

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.813 of 2010

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1. Sant Lal Chouhan, Son of Late Lachhman Chouhan.

2. Chandan Chouhan, Son of Sant Lal Chauhan.

3. Most Jasia W/o Late Lachhman Chouhan.

All residents of Mohalla-Driver Tola, Sangram Chauk, Katihar,
P.S./District-Katihar **-(Defendant 1st party)-Petitioners.**

Versus

1. Ishwar Lal Chouhan @ Fakira Chouhan , Son of Late Jawahar Nonia @ Bengali Chouhan.

2. Parmeshwar Lal Chouhan @ Parmeshwar Chouhan @ Kalu Chouhan ,
Son of Late Jawahar Nonia @ Bengali Chouhan.

3. Bimla Devi W/o Late Jawahar Nonia @ Bengali Chouhan.

4. Manju Devio W/o Sri Ram Prasad Chouhan.

5. Subol Chouhan son of late Bengali Chouhan.

6. Raju Chouhan Son of Subol Chouhan.

7. Manoj Chouhan S/o Subon Chouhan.

8. Manju Devi D/o Subor Chouhan.

9. Smt Lachhmani Devi D/o Late Jawahar Nonia@ Bengali Chouhan W/o
Sri Dukhi Lal Chouhan.

10. Smt Putul Devi D/o Late Jawahar Nonia@ Bengali Chouhan W/o Sri
Ram Govind Chouhan.

11. Raj Kumari Devi W/o Sri Iswal Lal Chouhan.

Nos.1 to 3, 5 and 8 to 11 residents of Mohalla-Lal Kothi Road
P.S./District-Katihar, No.4. Resident of KP 2/13 Fort Willian Kolkatta-
22, No.6 resident of Ankara Fatak, P.O.-Baratalla, Kolkatta and No.7
resident of 17C Lake Road (Opposite Charu Chandra Lake Market)
Kolkatta-29 **-Plaintiffs-1st party Opposite party.**

12. Manti Devi Widow of Late Babul Lal Chouhan.

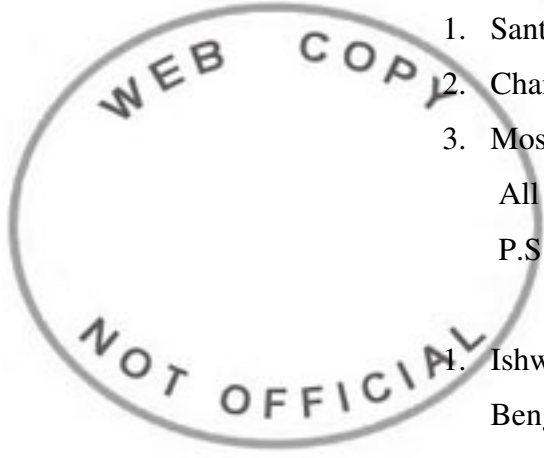
13. Gita Devi, W/o Bhagwan Chouhan.

14. Sita Devi W/o Prabhu Chouhan.

15. Rita Kumari D/o Late Babulal Chouhan.

Nos.12 to 15 residents of Mohalla- Lal Kothi Road, Larkania,
P.S./District-Katihar **-Defendant 2nd party –Opposite Party.**

16. Smt. Shyama Devi W/o Sri Khantar Chouhan, residents of Mohalla-Lal



Kothi Road , P.S./District-Katihar.

-Defendant 3rd parties-3rd party-Opposite Party.

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Appearance :

For the Petitioner/s : Mr. Madhav Roy, Adv.
For the Respondent/s : Mr. Laxman Lal Pandey, Adv.
Mr. Ashok Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

16 22-07-2015

Heard Mr. Madhav Roy, the learned counsel

for the petitioners and also the learned counsel for the opposite parties.

Calling in question the legal acceptability of the order dated 01.09.2010 passed by the learned court below rejecting the petition of the defendant-petitioners challenging the maintainability of the suit and praying to try the said issue as preliminary issue, the present revision application has been filed.

