

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Writ Jurisdiction Case No.10981 of 2012

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1. POKHRAJ YADAV SON OF LATE INDU YADAV
 2. SHIV NANDAN YADAV SON OF LATE INDU YADAV
 3. RITA DEVI D/O LATE INDU YADAV ALL ARE RESIDENTS OF
VILLAGE- ANGARA TOLA, GAMHARIYA, POLICE STATION-
SHERGHATI, DISTRICT- GAYA

.... PETITIONER/S

VERSUS

1. BHUNESHWAR YADAV S/O LATE HUSSAINI YADAV.
2. SUKHDEO YADAV S/O LATE HUSSAINI YADAV
3. TETAR YADAV S/O LATE HUSSAINI YADAV
ALL ARE RESIDENTS OF VILLAGE- ANGARA TOLA, GAMHARIYA,
POLICE STATION- SHERGHATI, DISTRICT- GAYA
4. DOMAN YADAV SON OF LATE MUKHU YADAV
5. TULA YADAV SON OF LATE MUKHU YADAV
BOTH RESIDENT OF VILLAGE- ANGARA TOLA, GAMHARIYA,
POLICE STATION- SHERGHATI, DISTRICT- GAYA.
6. MD. AMINULLAH KHAN S/O LATE MD. ANAMULLAH KHAN
7. MD. MATIULLAH KHAN S/O LATE MD. ANAMULLAH KHAN
BOTH RESIDENTS OF VILLAGE- KARMAUNI, POLICE STATION-
SHERGHATI, DISTRICT- GAYA.

.... RESPONDENT/S

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Appearance:

For the Petitioner/s : Mr. Manish Kumar No.-2, Adv.
For the Respondent/s : Mr. Shabbir Ahmad, Adv.

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI

CAV JUDGMENT

Date: 17-12-2015

Petitioner's ancestor Indu Yadav being one of the
defendants challenged order dated 25.04.2012 passed by Munsif-III,
Gaya in Title Suit No.27 of 1989 whereby and whereunder prayer
made on his behalf to reject the compromise petition, has been

rejected.

2. Although no copy of plaint as well as W.S. has been made annexure to the present petition, from pleading of the party, it is evident that one Title Suit No.27 of 1989 has been filed respondent 1st set/plaintiff with regard to Plot No.5 corresponding to Khata No.56 lying at village-Angara, claiming to be his ancestral property having been purchased by his father Husaini Yadav and as there happens to be apprehension at the end of defendant of dispossession, therefore suit has been brought up having a relief of declaration of title, confirmation of possession as well as injuncting the defendant from interfering with his possession whereupon the defendant noticed appeared, filed WS and put objection over pleading claiming to be in possession of the disputed land.

3. While the suit was proceeding ahead, during midst thereof, a compromise petition has been filed on 28.09.2010 bearing the signature as well as LTI of the respective parties. The aforesaid compromise petition has also not been brought up on record. It is evident from the impugned order that petitioner/defendant had already been examined and had supported the theme of compromise during his evidence. However, for want of compromise petition, it is difficult to trace out whether compromise has been effected with all the defendants or only with the petitioner. The order impugned is also silent.



4. Subsequently thereof, on 27.09.2011 a petition was filed on behalf of petitioner, one of the defendant to obliterate the compromise petition in view of the fact that he happens to be an illiterate and during course of obtaining his LTI, the contents of the compromise petition was not stated before him truly which, he came to know, subsequently and therefore, during course of obtaining his LTI, the plaintiff acted in malafide way as well as false representation was made. Plaintiff refuted the allegation by way of rejoinder dated 24.01.2012 and submitted that full facts of the compromise petition was placed before the defendant no.2 and considering therewith, put his LTI subsequently, he developed dishonest intention and with ulterior motive filed this petition.

5. As stated above for want of respective pleadings along with alleged compromise petition, the materials facts have not been before the court. Furthermore, it is evident that up till now compromise petition has not been accepted.

6. Order XXIII Rule-3 deals with the compromise which reads as follows:-

“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 than 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.]”

