

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.456 of 2013

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Sita Ram Prasad S/O Late Sudama Sao R/O Village- Nagar Nausa, P.S.-
Chandi, District- Nalanda

.... Petitioner/s

Versus

1. Sri Shyam Sundar Prasad S/O Late Gudda Sao R/O Village & P.S.-
Nagar Nausa (Nalanda)
2. Sri Suresh Gope S/O Late Wazir Gope R/O Village + P.S.- Nagar Nausa,
District- Nalanda
3. Sri Ganga Prasad S/O Late Sudama Sao R/O Village + P.S.- Nagar
Nausa, District- Nalanda
4. Ram Chandra Prasad S/O Late Sudama Sao R/O Village + P.S.- Nagar
Nausa, District- Nalanda

.... Respondent/s

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with

Civil Writ Jurisdiction Case No.23826 of 2012

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Sita Ram Prasad Son Of Late Sudama Sao Resident Of Village - Nagar
Nausa, P.S. Chandi, District - Nalanda

.... Petitioner/s

Versus

1. Shyam Sundar Prasad Son Of Late Gudda Sao Resident Of Village &
P.S. - Nagar Nausa (Nalanda)
2. Sri Suresh Gope Son Of Late Wazir Gope Resident Of Village + P.S. -
Nagar Nausa, District - Nalanda
3. Sri Ganga Prasad Son Of Late Sudama Sao Resident Of Village + P.S. -
Nagar Nausa, District - Nalanda
4. Ram Chandra Prasad Son Of Late Sudama Sao Resident Of Village +
P.S. - Nagar Nausa, District – Nalanda

.... Respondent/s

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Appearance :

(In CWJC No.456 of 2013)

For the Petitioner/s : Mr. Ravi Bhatia

For the Respondent/s : Mr.

(In CWJC No.23826 of 2012)

For the Petitioner/s : Mr.

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

submitted that he has already given 'No Objection' to the respondent no.4 of this case and therefore his appearance on his behalf may be ignored.

As prayed for, the appearance of Mr. Binod Prasad Singh, learned counsel on behalf of the respondent no.4 is ignored.

Heard Mr.J.S.Arora, the learned counsel appearing on behalf of the petitioner.

No body has appeared on behalf of the respondents when the matter has been taken up. Earlier the notice was issued to the respondents and the notices have been reported to be validly served upon the respondents.

The necessitous facts are that the T.S.No.77/1988 was filed by the respondent no.1 for declaration of his title with regard to the suit land consisting of six decimals of land. In that suit the petitioner alongwith his brothers and other persons was impleaded as defendant. The two brothers of the petitioner are respondent nos.3 and 4 of the present application. The suit was decreed and the petitioner alongwith his brother (respondent no.4) also as appellant preferred Title Appeal No.22/2001 before the court of learned District Judge, Nalanda at Biharsharif. The said appeal was eventually transferred for hearing



and disposal before the learned Additional District Judge I, Hilsa, Nalanda. It is the case of the petitioner that he was dependent upon his brother respondent no.4 for making the pairvi in the said appeal but his brother filed a petition on 06.09.2009 (Annexure-2) praying for striking off from the memo of appeal the name of the petitioner who was appellant no.2 in the said appeal and also the names of the respondent no.2 and respondent no.3 of the said appeal. The said petition was allowed by order dated 06.09.2009 by the appellate court below and the names of the petitioner as appellant no.2 and the names of respondent nos. 2 and 3 as well were struck off from the memo of appeal. Thereafter a compromise petition was filed in the said appeal jointly by the brother of the petitioner who was the sole remaining appellant in the appeal and the respondent no.1 who was the sole remaining respondent in the said appeal. The appellate court below by order dated 24.11.2009 accepted the compromise petition and disposed of the appeal in terms of the compromise as contained in the compromise petition.

The petitioner, thereafter, filed a petition under Section 151 C.P.C. on 09.12.2009 praying for review of the order dated 24.11.2009 and further praying for setting aside the compromise decree. During the pendency of this petition, another



petition was filed on 22.09.2012 on behalf of the petitioner seeking permission of the court to put his signature on the petition as well as the Vakalatnama attached with the petition. The learned court below by order dated 05.10.2012 has rejected the petition dated 22.09.2012 declining the prayer of the petitioner for putting the signature on the petition as well as Vakalatnama and has further rejected the petition dated 09.10.2009 also after holding the same to be bundle of papers .

The CWJC No. 456/2013 has been filed by the petitioner praying for quashing the order dated 06.09.2009 whereby the prayer for striking off the name of the petitioner from the memo of appeal of Title Appeal No.22/2001 was allowed and the compromise decree was passed in the appeal on 24.11.2009 in absence of the petitioner. The CWJC No.23826/2012 has been filed assailing the order dated 05.10.2012 whereby the Miscellaneous Case No.04/2009 instituted on the basis of the petition dated 09.10.2009 of the petitioner has been dismissed. On the prayer of the learned counsel for the petitioner on the ground that the common questions of law and fact arise for consideration in both the writ applications, both the writ applications have been heard together.