The plaintiff-opposite parties filed T.S. No. 106 of 2005 seeking the relief for setting aside the judgment and decree passed in T.S. No. 03 of 1987 by the court of Sub Judge-III, Katihar on the ground that the said decree had been obtained by playing fraud upon the court and suppressing the summons by the plaintiffs. The declaration has also been sought that the final decree passed in T.S. No. 241 of 1967 of the court of Munsif Katihar was vague and not executable and no delivery of possession was effected on the spot to the ancestors of the

defendant in Execution Case No. 31 of 1973.

The plaint of T.S. No. 106 of 2005 has been brought on record as Annexure-1 to the revision application. The case of the plaintiff-opposite parties as made out in the plaint, in short, is that the ancestor of the defendant-petitioners earlier filed T.S. No. 241 of 1967 for partition before the Munsif at Katihar and obtained the ex parte decree for partition suppressing summons against the ancestor of the plaintiff-opposite parties. Subsequently, ancestor of the defendant-petitioners got a final decree prepared and got the same executed by filing Execution Case No. 31 of 1973 where a collusive delivery of possession, only on paper, was effected. Later on, the said ancestor of the defendant-petitioners filed T.S. No. 03 of 1987 before the Sub Judge claiming his right, title and interest over the suit on the basis of the decree passed in the T.S. No. 241 of 1967 and the delivery of possession effected in the Execution Case No. 31 of 1973. It is the case of the plaintiffs that in this suit also the summons were suppressed and a collusive service report was submitted with regard to the substituted defendant and ultimately the ex parte decree was passed in favour of the ancestor of the defendant-petitioners. The plaintiffs have filed the present suit with aforementioned reliefs before the court of

Sub Judge I, Katihar.

The defendants filed the petition on 01.04.2009 mainly raising the objection that the court of Sub Judge had no jurisdiction to interfere with the judgment and decree passed by the court of Munsif in the earlier suit as the court of Sub Judge was neither an appellate court nor revisional court of the original court of Munsif. It was the contention of the defendants that the later decree passed in T.S.No. 03/1987 by the court of Sub Judge could not make any difference as the same was passed on the basis of the earlier decree passed by the court of Munsif. The prayer therefore was made to try the issue of maintainability of the suit before the court of Sub Judge as preliminary issue. The rejoinder was filed by the plaintiffs contesting assertions of the defendants. After hearing the parties, the learned court below has by the impugned order declined to grant the prayer as made.

Mr.Roy, the learned counsel appearing for the petitioners has submitted that the learned court below has committed error of jurisdiction in passing the impugned order failing to appreciate that the decree passed in the suit by the court of Munsif cannot be challenged before the court of Sub Judge as the same court is neither appellate court nor revisional



court against the judgment/order passed by the court of Munsif. It has been propounded that under the scheme of Bengal, Agra and Assam Civil Courts Act or even in accordance with the provisions of the Code of Civil Procedure a court of Sub Judge is not competent to set aside the decree passed by the court of Munsif even if the said decree is challenged on the ground of fraud. It has also been submitted that the learned court below should have tried this issue as preliminary issue in accordance with the provisions of Order 14 Rule 2 of the Code of Civil Procedure. The learned counsel has also relied upon the decision in the case of *Arunachellam Chetty Vs Sabapathy Chetty*, AIR 1918 Madras 711 in order to bolster his submission.

After perusal of the materials brought on record including the impugned order and considering the submissions on behalf of the petitioners, the centrirorial issue emerges for consideration is as to whether the court of Sub Judge has got jurisdiction to annul/set aside the decree passed by a court of Munsif when the same is challenged in a regular suit on the basis of allegations of fraud in obtaining the said decree. It is no doubt true that a court of Sub Judge is neither an appellate court nor a revisional court of the court of Munsif. However, the said consideration is immaterial when a decree passed by any



court is challenged on ground of fraud in a regular civil suit filed before the court of Sub Judge which is otherwise cognizable by it. The provisions contained in Section 9 and Section 15 of the Code of Civil Procedure clarify the position beyond cavil that all suits of civil nature can be instituted before the court of lowest grade competent to try it unless the cognizance of such suit is either expressly or impliedly barred. On behalf of the petitioners no such bar to the cognizance of the present suit by the court of Sub Judge has been demonstrated. Even the provision contained in Order 7 Rule 10 C.P.C. relating to return of plaint for presentation before the competent court does not oust the jurisdiction of the higher court.

