

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.687 of 2001

IN

First Appeal No. 285 of 1980 IA 196 of 88

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Syed Mahtab Ahmad son of Late S.M. Aftab Ahmad, resident of Ramna Road, P.S. Pirbahore, District Patna

.... Appellant/s

Versus

1. Syed Kamaluddin Asraf
2. Syed Jamaluddin Asraf
3. Syed Jiyauddin Asraf
4. Syed Mooruddin Asraf
5. Syed Quamruddin Asraf. All 1 to 5 sons of Late Syed Azizuddin Asraf.
6. Bibi Maimoona Khatoon widow of Late Syed Azizuddin Asraf
7. Bibi Rehana Khatoon daughter of Late Syed Azizuddin and wife of Mr. Syed Sultan Ahmad. All are resident of Chitkohara, P.S. Gardanibagh, District Patna
- 8 (i) Sd. Saulat Rahman
- 8(ii) Sd. Shahid Rahman
- 8(iii) Guddu
- 8(iv) Sd. Asifur Rahman
- 8(v) Hasreen Rahman. All sons and daughter of Late Bibi Amina Khatoon. All residing at Dumri Kothi near Gandhi Maidan Masjid, Ashok Rajpath, P.S. Pirbahore, Town and District – Patna
9. Bibi Farzana Hasra wife of Dr. Syed Tasnimur, daughter of late Syed Azizuddin Asraf, residing at Dumri Kothi, Exhibition Road, P.S. Kotwali, District Patna
10. Syed Shaheen Asraf son of Late Aminuddin Asraf, resident of Chitkohra, P.S. Gardanibagh, District – Patna
11. Samin Asgar @ Seemi Asgar wife of Sajjad Asgar, resident of 1425 Badamia Road, Apartment 502 Missisanga, L-5, J-3, I-4 Entraria Canada
- 12(a) Syed Ausaf Imam H/o Late Zareen Imam
- 12(b) Manizah Imam daughter of late Zareen Imam
- 12 (c) Salma Imam Daughter of late Zareen Imam
- 12(d) Syed Shahroze Imam minor son of Late Zareen Imam. All residing at 11, Galzy Apartment, Phase-I, Road No. 3H, Patliputra Colony, Patna-13
13. Tazeen Tirmizi wife of Nazib Tirmizi, resident of 7721 under Wood Drive, Amaritto, Texas, Pin Code – 70921, U.S.A.
14. Shazi Soza (Doja) wife of N. Doja Reader Zamia Milia University Sarswati Kunj behind Noida, Sector -14, New Delhi
15. Tarannum Asraf daughter of late Aminuddin Asraf, resident of Kahkeshan Mohalla – Chitkohra, P.S. Gardanibagh, Patna. All numbers 11, 13 to 14 daughters of Late Aminuddin Asraf, through opposite party no. 10 who holds power of attorney.
16. Ramchandra Lal Das son of Not known, R/o House No. 13/16, West Anandpuri, West Boring Canal Road, Patna-1.

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. D.K. Sinha, Sr. Advocate

For the Respondents

1, 3, 4, 5, 6 & 7 : Mr. Abbas Haider, Advocate

Mr. R.K. Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE V.N. SINHA

and

HONOURABLE JUSTICE SMT. NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE V.N. SINHA)

Date: 07-07-2015

Heard learned counsel for the son of the original plaintiff
as also counsel for Defendant Nos. 1, 4 and others.

2. This Letters Patent Appeal is directed against the order dated 17.05.2001 passed in I.A. No. 196 of 1998 filed to recall order dated 09.04.1997 passed in First Appeal No. 285 of 1980 whereunder said first appeal was disposed of in terms of the compromise between Defendant nos. 1, 4 and plaintiff as according to the applicant of I.A. No. 196 of 1998 the compromise was actuated by fraud. In this connection, it is also pointed out that the counsel appearing in the aforesaid appeal on behalf of the parties were also instrumental in committing fraud. The mother of the appellant herein, who was Respondent no.1 in the said appeal, is said to have signed the compromise petition but she did not even appear in the appeal by filing any vakalatnama, though by committing forgery her vakalatnama is said to have been filed through a counsel who also appeared for those whose interest was adverse to her in the said appeal. In this connection, it is also pointed out that the order dated 09.04.1997 was passed ignoring order no. 8 dated 25.11.1994 passed

in the said appeal whereunder appeal was directed to abate against the heirs of deceased Respondent nos. 2 and 4.

3. It is submitted on behalf of the appellant that appeal having abated against the heirs of deceased Respondent nos. 2 and 4, the order dated 09.04.1997, disposing of the said appeal on the basis of the compromise petition, will not bind any of the parties including appellant.

4. We regret not to accept such submission in view of the fact that the suit being partition suit, Respondent Nos. 2 and 4 in the appeal having died, appeal having abated against them, their heirs may not be bound by the order dated 09.04.1997 passed in the said appeal, but the compromise decree passed on the basis of the compromise entered into and signed by the parties will certainly bind those who are the signatory to the compromise petition.

5. Learned counsel for the appellant then submitted that the finding that mother of the appellant had executed vakalatnama as Respondent no.1 in the First Appeal arrived in the enquiry by the Registrar General of this Court and duly accepted by this Court under order dated 17.05.2001 impugned in this appeal cannot be allowed to stand, as such finding has been recorded without proving signature of his mother on the vakalatnama or on the compromise petition. In this connection, report of the Registrar General of this Court duly dealt



with in the impugned order has considered the circumstances in which she furnished her thumb impression instead of signature which was required to be compared with her signature on the vakalatnama, compromise petition filed in the appeal. In the appeal, we are, however, not inclined to reopen the matter but would grant liberty to the appellant to file suit alleging fraud against those who are responsible for practicing fraud on him and his mother.

6. Before parting with this order, we would like to notice the last submission made by the counsel for the appellant that after the partition suit was decreed, before filing of the appeal, original Defendant No.1 died, his heirs filed First Appeal No. 285 of 1980 before this Court without obtaining permission from the trial court for substitution. Defendant no.1 having died after the disposal of the suit and passing of the decree in the partition suit, the heirs of Defendant no.1 chose to question the partition decree without obtaining permission from the trial court, which according to us will not make the appeal not maintainable, as such, we are not inclined to set aside either the compromise decree pursuant to order dated 09.04.1997 passed in First Appeal No. 285 of 1980 or order dated 17.05.2001 whereunder the report of the Registrar General of this Court has been accepted and it has been held that the parties who entered into compromise in terms whereof order dated 09.04.1997 was passed in

the appeal is not vitiated by any fraud.

7. The Letters Patent Appeal is, accordingly, dismissed,
however, without cost.

(V.N. Sinha, J.)

(Nilu Agrawal, J.)

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