Mr. Arora, the learned counsel for the petitioner

has submitted that the appellate court below has acted with material irregularity as well as has committed error of jurisdiction in allowing the prayer of the appellant no.1 for striking off the name of the present petitioner who was appellant no.2 in the appeal. It has been propounded that in view of the stipulations under the provisions of Order 1 Rule 10 C.P.C., for striking off the name of a party, there must be the assertion that the said party has been improperly joined in the suit/appeal but such is not the case at present where the present petitioner who was one of the defendants in the suit and had filed the appeal alongwith other defendant (brother) as appellants and thus by no stretch he can be said to be a person who has been improperly joined in the appeal. It has also been argued that the facts are explicit enough to suggest the manner in which the court below has proceeded to allow the prayer of the appellant no.1 and the respondent no.1 to accept the compromise between them and dispose off the appeal in terms of the compromise after striking off the name of the present petitioner and other respondents in the appeal. The learned counsel has further pointed out that out of the six decimals of the suit land, the two decimals land was the self-acquired property of this petitioner and the remaining 4 decimals was the property obtained by his brother (appellant no.1 in the appeal) by way of gift but in



the compromise, the said two decimals land of the petitioner has been retained as his own land by his brother (appellant no.1) and the remaining four decimals land has been given to the respondent no.1 who was the plaintiff in the suit. It has been further submitted by the learned counsel that the learned court below has also failed to exercise its jurisdiction in rejecting the prayer of the petitioner for putting his signature on the petition dated 09.12.2009 as well as Vakalatnama attached therewith and thereafter has wrongly dismissed the prayer for review of the order disposing off the appeal in terms of the compromise. It has been argued that the learned court below at least should have considered the facts which were apparent from the face of the record itself and should have exercised its jurisdiction to cure the irregularity and illegality committed in the earlier order(s).

No body has appeared on behalf of the respondents. Although, it appears from the record that the respondent nos.3 and 4 have appeared through separate Vakalatnama, the learned counsel who has filed Vakalatnama for respondent no.4 has prayed to ignore his appearance on behalf of the respondent no.4.

After considering the facts and circumstances of the case, the submissions on behalf of the petitioner and the

materials on record, it is manifest that the present petitioner was one of the defendants in the suit filed by the respondent no.1 as plaintiff. In the said suit the dispute was with regard to the six decimals of land and the present petitioner by filing written statement contested the claim and relief sought by the plaintiff in the suit. After the decree of the suit, the present petitioner alongwith his brother filed the appeal wherein the present petitioner was appellant no.2 and his brother was appellant no.1. It is the case of the petitioner that his brother, who was appellant no.1 in the appeal, filed a petition on 06.09.2009 praying for striking off the name of the present petitioner as appellant no.2 in the memo of appeal alongwith similar prayer with regard to respondent nos. 2 and 3 without the consent and knowledge of the petitioner. The reason assigned in the said petition dated 06.09.2009 was that this petitioner was not taking interest and had no interest or concern in the suit land and the entire cost of the litigation was being borne by the appellant no.1 and therefore the name of the present petitioner as appellant no.1 was prayed to be struck off. By order dated 18.09.2009 the learned court below has allowed the prayer for striking off the name of the petitioner as appellant no.2 from the memo of appeal and also striking off the names of the respondent nos.2 and 3 from the memo of appeal.



The remaining sole appellant and the remaining sole respondent thereafter filed compromise petition and by order dated 24.11.2009 the court below has accepted the said compromise petition and disposed of the appeal in terms of the compromise. The learned court below has assigned no reason for permitting the deletion of the name of the petitioner as appellant no.2 from the memo of appeal and has also remained oblivious to the fact that the petitioner was one of the defendants in the suit, and aggrieved by the judgment and decree passed in the suit he had preferred the appeal. Thereafter on 09.12.2009 the petition was filed by the petitioner paying for review of the order dated 24.11.2009 but the same was also dismissed on technical ground after turning down the prayer of the petitioner for putting his signature on the petition as well as Vakalatnama thereto.

In the backdrop of aforesaid facts, it is apparent that the order for striking off the name of this petitioner as appellant no.2 from the memo of appeal has been passed mechanically and without considering the fact that the ground mentioned therein praying for striking off the name of the petitioner were itself not sufficient for exercising the power under Order 1 Rule 10(2) C.P.C. From the petition dated 11.09.2009 filed by the appellant no.1 in the said appeal it does not appear that



an appropriate case has been made out that the present petitioner was improperly joined in the appeal as appellant or the appeal was wrongly filed in his name. As such the learned court below should not have allowed the prayer on behalf of the appellant no.1 for deleting the name of the petitioner as appellant from the memo of appeal solely on the basis of the unilateral statement of the appellant no.1 that the appellant no.2 had no concern with the suit land as he was not bearing the cost of litigation. This Court, therefore, holds that the order dated 18.09.2009 passed by the learned court below striking off the name of the petitioner as appellant no.2 in the memo of appeal cannot be sustained in law. The said order is accordingly quashed.

The necessary corollary is that the disposal of the suit by order dated 24.11.2009 in terms of the compromise between the appellant no.1 and respondent no.1 will also fall apart as the said order of compromise would not be binding upon the petitioner and the appeal could not have been disposed of in absence of the present petitioner as appellant no.2 being a party in the compromise. Therefore, the order dated 24.11.2009 is also quashed.

The C.W.J.C.No.456/2013 is accordingly allowed and the matter is remitted back to the appellate court below to pass appropriate order afresh on the compromise petition

between the appellant no.1 and respondent no.1 in accordance with law after granting opportunity of hearing to the present petitioner as appellant no.2 in the appeal.

In view of the above order, the learned counsel for the petitioner has prayed to withdraw the C.W.J.C. No. 23826/2012.

The prayer is allowed.

The C.W.J.C. No. 23826/2012 is, accordingly, dismissed as withdrawn.

(V. Nath, J)

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