

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.199 of 2013

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Ram Janam Bhagat Son Of Late Raman Bhagat Resident Of Village-Goniyar, P.S.-
Thave, District-Gopalganj

.... Petitioner

Versus

Paras Pathak Son Of Firangi Pathak Resident Of Village-Goniyar, P.S.-Thave,
District-Gopalganj

.... Respondent

with

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Civil Revision No. 200 of 2013

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Bajnath Bhagat Son Of Late Bishun Bhagat Resident Of Village-Goniyar, P.S.-
Thave, District-Gopalganj

.... Petitioner

Versus

Paras Pathak Son Of Firangi Pathak Resident Of Village-Goniyar, P.S.-Thave,
District-Gopalganj

.... Respondent

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Appearance :

(In C.R. No. 199 of 2013)

For the Petitioner/s : Mr. Chandrakant, Adv.
Mr. Satyendra Rai, Adv.
For the Opposite Party: Mr. Ranjan Kumar Dubey, Adv.
Mr.Shailendra Kumar Dwivedi, Adv.

(In C.R. No. 200 of 2013)

For the Petitioner/s : Mr. Chandrakant, Adv.
Mr. Satyendra Rai, Adv.
For the Opposite Party: Mr. Ranjan Kumar Dubey, Adv.
Mr.Shailendra Kumar Dwivedi, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 30-11-2016

Heard Mr.Chandrakant, the learned counsel
appearing for the petitioner and Mr. Ranjan Kumar Dubey, learned
counsel appearing for the opposite party, in both the revision



applications.

Two suits for specific performance of contract were filed by the opposite party against the two petitioners of C.R.No.199/2013 and C.R.No.200/2013 respectively. Both the suits ended in compromise decree on the basis of compromise petitions filed by the parties therein. Later on the petitions were filed by the respective defendants of the two suits under Order 23 Rule 3 questioning the legality and validity of the compromise decree alleging that the same had been obtained by the plaintiff by playing fraud. By the impugned orders, in the present two revision applications the learned court below has rejected the miscellaneous cases i.e Misc.Case No.71/2009 and Misc.Case No.72/2009 initiated on the basis of the respective petitions filed by the two defendants of those two suits.

The learned counsel for the petitioner in the two revision applications, at the outset, has submitted that the identical issues of fact and law arise in both the revision applications and therefore the same may be heard together. Accordingly, both the revision applications have been heard together.

The learned counsel for the petitioner has submitted that the learned court below has committed error of jurisdiction and has also acted with material irregularity in passing the



impugned orders, rejecting the respective petitions filed by the defendant-petitioners praying for setting aside the compromise decree in the two suits. It has been contended that the learned court below has wrongly relied upon the report of the handwriting expert in coming to the conclusion that the compromise petitions bear the signature/thumb impression of the petitioner ignoring the fact that the said expert was not appointed by the court. Elaborating the submissions, it has been pointed out that in case an expert is appointed by the court, the admitted document and disputed document or handwritings appearing thereupon are handed over to the expert and photographs in presence of Najir are taken but the said process has not been followed in the present case. The learned counsel has further also submitted that simply the report of the expert cannot be the basis for a decision, as the court is expert of experts and is required to apply its own independent mind to the facts and circumstances of the case. Reliance has been placed on the decision in the case of ***Thyssen Stahlunion GmbH Vs. Steel Authority of India, AIR 2002 Delhi 255.*** in support of the contention that a handwriting expert or the report of the expert are only by way of an aid to the court in coming to the conclusion and cannot be the sole basis for the decision. It has also been submitted by referring to Annexure-4, which is a petition said to have been filed on behalf of the petitioners in the suit that the said