7. The first part of Order XXIII Rule-3, it is evident that court has to prima facie satisfy that the suit has been adjusted wholly or in part by any lawful agreement or compromise in writing and signed by the parties. That means to say, compromise is the effect of respective parties. Furthermore, when the explanation of the aforesaid Rule-3 is taken into consideration, it is evident that it happens to be an agreement amongst the parties and being an agreement, the parties has an option to withdraw till its acceptance. What repercussion by way of filing of aforesaid compromise, which could be identified as a deed of agreement and having duly endorsed by the parties may tantamount to admission unless and until substantially succeeded in refuting the same, is to be adjudged by the court itself in the background of the evidence so available on the record.

8. Furthermore, the compromise petition has not yet been accepted and on account thereof, the parties have an opportunity.

9. In *Star Construction and Transport Co. v. India Cements Ltd., reported in AIR 2001 SC 941*, it has been held:-

“7. In this case, applications are filed under Order 23 Rule 3 CPC. This Rule is a provision for making a decree on any lawful agreement or compromise between the parties



during the pendency of the suit by which claim is satisfied or adjusted. The agreement, compromise or satisfaction may relate to the whole of the suit or part of the suit or it may also include matters beyond the subject-matter of the suit. But Rule 3 clearly envisages a decree being passed in respect of part of subject-matter on a compromise. Whether in fact there has been compromise or adjustment of the suit claim or any part thereof is itself put in dispute in this case. Unless it is clearly established that such accord or compromise has been entered into between the parties, the powers under Order 23 Rule 3 CPC could not be exercised. The respondent's case is that the claim made in the suit were never before the arbitrators in any form and even the figures mentioned in the reconciliation statement also do not pertain to the suit claim and the scope of reference to the arbitrators does not enable them to make an award on that aspect of the matter. Those objections have to be dealt with appropriately on full trial. That is the course now adopted by the Division Bench of the High Court."

10. In *Ramanuj Pandey and others Vs. Rang Nath Pandey*

@ *Bishwak Sen Pandey* reported in **2004(2) BLJ 703**, it has been held:

"5. Having heard the learned counsel for the parties and after considering the materials on record placed by the parties, I find that, no doubt, the Court has to decide the question of validity, legality and maintainability of the compromise petition, but at what stage it has to be done, is to be decided by that Court itself. Hence, I find no illegality or jurisdictional error in the impugned order of the learned Court below. Further by the impugned order the LIS has not been finally decided by the learned Court below and hence no relief can be granted by way of the instant civil revision, which is, accordingly, dismissed."

11. In *Banwari Lal v. Chando Devi* reported in AIR 1993

SC 1139, it has been held:

"14. The application for exercise of power under proviso to Rule 3 of Order 23 can be labelled under Section 151 of the Code but when by the amending Act specifically such power has been vested in the Court before which the petition of compromise had been filed, the power in appropriate cases has to be exercised under the said proviso to Rule 3. It has been held by different High Courts that even after a compromise has been recorded, the court concerned can entertain an application under Section 151 of the Code, questioning the legality or validity of the

compromise. Reference in this connection may be made to the cases *Tara Bai (Smt) v. V.S. Krishnaswamy Rao*, AIR 1985 Kar 270; *S.G. Thimmappa v. T. Anantha*, AIR 1986 Kar 1, *Bindeshwari Pd. Chaudhary v. Debendra Pd. Singh*, AIR 1958 Pat 618; *Mangal Mahton v. Behari Mahton*, AIR 1964 Pat. 483 and *Sri Sri Iswar Gopal Jew v. Bhagwandas Shaw*, AIR 1982 Cal. 12, where it has been held that application under Section 151 of the Code is maintainable. The court before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that court has to decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3 and as such not lawful. The learned Subordinate Judge was perfectly justified in entertaining the application filed on behalf of the appellant and considering the question as to whether there had been a lawful agreement or compromise on the basis of which the court could have recorded such agreement or compromise on February 27, 1991. Having come to the conclusion on the material produced that the compromise was not lawful within the meaning of Rule 3, there was no option left except to recall that order."

12. Because of the fact that compromise petition has not yet been adjudicated upon by the lower court. Therefore, an opportunity is still available before the court to adjudicate upon it in terms of Order-XXIII Rule-3 CPC itself. As such, instant petition is disposed of directing the lower court to adjudicate the compromise petition independently in terms of Order XXIII Rule-3 CPC.

(Aditya Kumar Trivedi, J.)

Patna High Court
Dated 17th day of Dec.,2015
Prakash Narayan

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