

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.24142 of 2013

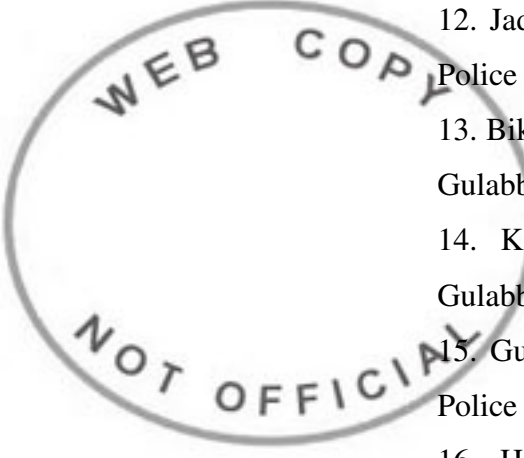
=====

Jamun Sah S/O Makuni Sah Resident Of Mohalla- Gulabbagh Police
Station- Sadar, District- Purnia.

.... Petitioner/s

Versus

1. Dinesh Kumar Patel S/O Late Lakhan Bhai Patel Resident Of Village Petlad Police Station- Petlad District- Anand (Gujrat) Through This Duly Constituted Attorney Namely Bhola Prasad Gupta S/O Late Bhagwan Prasad Gupta, Resident Of Village- Benmankhi, Police Station, District- Purnia (Vide Regd. General Power Of Attorney Dt. 05.09.1995
2. Ranjit Kumar Patel S/O Lakhan Bhai Patel Resident Of Village Petlad Police Station- Petlad District- Anand (Gujrat) Through This Duly Constituted Attorney Namely Bhola Prasad Gupta S/O Late Bhagwan Prasad Gupta, Resident Of Village- Benmankhi, Police Station, District- Purnia (Vide Regd. General Power Of Attorney Dt. 05.09.1995
3. Rita Devi W/O Late Jibach Sah (Applicant) Resident Of Village And P.O- Bellaury Police Station Sadar, District- Purnia.
4. Manju Devi D/O Jibachh Sah And W/O Berod Kr. Sah Resident Of Abdulah Nagar Naya Tola, P.S- Kushkibagh, Police Station- Sadar, District- Purnia.
5. Poonam Devi D/O Jibachh Sah And W/O Berendra Pd. Sah Resident Of Kalighat Abdullah Nagar, P.O- Khuskibagh, Police Station- Sadar District- Purnia.
6. Sinki Kumari D/O Jibachh Sah Resident Of Village Bellouri, P.O- Bellaury, P.S- Sadar, District- Purnia.
7. Satya Narayan Sa S/O Late Dukhit Sah Resident Of Village Bellouri, P.O- Bellaury, P.S- Sadar, District- Purnia.
8. Mahendra Sah S/O Late Dukhit Sah Resident Of Village Bellouri, P.O- Bellaury, P.S- Sadar, District- Purnia.
9. Gobardhan Roy S/O Jhabri Roy Resident Of Village- Kalighat Bellaury, P.O- Bellaury, Police Station- Sadar, District- Purnia.
10. Madav Roy S/O Jhabri Roy Resident Of Village- Kalighat Bellaury, P.O- Bellaury, Police Station- Sadar, District- Purnia.

- 
11. Permeshwar Mahto S/O Bhikari Mahto Resident Of Mohalla- Gulabbagh, Police Station- Sadar, District- Purnia.
 12. Jadu Nandan Roy S/O Bishnu Roy Resident Of Mohalla- Gulabbagh, Police Station- Sadar, District- Purnia.
 13. Bikram Bahadur Roy S/O Late Ram Saran Mahto Resident Of Mohalla- Gulabbagh, Police Station- Sadar, District- Purnia.
 14. Kausalya Devi W/O Ram Bilash Mahto Resident Of Mohalla- Gulabbagh, Police Station- Sadar, District- Purnia.
 15. Gunjani Devi W/O Maksudan Roy Resident Of Mohalla- Gulabbagh, Police Station- Sadar, District- Purnia.
 16. Har Lal Yadav S/O Late Jamun Yadav Resident Of Mohalla- Gulabbagh, Police Station- Sadar, District- Purnia.
 17. Gudari Yadav S/O Bhagirath Yadav Resident Of Mohalla- Chauhan Tola, Khuskibagh, Police Station- Sadar, District- Purnia.
 18. Hari Yadav S/O Jamun Yadav Resident Of Mohalla- Chauhan Tola, Khuskibagh, Police Station- Sadar, District- Purnia.
 19. Laxmi Devi D/O Late Makund Sah And W/O Indra Deo Sah Address r/o Mohalla Gulabbagh P.O. Gulabbagh, P.S. Sadar District Purnia.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. K.N. Choubey, Sr. Adv & Mr. Vikram Deo Singh, Adv

For the Respondent/s : Mr. Sri Prakash Srivastava, Adv, Mr. Shivendra Kumar, Adv, Mrs. Anu Priyadarshi and Mr. Santosh Bharate, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

5 04-02-2016 Heard Mr. K.N. Choubey, learned senior counsel and also Mr. Vikramdeo Singh, who have appeared on behalf of the petitioner and Mr. S.P. Srivastava, learned counsel appearing on behalf of the respondent nos. 1 and 2.

