

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.94 of 2013

- =====
1. Sushma Devi wife of late Om Prakash Gupta.
 2. Golu Kumar @ Munna @ subham Raj.
 3. Bholu Kumar @ Sudhanshu Raj, both sons of late Om Prakash Gupta.
 4. Amrita Kumari (wrongly described as Anita Kumar in the judgment).
 5. Neha Kumari, both daughters of late Om Prakash Gupta all residents of Mohalla-Purab Darwaja, P.S. Malsalami, District-Patna.

.... Petitioner/s

Versus

1. Jamuna Devi @ Punam, wife of Jugal Kishore Sahu, resident of Kadamkuan by the side of Kamdehnu Hotel, P.S. Kadamkuan, District-Patna.
2. Anita Devi wife of Santosh Kumar, resident of village-Majharia, P.S. Sohsarai, Biharsharif, Nalanda.
3. Rajendra Prasad, son of late Judagi Sao.
4. Sanjay Kumar.
5. Dilip Kumar, both sons of Rajendra Prasad.
6. Rekha Devi.
7. Bebi Devi, both daughters of Rajendra Prasad, all residents of Daldali Road, P.S. Gandhi Maidan, P.O. Kadamkuan, Patna, District-Patna.
8. Arun Sao, H/o late Bina Devi son of late Jamun Sah.
9. Kiran Devi, wife of Budha lal, resident of Chai Tola, P.S.-Kadamkuan, District-Patna.
10. Parmeshwar Sao, son of late Baidyanath Sao.
11. Kapil Prasad @ Alok Kumar, son of Parmeshwar Sao, both residents of Purab Darwaja, P.S. Malsalami, District-Patna.
12. Kamla Devi wife of Parmeshwar Sah.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. S.S. Dwivedi, Sr. Adv.

For the Respondent/s : Mr. Dhruv Narayan, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 03-05-2016

Heard Mr. S.S. Dwivedi, learned senior counsel appearing on behalf of the petitioners and Mr. Dhruv Narayan, learned senior counsel appearing on behalf of the opposite parties.

This revision application has been filed against the order dated 18.03.2013 passed by Sub Judge-V, Patna in T.S. No. 184 of 2000/Misc. Case No. 08 of 2012 whereby and whereunder he has declared the compromise decree passed in Partition Suit No. 55 of 1996 and Title Suit No. 147 of 1999 (partition) as illegal, collusive and not binding on the plaintiff.

The facts relevant in the present context are that Title Suit No. 184 of 2000 was filed by the plaintiff Sona Devi (now deceased) seeking her declaration of title over the property described in schedule-I of the plaint with further declaration that the compromise decree passed in Partition Suit No. 55 of 1996 and Title Suit No. 147 of 1999 (partition) were collusive, illegal and not binding upon the plaintiff. The written statements were filed in the said suit by the defendants including the petitioners also who were defendants in the said suit. After the issues were framed and the parties adduced their evidence, the suit was posted for judgment after completion of the arguments on behalf of the parties in the suit. On 26.04.2012, which was the date fixed for delivering of the judgment, a petition was filed on behalf of the plaintiff praying to convert the suit



into a miscellaneous case on the ground that the suit was not maintainable in view of the bar as envisaged under Order 23 Rule 3 (A) C.P.C. The said prayer on behalf of the plaintiff was allowed by order dated 30.04.2012 by the learned court below. Thereafter by the impugned order the learned court below has allowed the prayer on behalf of the plaintiff declaring the decree passed in Partition Suit No. 55 of 1996 and Title Suit No. 147 of 1999 as collusive, illegal and not binding upon the plaintiff.

Criticizing the impugned order, Mr. Dwivedi has made a frontal attack on the jurisdiction of the court to pass the impugned order as well as the material irregularity committed by the learned court below in passing the impugned order. It has been submitted that indisputably the T.S. No. 184 of 2000 was filed where the main relief pertained to the legal validity of the compromise decree passed in Partition Suit no. 55 of 1996 by the court of Sub Judge-III Patna and also the compromise decree passed in T.S. No. 147 of 1999 (partition) where the share allotted in the said compromise decree to one of the parties was subject matter of partition and therefore when evidently the learned court below which was admittedly not the court which passed those compromise decrees under challenge could not have the jurisdiction to pass the impugned order declaring the said compromise decrees as illegal and collusive.



