

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.161 of 2016

IN

C.Misc. 180 of 2016

- =====
1. Most. Manorma Kunwar @ Manorma Devi, Wife of Late Lalita Prasad Verma.
 2. Kailash Prasad Verma @ Kailash Narayan , Son of Late Jagdhar Mahto.
 3. Jitendra Kumar Verma, Son of Late Lalita Prasad Verma, all R/o Village+P.O.-
Malawan, P.S.-Khadawan, District-Aurangabad. Petitioners

Versus

1. Mahendra Prasad Verma, Son of Late Jagdish Prasad Verma.
 2. Most. Anita Devi Wife of Late Munna Prasad Verma.
 3. Upendra Prasad Verma, son of Mahendra Prasad Verma.
 4. Beyas Prasad Verma, Son of Late Jagdish Prasad Verma.
All R/o Village-Malwan, P.S.-Khudawan, District-Aurangabad. Opposite Parties.
- =====

Appearance :

For the Petitioner/s : Mr.Ganpati Trivedi, Sr.Adv.
Mr.Kumar Alok, Adv.
Mr.Madan Mohan, Adv.
Mr. Rakesh Kumar, Adv.

For the Opposite Parties : Mr. Bacchanji Ojha, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-09-2016

Heard the learned counsel for the petitioners and
the learned counsel for the opposite parties.

With the consent of the learned counsel for the
parties, the present revision application is disposed of by this order.

The plaintiff-opposite parties have filed
T.S.No.431/2014 for declaration that the compromise petition dated
09.05.2006 in P.S.No.76/2000 and compromise decree passed on
20.03.2007 in P.S.No. 76/2000 is fraudulent, null and void and does
not bind the right, title and interest of the plaintiffs. The defendants



raised the objection in the suit by filing a petition questioning its maintainability in view of the bar as envisaged under Order 23 Rule 3(A) C.P.C. The learned court below , however, has overruled the objection raised by the defendant-petitioner and has come to the conclusion that the plaintiffs have got entitlement to maintain the suit for determination of the issue of fraud in filing the compromise petition and getting the compromise decree set aside on that basis.

The learned counsel appearing for the plaintiff-opposite parties, during the course of submission, has fairly accepted that the suit filed by the plaintiff-opposite parties is barred under the provision of Order 23 Rule 3(A) C.P.C. as the relief sought therein is for declaration that the compromise decree passed in earlier suit as illegal, null and void on the ground of fraud.

After considering the submissions and the stand on behalf of the learned counsel for the plaintiff-opposite parties, this Court after the perusal of the relief sought for by the plaintiff-opposite parties in the plaint which has been brought on record by way of Annexure-12 (supplementary affidavit) finds that the relief as sought for in the suit is clearly barred by the provision as envisaged under Order 23 Rule 3 (A) C.P.C. The learned court below, therefore, has clearly committed error of jurisdiction in coming to the conclusion

that the suit was maintainable for the relief as prayed. This Court also takes into notice the stand taken by the learned counsel for the plaintiff-opposite parties in view of the said provision that the suit was not maintainable.

For the aforesaid reasons, the present revision application is allowed and the impugned order is, accordingly, set aside. However, the plaintiff-opposite party will have the liberty to seek redressal of their grievances, if permissible, in accordance with law.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	26.10.2016
Transmission Date	