

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.138 of 2012

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1. a. Chandrababha Devi, W/o Late Ashok Kumar Sah.
b. Ranjit Kumar , Son of Late Ashok Kumar Sah.
c. Most. Mina Devi W/o Late Shekhar Kumar Prasad.
d. Tanya Suman (minor)d/o Late Shekhar Kumar Prasad.
e. Aryan Suman (Minor)Son of Late Shekhar Kumar Prasad.
- 1(d) and 1(e) are under the Guardianship of their natural mother Most. Mina Devi.
- 1 (a) to 1(e) are resident of Mohalla- Karimabad @ Magardiha, Ganesh Chowk, Ward No.18 udner town Samastipur, P.S.- Samastipur, District-Samastipur.
- f. Pinki Devi W/o Narendra Sah d/o Late Ashok Kumar Sah , Resident of Village- Biratnagar, Nepal.
- g. Sangita Devi W/o Rakesh Kumar D/o late Ashok Kumar Sah.
Resident of Village and P.O. Sitamarhi, P.S. and District-Sitamarhi.

--Plaintiff/Opp.Party 1st party/ Petitioners.
Versus

1. Satya Narayan Sah S/O Late Prayag Sah Resident Of Mohalla- Karimabad @ Magardahi, Ward No. 15, New Town, Samastipur, P.O- Samastipur, Police Station And District- Samastipur.
2. Lakshmi Sah S/O Late Prayag Sah Resident Of Mohalla- Karimabad @ Magardahi, Ward No. 15, New Town, Samastipur, P.O- Samastipur, Police Station And District- Samastipur.

--Defendant/Opp.Party/Opp.Party 2nd Set.

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Appearance :

For the Petitioner/s : Mr. Md. Waliur Rahman, Adv.
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

15 22-01-2015

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



Grieved by the order dated 02.06.2012 in Miscellaneous Case No.01/06 by which the compromise decree passed in the eviction suit has been set aside and the proceeding of the Eviction Suit No.02/95 has been revived, the plaintiffs have preferred this revision application. It is not in dispute that the plaintiff-petitioners filed eviction suit in the court below seeking the eviction of the defendant-opposite parties from the suit premises on the ground of default. The said suit was filed on 17.02.1995 and the defendant-opposite parties appeared on 05.05.1995. A written statement was filed by the defendant no.1 on 24.08.1995. It further transpires that a compromise petition was filed on 21.11.1995 and the eviction suit was disposed of in terms of the compromise on 24.11.1995. The defendant-opposite parties filed a petition invoking proviso to Order 23 Rule 3 C.P.C. questioning the validity, legality and propriety of the compromise and the decree passed in the eviction suit on that basis and the miscellaneous case was initiated. The learned court below after hearing the parties has allowed the miscellaneous case, set aside the compromise decree and has proceeded to take up the eviction suit.

The learned counsel for the plaintiff-petitioner



has submitted that the learned court below has not considered the oral evidence adduced on behalf of the petitioners in the miscellaneous case, and therefore, the impugned order is vitiated. It has also been propounded by the learned counsel that the compromise petition was duly signed by the advocate of the defendant-opposite parties and in that view of the matter, even if the said compromise petition did not bear the signature of the defendants or the defendants had not been examined in the suit in support of the compromise, it will not vitiate the compromise decree on that score. The reliance has been placed on the decisions of the apex court, which shall be referred to appropriately hereafter.

The learned counsel appearing for the defendant-opposite parties, however, has supported the impugned order and has submitted that the impugned order has been passed after taking into notice the absence of the materials which would have been the basis for satisfaction of the court regarding the legality and validity of the compromise. It has also been canvassed that the learned court below has scrutinized the materials before it for coming to the conclusion regarding legal acceptability of the compromise decree in question and the

impugned order does not suffer from error of jurisdiction or perversity in any manner.

After considering the submission on behalf of the parties and perusal of the impugned order, it is limpid that the suit was filed seeking eviction of the defendants from the suit premises on the ground of default in payment of rent. The compromise petition filed in the suit does not disclose that the nature of the grounds mentioned in Section 11 of the Bihar Building (Lease, Rent & Eviction) Control Act, 1982, for eviction have been found /accepted to be existing. To the contrary, the plaintiffs had agreed that the defendants could continue as their tenants in the suit premises. Manifestly, when the plaintiff filed the suit seeking eviction of the defendant, on the ground of default, such compromise allowing the defendants to continue as his tenant is definitely incomprehensible. But the reason becomes obvious when it has been accepted by the learned counsel for the parties that the defendants in the written statement had also denied the relationship of landlord and tenant in between the plaintiffs and the defendants and had set up their own independent title over the suit premises. Through compromise, the plaintiff has made the attempt to blunt the

main defence of the defendants.

It has also been not denied on behalf of the plaintiff that none of the parties (either the plaintiff or the defendants) have been examined by the court before recording the compromise and no satisfaction, which the court was mandatorily required to record before accepting the compromise, was recorded by the court. This aspect assumes all the more relevance when admittedly there were two Vakalatnamas (Exts. 7 and 7A) said to have been filed on behalf of the defendants by which two different advocates had been appointed and the defendants have specifically denied to have executed the later Vakalatnama. It is true and has rightly been submitted that by the learned counsel for the petitioners that the compromise petition can be signed by the advocate of the parties and the reliance has also rightly been placed on the judgments of the apex court in the case of **Y.Sleebachen Etc. Vs Superintending Engineer, 2014 (4) BBCJ SC IV-345** and the earlier decision of the apex court in the case of **Byram Pestonji Gariwala Vs Union Bank of India, (1992)1 SCC 31**. However, when the issue arises with regard to the validity, legality and propriety of the compromise then in that case the

requirement of the provision under Order 23 Rule 3 regarding satisfaction of the Court becomes a material consideration. This aspect has also been considered by this Court in the case of **Urmila Devi Vs Ashok Prasad, 2013 (1) PLJR 806**. Admittedly none of the parties have been examined before recording the compromise and disposing of the eviction suit in terms of the compromise. The findings of fact has been recorded by the learned court below that the compromise between the parties was based on fraud and misrepresentation.

Aligning with the principles enunciated by this Court in the case of **Urmila Devi (Supra)**, this Court does not find any material irregularity or error of jurisdiction in the impugned order. The revision application is, accordingly, dismissed. However, no observation in this order shall prejudice either of the parties in the trial of the Eviction Suit No.02/95.

(V. Nath, J)

Nitesh/-

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