Elaborating the submissions, it has been posited that when the plaintiff herself accepted even on the date of delivery of judgment in the suit that a suit was not maintainable, the learned court below had the jurisdiction only to dismiss the suit as not maintainable in view of the bar of Order 23 Rule 3 (A) and in no case it could have proceeded after allowing the prayer of converting the suit into a miscellaneous case, to determine the legal validity of the compromise decree which was passed by another court. It has also been argued that a bare perusal of the impugned order will show that it is prominently in the nature of a judgment passed in a suit with obvious attempts to give it the colour of an order passed in a miscellaneous case. It has also been lastly contended that in any view of the matter the material irregularity committed by the court below is further manifest when there is no direction for revival of the suits after annulling the compromise decree passed in those suits.

Mr. Dhrub Narayan, learned senior counsel for the opposite parties, in his submission, has supported the impugned order and has mainly laid the emphasis contending that the present revision application is not maintainable as the impugned order is appealable under Order 43 Rule 1 A C.P.C.

In view of the rivalised submissions and considering the materials on record including the impugned order, it is manifest

that earlier Partition Suit No. 55 of 1996 between the parties for the suit property was disposed of in terms of the compromise decree dated 09.07.1998. Another T.S. No. 147 of 1999 (partition) was filed with regard to the part of the property allotted in the share of the husband of the present petitioner no. 1 by the present petitioners but from paragraph-13 of the revision application it transpires that the said suit became infructuous after the gift deed by the husband of the petitioner no. 1 in favour of his sons. However, that suit is also said to have been disposed of by compromise decree dated 01.05.2000. Thereafter, the T.S. No. 184 of 2000 was filed by the plaintiff Sona Devi (now deceased) for declaration of her title over the suit property after declaration that the compromise decree passed in Partition Suit No. 55 of 1996 and T.S. No. 147 of 1999 (partition) was collusive, illegal and not binding upon the plaintiff. From the facts, it is also transparent that on the date fixed for judgment in T.S. No. 184 of 2000, the plaintiff filed a petition stating that the suit was not maintainable in view of the bar under Order 23 Rule 3 (A) C.P.C. and the prayer was made for converting the suit into a miscellaneous case. This prayer was allowed by the learned court below by order dated 30.04.2012 and thereafter the impugned order has been passed declaring the compromise decree passed in partition Suit No. 55 of 1996 and T.S. No. 147 of 1999 (partition) as collusive, illegal and not binding upon

the plaintiff.

The major plank of the submissions on behalf of the petitioners is that the learned court below which has passed the impugned order has no jurisdiction to declare the compromise decree passed in Partition Suit No. 55 of 1996 as collusive, illegal and erroneous and not binding upon the plaintiff as it was not the court which has passed the said compromise decree. The fact is not in dispute between the parties that the court which has passed the impugned order was not the court before whom the compromise was entered between the parties in P.S. No. 55 of 1996 and the said suit was disposed of by the court in terms of the said compromise. The Apex Court in the case of **Banwari Lal Vs. Chando Devi 1993 S.C. 1139** after taking into notice the changes introduced in the Code of Civil Procedure with regard to compromise of a suit has ruled as follows:-

“6. The experience of the Courts has been that on many occasions parties having filed petitions of compromise on basis of which decrees are prepared later, for one reason or other challenge the validity of such compromise. For setting aside such decrees suits used to be filed which dragged on for years including appeals to different Courts. Keeping in view the predicament of the



Courts and the public, several amendments have been introduced in O. 23 of the Code which contain provisions relating to withdrawal and adjustment of suit by Civil Procedure Code (Amendment) Act, 1976.....Rule 3 of O. 23 which contained the procedure regarding compromise of the suit was also amended to curtail vexatious and tiring litigation while challenging a compromise decree.....
.....”

