

**IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.711 of 2016**

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Ram Kishore Singh & Anr

.... Appellant/s

Versus

Raushan Kumar & Anr

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Dhananjai Kumar Singh

For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER**

- 2 26-09-2016 **1.** Heard the learned counsel, Mr. Dhananjai Kumar Singh, for the petitioner and the learned counsel, Mr. J.S. Arora for the plaintiff respondent No.1.
- 2.** Perused the impugned order dated 30.06.2016 passed by Addl. District Judge IIIrd, Patna in connection with Title Suit No.23 of 2010 whereby the Court below rejected the petition dated 01.08.2015 filed by the petitioner.
- 3.** It appears that the plaintiff respondent No.1 filed probate case in the year 2004. The defendant petitioner filed objection to the probate case and, therefore, since the probate case was contested, the probate case was renumbered as title suit in the year 2010 as provided under Section 295 of the Indian Succession Act. Thereafter, the parties filed compromise application in the Court below. The defendant petitioner filed an application for



rejection of the compromise application on the ground that the Advocate of the petitioner got the signature of the petitioners wrongly on the compromise application. The Court below rejected this application again by order dated 12.08.2013 holding that Anita Devi and Ram Kishore Singh have not filed any complaint against act of their Advocate.

4. The compromise has been signed by the Advocate and also the petitioners. The Court below also recorded finding that the petitioners appeared in the year 2005. When they did not file any objection / written statement on 12.04.2006, they were debarred from filing the written statement. Anita Devi appeared on 23.02.2007 and filed objection and thereafter, a joint compromise application was filed. In the meantime, the witnesses have been examined on behalf of the plaintiff and plaintiff case was closed and the case was fixed for argument. Thereafter, this application has been filed on 14.06.2012. Therefore, it appears that the petitioners are adopting dilatory tactics. Thereafter, the petitioner did not challenge this order before the higher Court.

5. Subsequently, again on 02.09.2013, another application was filed by the petitioner for seeking permission to adduce evidence in spite of the objection. This application was rejected



by terms of order dated 28.02.2014 with cost of Rs.5,000/-. The earlier order dated 12.08.2013 and the present order dated 28.02.2014 was challenged by the petitioner before this Court in C.W.J.C. No.7955 of 2014. After hearing both the parties, this Court by order dated 26.06.2015 permitted the petitioner to withdraw this writ application after some argument with liberty to raise their objection in accordance with law before the Court below in the pending suit. Thereafter, again application has been filed by this petitioners on 01.08.2015 praying for recall of the order dated 12.08.2013 and the order dated 28.02.2014. The trial Court by the impugned order has rejected this application. The Court below held that the said orders were challenged before the High Court and they withdrew the said writ application finding themselves enable to support their challenge.

6. The learned counsel for the petitioner submitted that the probate case cannot be decided on the basis of compromise but in the present case, the Court below is not rejecting the compromise application. The petitioners are not permitted to adduce evidence and the Court below is proceeding to decide the case without granting opportunity to the petitioner. According to the learned counsel, the petitioners are afraid that the Court below may pass Judgment / order on the basis of the compromise application. The

learned counsel further submitted that res judicata will not apply in question of law and, therefore, the learned Court below has wrongly rejected the application filed by the petitioners.

7. On the other hand, the learned counsel, Mr. Arora, for the respondent submitted that the petitioners appeared as far back as in the year 2005-07 respectively. The petitioner No.1 was debarred from filing the written statement. The petitioner No.2 was directed to produce evidence after closure of the evidence of the plaintiff but they did not produce any evidence. When their case was closed in the year 2013, they did not challenge the same earlier. Subsequently, when they filed application again for rejection of the compromise it was rejected on 28th February, 2014, they filed writ application before the trial Court challenging both the orders and the High Court was not inclined to interfere with both the order, they go the writ application withdrawn. This Court while permitting to withdraw the writ application only granted liberty to the petitioner to raise their objections permitted under law before the pending suit.

8. Admittedly, the present application has been filed now again challenging compromise application and that for recalling the order dated 12.08.2013 and 28th February, 2014 which has

been confirmed by the High Court.

9. It may be mentioned here that both the orders were not interfered by the High Court in exercise of jurisdiction under Article 227, therefore, orders merged in the order of the High Court. In such circumstances, the trial Court had no jurisdiction to recall the said orders which have already been confirmed impliedly by the High Court.

10. This Court in the case of *Nityanand Singh Vs. M/s Addiyta Cooperative Housing Society Ltd.* 2011 (3) PLJR 728 has held that **‘the dismissal of the Civil Revision in any manner whatsoever either by default or by withdrawal simpliciter or by dismissal on any preliminary matter, would naturally amount to confirmation of the order under challenge.’** Now, therefore, the dismissal of the writ application by permitting the petitioner to withdraw the same, this Court confirmed the order dated 12.08.2013 and 28.02.2014. In such circumstances, the same question could not have been decided by the Court below and, therefore, the learned Court below has rightly passed the impugned order dated 30.06.2016. In the impugned order, the Court below has held that the probate case / suit is not going to be decided on the compromise application only The same can be

decided after the evidences are produced and the plaintiff have already adduced their evidence. So far the defendant petitioners are concerned, their case has been closed and the High Court has confirmed the order of closing evidence. Therefore, while sitting in the same jurisdiction under Article 227, this Court cannot again consider the same fact. However, it is clear that although the probate case is of the year 2004 and the petitioner have already appeared in the Court below in the year 2005 but they have been able to drag the matter since last more than 10 years and therefore, it can very well safely be held that the petitioners are adopting dilatory tactics and harassing the plaintiff respondent by abusing the process of the Court. They are also killing the Court's time by filing frivolous and vexatious applications.

11. Accordingly, this Civil Misc. application is dismissed with cost of Rs.10,000/- to be paid by the petitioner to the plaintiff respondent within one month in the Court below. The cost must be deposited within one month failing which the same shall be realised through the process of the Court. If the cost is deposited, the plaintiff respondent shall be at liberty to withdraw the same.

(Mungeshwar Sahoo, J)

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