a question to be decided while considering application under Order 7 Rule 11 C.P.C. All those objection or order are the defence case, which can be decided after evidence.

8. The Hon'ble Supreme Court recently in the case of **Kamlesh Verma Vs. Mayawati & Ors., A.I.R. 2013 SC 3301** has held that the jurisdiction and scope of review is not that of an appeal and it can be entertained only if there is an error apparent on the face of the record. An error which is not self-evident and has to be detected by a process of reasoning can hardly be said to be an error apparent on the face of the record justifying the Court to exercise its power of review.

9. In view of my above discussions I find no merit in this review application and accordingly, this review application is dismissed.

(Mungeshwar Sahoo, J)

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