7. By adding the proviso along with an explanation the purpose and the object of the amending Act appears to be to compel the party challenging the compromise to question the same before the court which had recorded the compromise in question.....
.....”

13. When the amending Act introduced a proviso along with an explanation to Rule 3 of O. 23 saying that where it is alleged by one party and denied by other that an adjustment or satisfaction has been arrived at, “the Court shall decided the question”, the Court before which a petition of compromise is filed and which has



recorded such compromise, has to decide the question whether an adjustment or satisfaction had been arrived at on basis of any lawful agreement.....In view of the proviso read with the explanation, a Court which had entertained the petition of compromise has to examine whether the compromise was void or voidable under the Indian Contract Act.....
.....”

14. The application for exercise of power under proviso to R. 3 of O. 23 can be labelled under S. 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 R.3.....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 India Contract

Act.....
.....”

(emphasis supplied)

The above dictum by the Apex Court leaves no scintilla of doubts that the jurisdiction to determine the question of legal validity of a compromise, in view of the proviso and explanation to Order 23 Rule 3 C.P.C., is vested in that court before which the compromise has been entered and the suit has been disposed of in terms of the said compromise.

The learned court below while allowing the prayer of the plaintiff by order dated 30.04.2012 for converting the T.S. No. 184 of 2000 into a miscellaneous case was also conscious of this legal position which is apparent from the said order (Annexure-C to the counter affidavit by the opposite parties no. 12) when it was observed as follows:

“.....वादी का यह स्वत्व वाद 184/2000 मिशलेनियश वाद में परिवर्तित करने का आदेश दिया जाता है। दोनों पक्षों को इस बात का स्वतंत्रता है कि यदि वे चाहें तो इस विविध वाद का स्थानान्तरण उस न्यायालय में करा सकते हैं, जिसके द्वारा संधि-पत्र के आधार पर डिक्री पारित किया गया है।.....”

It is also vivid from the above order dated 30.04.2012 that the said order has been passed relying upon the decision of this Court in **Smt. Prabhawati Sinha Vs. Heera Rai, 2010 (1) P.L.J.R.**

560. However, in this decision also, following the dictum laid down in **Banwari Lal** (supra), it has been held as follows:

“19.....

.....

The remedies available to the plaintiffs-opposite parties were either by filing a Miscellaneous Case before the same court for recall of the order recording compromise and consequential decree or to challenge the decree in an appeal under Section 96 (1) of the Code.”

22. It has been informed by the parties that the suit has been transferred from the Court of Sub-Judge-VII, Patna, which had allowed compromise, to Sub Judge, Danapur at the instance of the petitioner. Such being the situation, this Court directs the District Judge, Patna to transfer the suit from the Court of Sub-Judge, Danapur to the court concerned or its successor court, which has passed the compromise decree.....” (emphasis supplied)

At this juncture, it would also be pertinent to notice that the aforesaid order dated 30.04.2012 passed in the suit by the learned court below was challenged before this Court in C.W.J.C. No. 9987 of 2012 by the petitioners. By order dated 04.12.2012, the aforesaid order was upheld and the application was dismissed.

However, it would be fruitful to notice the following observations of this Court in the said order as follows:

“.....
.....The
objection raised by Mr. Dwivedi that the permission so accorded would amount to assumption of jurisdiction by the court below, also does not hold substance for the simple reason that an assumption of jurisdiction by the learned trial would have occasioned, had the trial court proceeded with the hearing of the miscellaneous case after its conversion. On the contrary, the order impugned itself manifests that the learned trial court understanding his limitations in the matter has afforded opportunity to the parties to move the District Judge for transfer of the matter to the court which had passed the compromise decree. Thus no jurisdictional error has been committed by the learned trial court.....
.....
.....
.....This
Court, however, before parting with the order would like to clarify that any observation made by the learned trial court in the impugned order would not prejudice

the case of either of the parties and the court to which the miscellaneous case would stand transferred, shall consider and dispose of the same on its own merit.....”

