

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.6 of 2013



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1. Meer Zuber Alam.
 2. Meer Shah Jahan Alam @ Meer Shah Jahan.
 3. Meer Shah Zaman, all son of Meer Noorul Hoda.
 4. Bibi Nasima Khatoon, wife of Meer Noorul Hoda, all resident of village-Madanpur, P.S. Araria, and District-Araria.

.... Petitioner/s

Versus

1. Lal Mohammad son of Fasiur Rahman and husband of Isral Jahan, Deceased.
2. Md. Rafi Alam.
3. Md. Ala Maktur.
4. Md. Masoom.
5. Md. Trikanwar all sons of Lal Mohammad and Israt Jahan, deceased.
6. Bibi Rahat wife of Md. Zasim and D/o Israt Jahan, deceased.
7. Bibi Farhal.
8. Bibi Farzana.
9. Bibi Farhana.
10. Bibi Ujale, all daughter of Lal Mohammad and Israt Jahan, deceased. And all abovenamed, resident of village-Mahiskol P.S. Araria and District-Araria.
11. Bibi Aminum Nisha wife of Meer Naimuddin, and daughter of late Meer Safiruddin, resident of village-Dehti, P.S. Palasi and District-Araria.
12. Meer Noorul Hoda, son of late Safiruddin, resident of village-Madanpur, P.S. Araria and district-Araria.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

11 06-01-2016

Heard Mr. Abu Haidar, the learned counsel appearing on behalf of the petitioners.

Calling in question the legal acceptability of the impugned order by which the learned court below has set aside the compromise decree earlier passed in the suit and restored the suit to its original position, the present revision application has been filed by the plaintiff-petitioners.

The suit was filed by the plaintiff-petitioners for declaration that the plaintiffs had acquired valid title over the suit land by oral gift from the defendant. The sole defendant in the suit was Mir Safiruddin. Subsequently, a petition was filed purporting to be a compromise petition between the plaintiffs and the sole defendant and the learned court below disposed of the suit by a compromise decree on the basis of the said compromise petition. The opposite parties, thereafter, filed Misc. Case No. 03 of 1996 praying for setting aside the said compromise decree passed in the suit. It was asserted by the opposite parties that the sole defendant Mir Safiruddin died on 18.07.1995 before the filing of the suit (T.S. No. 21 of 1995) and therefore the compromise petition was prepared fraudulently and the compromise decree on that basis was not legally sustainable. By the impugned order, the learned court below has allowed the said miscellaneous case, set

aside the compromise decree and restored the suit to its original file.

Mr. Haidar, the learned counsel for the petitioners has submitted that the learned court below has committed material irregularity in ignoring the report of the handwriting expert who has found the similarity in the signature of the sole defendant Mir Safiruddin on the compromise petition. It has been further canvassed that the petition filed by the opposite parties under Section 151 C.P.C. was not maintainable as the requirement in law was to file a petition under Order 23 Rule 3 C.P.C. It has also been argued that the opposite parties were not parties in the said suit and therefore also the petition filed by them was not maintainable and they ought to have filed independent suit seeking appropriate relief.

After considering the submissions and the perusal of the impugned order, it is pellucid that in T.S. No. 21 of 1995 filed by the plaintiff-petitioners there was sole defendant Mir Safiruddin. The compromise petition filed in the said suit contained the left thumb impression of the sole defendant and the suit was disposed off in terms of the compromise. The case of the opposite parties who filed the petition praying for setting aside the said compromise decree in the suit is that the sole defendant was dead



prior to the filing of the suit and the compromise decree was fraudulently obtained. The learned court below after considering the evidence led by the parties has come to the finding that the sole defendant Mir Safiruddin was dead when the compromise petition was filed and the compromise decree was passed in the suit.

The submission on behalf of the petitioners that the learned court below ought to have relied on the report of the handwriting expert is devoid of merit in view of the provision of Section 73 of the Evidence Act which enjoins the court itself to form opinion with regard to the disputed handwriting or thumb impression. The report of handwriting expert and scientific investigation are only aid to the court to reach to a proper conclusion and not binding upon the court in view of the principle laid down by the Apex Court in the case of **Lalit Popli Vs. Canara Bank, (2003) 3 SCC 583**. Further in the case of **Banwari Lal Vs. Smt. Chando Devi, 1993 (1) P.L.J.R. (S.C) 21**, it has been held by the Apex Court that a petition under Section 151 C.P.C. is maintainable for setting aside a compromise decree.

The findings recorded by the learned court below are based upon appreciation of evidence on record and do not appear to be perverse or unreasonableness in any manner. There is thus

no error of jurisdiction or illegality in the impugned order.

The revision application is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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