The legal conundrum sought to be raised on behalf of the petitioners on the basis of the provisions of the C.P.C. as well as Bengal, Agra and Assam Civil Courts Act has already been settled by a bench decision of this Court in the case of ***Bhuaneshwari Kuer Vs Raghubansh Mani Prasad Narayan Singh, AIR 1954 Patna 34*** as follows:

3. “...*There is nothing in the language of Section 15 or Order 7, Rule 10 to suggest that the jurisdiction of the Court of the higher grade is ousted. The question of the*

jurisdiction of the Court of the District Judge is governed not by Section 15 or by Order 7, Rule 10 but by Section 18, Bengal and Assam Civil Courts Act which states:

“Save as otherwise provided by any enactment for the time being in force, the jurisdiction of a District Judge or Subordinate Judge extends, subject to the provisions of Section 15, Civil P.C. to all original suits for the time being cognizable by Civil Courts.”

“...If Section 15 is construed in the background of the object and scope for which it was enacted, it is clear enough that there is no obligation imposed by the section on the Court of the higher grade to return the plaint for being presented to the Court of the lower grade. It is on the other hand a matter of discretion for the Court of the higher grade either to retain the suit in its own Court or to

return it to the plaintiff for being presented before the Court of the lower grade.

5. “...It is clear that Section 15, Civil P.C. and Order 7, Rule 10, Civil P.C. are not imperative in their character and that the learned Additional District Judge had a discretion in the present case either to return the plaint or not to return the plaint for being presented to the Court of the Subordinate Judge. It is impossible to accept the argument put forth on behalf of the petitioner that the learned Additional District Judge has committed any illegality in the exercise of his jurisdiction.....”

The decision in the case of **Arunachellam Chetty (Supra)** also does not support the contention raised on behalf of the petitioners. In this case the question that came up for consideration before the bench was the competency of a court of inferior jurisdiction to entertain a suit to declare the compromise decree obtained in a court of superior jurisdiction, to be not binding on the plaintiff as having been obtained by fraud. Their lordships repelled the contention regarding the



absence of jurisdiction of a court competent to try a suit only on the ground that the decree under challenge on the ground of fraud has been passed by an inferior court or superior court and have held that “ *if it were only the Court which possessed the jurisdiction to try the suit in which the fraud was committed that could entertain a question whether a decree so obtained was vitiated by fraud, there would be no relief by suit under Article 95, Limitation Act, for parties aggrieved by fraud perpetrated in the trial of Small Cause suits, or of rent suits in Revenue Courts, or in appeals to the Privy Council however gross the fraud* ”. Their lordships further also quoted the observations by **Stanley, J.**, in ***Nistarini Dassi Vs. Nundo Lall Bose ((1899)26 Cal.891*** as follows:

“... It matters not whether the impeached judgment has been pronounced by an inferior Tribunal or by the highest Court of Judicature in the realm in all cases alike it is competent for every Court, whether superior or inferior, to treat as a nullity any judgment which can be clearly shown to have been obtained by manifest fraud...”

On the anvil of the aforesaid dictums, this

Court therefore does not find substance in the submission on behalf of the petitioners that the Court of Sub Judge has got no jurisdiction to entertain a suit against the decree passed by a court of Munsif which has been challenged on ground of fraud. The learned court below has committed no illegality or error of jurisdiction in passing the impugned order.

The revision application is, accordingly, dismissed.

(V. Nath, J)

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