2. Learned counsel for the parties have jointly

submitted that the contest in the present application is between the petitioner and respondent nos. 1 and 2 and therefore, the other respondents are not required to be heard before disposal of this writ application.

3. The facts are not in dispute that the Title Suit for (partition) No. 629/96 by the present petitioner as one of the plaintiffs was filed. In that suit the respondent no. 2, was impleaded as defendant no. 16 in the array of defendant IInd party. The said suit was decreed and thereafter the appeal was preferred by the defendant Ist party. In the appeal, the respondent no. 2 was impleaded as respondent no. 14. During the pendency of the appeal different petitions were filed including the petition whereby the prayer was made to strike off the name of respondent no. 14 from the memo of appeal. Another petition was filed adding the name of the present respondent no. 1 in the memo of appeal. The appellate court below allowed the prayer for deleting/striking off the name of the respondent no. 14 (respondent no. 2 in the present writ application), and further also allowed the prayer for addition of the name of the present respondent no. 1 Dinesh Kumar Patel as respondent no. 15 in the memo of appeal. The compromise petition in appeal was thereafter filed by the parties and the

appeal was disposed of in terms of the compromise.

4. Subsequently, the respondent no. 1, Dinesh Kumar Patel and respondent no. 2, Ranjit Kumar Patel, filed petition for setting aside the compromise decree on the ground of fraud, forgery and mis-representation. The learned court below by the impugned order has come to the finding that the compromise decree was obtained by playing fraud upon the court and consequently has set aside the said compromise decree under the provisions of Order 23 Rule 3 (proviso) and restored the appeal to its original petition.

5. After, careful consideration of the matter and the submissions on behalf of the parties, it is apparent that the defendant no. 16, Ranjit Kumar Patel was present in the suit till the decree was passed and there was no appeal filed by defendant no. 16 as he was not aggrieved by the decree passed in the suit. Learned counsel for the petitioner and learned counsel for the respondent nos. 1 and 2 have agreed to this fact that the decree passed in the suit was in no way detrimental to the interest of the defendant no. 16-respondent no. 2 Ranjit Kumar Patel who was purchaser of the suit property from the defendant no. 1, Dukhit Sah. The fact, therefore, emerges that after the parties to the appeal got the name of the defendant no. 16 Ranjit



Kumar Patel, struck off from the memo of appeal, there remained no appeal against the decree as far as the interest of the defendant no. 16 Ranjit Kumar Patel in the suit property was concerned. In sequence, therefore, it is further manifest that the subsequent compromise between the parties to the appeal would in no way affect the interest of the defendant no. 16, Ranjit Kumar Patel (respondent no. 2 in the present writ application). At this juncture, Mr. Vikramdeo Singh, learned counsel for the petitioner has also taken a categorical stand by stating that the interest of the defendant no. 16, Ranjit Kumar Patel, in the suit property, after the decree passed in the suit attaining finality to that extent, would not be affected by the compromise decree in any manner and the petitioner accepts and recognizes the interest and possession of the respondent no. 2 in the suit property to that extent.

6. In this view of the matter and taking into notice the stand on behalf of the petitioner, there appears substance in the submission on behalf of the petitioner and the conclusion is irresistible that the defendant no. 16, Ranjit Kumar Patel, whose name has been struck off from the memo of appeal before the disposal of the appeal in terms of the compromise has no *locus standi* to file the petition challenging the legality and validity of

the compromise decree and this aspect deserved countenance by the learned court below while passing the impugned order on the petition filed by the respondent no. 2.

7. So far as the interest of respondent no. 1, Dinesh Kumar Patel is concerned, the fact is admitted that he was added as respondent no. 15 in the appeal and thereafter the compromise petition was filed and the appeal was disposed of in terms of the said compromise. This respondent no. 1, Dinesh Kumar Patel is also a purchaser of the part of the suit property from the original defendant no. 1 Dukhit Sah. The compromise decree has been challenged by respondent no. 1 on the ground that his signature over the compromise petition was forged as he never put his signature on the compromise petition. It appears from the impugned order that the court below has not recorded any specific finding with regard to the allegation of forgery, as made by the respondent no. 1, Dinesh Kumar Patel, in the compromise petition, and has only mentioned that there is allegation of forgery/fabrication of his signature over the compromise petition. Learned counsel for the parties again have also agreed that no specific finding in this regard has been recorded by the learned court below. The learned court below has, thus, committed material irregularity in its failure to record

a specific finding, on the allegation of fraud and forgery as alleged by the respondent no. 1 in the petition dated 29.02.2012 (Annexure-1) on the basis of which Miscellaneous Case No. 4 of 2012 was initiated, before setting aside the compromise decree.

8. In result, this application is allowed, the impugned order is set aside and the matter is remitted back to the learned court below for fresh decision on merits in Miscellaneous Case No. 04 of 2012 after hearing the parties in the light of the observations made in this order. The learned court below shall also allow the parties to lead evidence in accordance with law if such prayer is made.

9. The writ application is allowed with the observations and directions.

(V. Nath, J)

Ranjan/-

U			
---	--	--	--