petition apparently bears the signature of the petitioner whereas the compromise petitions bear the thumb impression but this aspect of the matter has not been considered by the court. The learned counsel for the petitioner has further contended that the two suits were also not maintainable, as the agreements for sale sought to be specifically enforced were not registered documents as required by law in the case where the delivery of possession on the said basis has been given. The learned counsel has relied upon Section 53A of the T.P. Act in support of this contention. Arguing further, it has been contended that the fraud played upon the petitioner is apparent from the materials on record itself and therefore any judgment on the basis of fraud must be set aside in view of the law laid down by the apex court in the case of ***Regoss Exports International (P) Ltd. Vs. Thartan Informark Ltd, 2012(4)PLJR (SC) 26.*** The learned counsel has also tried to persuade this Court to come to the conclusion that the compromise decrees have been obtained by fraud and has submitted that this Court must not shut out its door in cases where the commission of fraud is explicit. No other submission has been made on behalf of the petitioners.

Mr.Dubey, learned counsel appearing for the plaintiff-opposite party in both the revision applications, however, has supported the impugned order and has contended that though it was



the petitioner's specific case that the compromise petition did not bear his thumb impression but no step was taken up by the petitioner for appointment of a handwriting expert to examine the said thumb impression scientifically in order to prove the said assertion. It has been further pointed out that even no objection was filed by the petitioners to the report of the expert as produced by the plaintiff-opposite party and not only that the said expert was also cross examined by the petitioner. Confronting the submission on behalf of the petitioners made on the basis of the Annexure-4 to the revision application, Mr.Dubey has submitted that the said petition has been placed for the first time before the revisional court and no step was taken or prayer made on behalf of the petitioner before the learned court below in both the miscellaneous cases for calling for the records of the suit and praying that the application (Annexure-4 to the revision application) be taken in evidence and marked as exhibit. The learned counsel has further also submitted that the learned court below has also considered the issue of maintainability of the suit on the basis of the unregistered agreement for sale and there is no error of jurisdiction or material irregularity committed by the court below in passing the impugned order in the two revision applications.

After considering the submissions and perusal of the materials on record as well as the impugned order, it is pellucid



that the two suits filed by the plaintiff-opposite party for specific performance of contract have ended in compromise decree on the basis of compromise petitions filed by the respective parties in those two suits. The defendant-petitioners, however, filed their respective petitions calling in question the legal validity of the compromise decree on the ground that the same was not lawful and vitiated by fraud. It was the specific case of the petitioners that the compromise petitions in the two suits did not bear their thumb impression. However, it, does not appear from the impugned order nor it is the case on behalf of the petitioner that any step was taken by them for getting the thumb impression appearing on the respective compromise petitions examined by an expert in order to prove the allegation of fraud. It is general rule that fraud cannot be presumed on the basis of allegation or suspicion and the burden of proving the charge of fraud lies upon the person who seeks to impeach the validity of any transaction on that ground. A compromise decree can be avoided on the grounds like fraud, undue influence or coercion but until it is so avoided, it can be treated to be lawful for the purpose of Order 23 Rule 3 C.P.C. In the present cases though the expert was got appointed by the plaintiff-opposite party themselves and the report of the said expert was produced in evidence as Ext.C in the proceeding but no objection was raised by the petitioners to the said report. It also



appears that the petitioners cross examined the said expert. The alleged petition (Anneuxre-4 to the revision application) said to be bearing the signature of the petitioners was also not adduced in evidence in the learned court below and there is no cogent explanation for not doing so. The submission with regard to maintainability of the suit is definitely alien to the scope of the proceedings under proviso to order 23 Rule 3 C.P.C. The learned court below, after considering the oral and documentary evidence as adduced on record, has come to the conclusion that the compromise decree is not unlawful or vitiated by fraud. This Court has not been persuaded to find perversity or unreasonableness in the findings which are based upon the evidence which were acceptable and could have been relied upon. Accordingly, this Court comes to the conclusion that the learned court below has committed no error of jurisdiction or material irregularity in passing the impugned orders in both the revision applications.

Accordingly, both the revision applications are dismissed.

(V. Nath, J)

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