(emphasis supplied)

The principle laid by the Apex Court in Banwari Lal (supra) and the judicial pronouncements thereafter either between the parties to the suit/miscellaneous case or otherwise manifestly support the contention propounded by the learned senior counsel for the petitioners that the learned court below clearly lacked the jurisdiction to pass the impugned order nullifying the disputed compromise decree which was admittedly not passed by it. The learned senior counsel appearing on behalf of the opposite parties has not brought to the notice of this Court any provision or the precedent to sustain his viewpoint in support of the impugned order that a compromise decree passed in a suit can also be set aside or annulled by another court which has not accepted the said compromise and passed the compromise decree. No legal explanation in this backdrop could also be furnished on behalf of the opposite parties in support of their stand and stance in getting the miscellaneous case heard and disposed of by the learned court below itself after securing the rejection of the prayer of transfer of the miscellaneous case to the competent court as made

by the petitioners before the learned District Judge.

The dichotomy, which has also prominently emerged after the impugned order, pertains to the fate of the Partition Suit No. 55 of 1996 and Title Suit No. 147 of 1999 (partition) after the declaration of the compromise decree passed therein as collusive and illegal. The learned court below appears to have remained entirely oblivious of the consequential revival of these two suits after the impugned order. It requires no authority for the proposition that a suit filed in accordance with law is to be finally disposed of in accordance with law and it appears more probable to reason that precisely having this viewpoint the requirement has been enunciated, as noticed above, for challenging a compromise decree only before the court which has passed it because in a case where such challenge is sustained by the court leading to the annulment of the compromise decree, the suit will revive and will have to be thereafter decided in accordance with law. The absence of any direction in the impugned order relating to revival of the P.S. No. 55 of 1996 and T.S. No. 147 of 1999 (partition) after declaring the compromise decree passed therein as illegal only gives credence to the submission on behalf of the petitioners that material irregularity has been committed by the learned court below in proceeding with the matter in the manner of a suit and leaving things in lurch after granting the relief to the plaintiff. The learned court



below has apparently not contemplated the distinction in the nature of final relief which can be granted in a miscellaneous case filed under the proviso to Order 23 Rule 3 C.P.C., questioning the legal validity of a compromise decree and the nature of a decree to be passed in a suit. While in the former case if the relief is granted it will necessarily lead to revival of the suit which was disposed of by the compromise decree but in the later case the proceeding of the suit will come to an end either by grant or refusal of the relief prayed by the plaintiff and nothing survives thereafter for determination. The impugned order demonstrably is silent on the fate of P.S. No. 55 of 1996 and T.S. No. 147 of 1999 (partition).

It would be also appropriate at this stage to take into notice the strenuous submission made by the learned senior counsel for the opposite parties questioning the maintainability of this revision application on the ground that the impugned order is appealable under Order 43 Rule 1 A C.P.C. From a bare reading of the provision as contained in Order 43 Rule 1 A it is evincible that this submission is totally misconceived as the impugned order has been passed in a miscellaneous case when no appealable decree is to follow. Significantly, however, this provision applies with all force to the plaintiff/petitioners of T.S. No. 184 of 2000/Misc. Case No. 08 of 2012 who had the option to file an appeal under Section 96 (1) read

with order 43 Rule 1A of the C.P.C. as laid down by the Apex Court in **Banwari Lal** (supra) against the compromise decree passed in the two suits.

For the aforesaid reasons and discussions, this Court holds that the error of jurisdiction and material irregularity has been committed by the learned court below in passing the impugned order. The revision application is, accordingly, allowed and the impugned order is set aside. The Misc. Case No. 08 of 2012 is transferred to the court of Sub Judge-III, Patna City or his successor court which had recorded the compromise in P.S. No. 55 of 1996 and had consequentially disposed of the said suit by compromise decree, for hearing and final disposal on merits in accordance with law afresh after grant of adequate opportunity of hearing to the parties which shall include adducing evidence by the parties.

The revision application is, accordingly, allowed with the directions aforesaid.

Devendra/-

(V. Nath, J)

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