

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.8709 of 2014

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1. Ganesh Kumar son of Late Sitaram Kumar.
 2. Nitesh Kumar @ Bittu son of Ganesh Kumar. Both are resident of Village - Dargahpur, P.S. Bachhwara, District - Begusarai.

.... Petitioner/s

Versus

1. Priya Bart Narain Jha son of late Ram Narain Jha.
2. Ram Kumari Devi wife of Sri Priya Bart Narain Jha. Both are resident of Village - Chatur, Bahuraman @ Khatuaha, P.S. - Khanpur, P.O. - Khairi, District - Samastipur.
3. Deepak Jha son of late Suresh Jha.
4. Gully Jha @ Amrendra Jha son of late Pitamber Jha. Both are resident of Village - Chatur, Bahuraman @ Khatuaha, P.S. - Khanpur, P.O. - Khairi, District - Samastipur.
5. Raman Chaudhary son of Sri Sarv Narain Chaudhary resident of Village - Sahra, P.S. - Pataur, District - Darbhanga.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Ashok Kumar Mishra

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

3 29-03-2016 Heard Mr. Ashok Kumar Mishra, the learned counsel
for the petitioners and the learned counsel for the respondents.

The assail in this application under Article 227 of the Constitution of India is to the order passed by the appellate court below whereby the prayer of the petitioners to dismiss the miscellaneous case initiated on the basis of the petition filed by the respondents as not maintainable has been turned down.

The facts are not in dispute that the title appeal between the parties was disposed of in terms of compromise. Later on, the present respondents filed the petition under Section 151 C.P.C.

read with Order 23 Rule 3 C.P.C. praying for setting aside the compromise decree and restoring the title appeal to its original file alleging fraud in obtaining the compromise. On the said petition by the respondents, the Misc. Case No. 10 of 2008 has been initiated. The petitioners who were respondents in the title appeal filed a petition for dismissing the miscellaneous case on the ground of maintainability. By the impugned order, the learned court below has rejected the said petition.

After considering the submissions made on behalf of the parties and perusal of the impugned order, it is manifest that the petition for setting aside the compromise decree has been filed by the respondents under Section 151 read with Order 23 Rule 3 C.P.C. In view of the law laid down by the Apex Court in the case of **Banwari Lal Vs. Chando Devi, 1993 (1) SCC 581**, the miscellaneous case initiated on the basis of the petition filed by the respondents under Section 151 read with Order 23 Rule 3 C.P.C. is maintainable. This Court has not been persuaded to find illegality or material irregularity committed by the learned court below in rejecting the petition questioning the maintainability of the miscellaneous case.

In result, this application is dismissed.

Devendra/-

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(V. Nath, J)