

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.130 of 2013

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1. Smt. Omi Rajak w/o Late Omi Rajak
 2. Naresh Rajak
 3. Kallu Rajak @ Kallu Kumar
 4. Raju Rajak Sons of Late Omi Rajak
 5. Rani Kumari
 6. Girja Kumari
 7. Sabita Devi
 8. Soni Devi Daughters of Late Omi Rajak All residents of Mohalla - Terhi Ghat, Patna City, P.S. Khajekalan, District - Patna at present resident of Hajiganj, Patna City, P.S. Chowk, District - Patna.

.... Petitioner/s

Versus

1. Munna Rajak S/o Late Lallu Rajak resident of Mohalla - Hajiganj, Patna City, P.S. Chowk, District - Patna

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. JITENDRA KISHORE VERMA, Adv
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 02-05-2016

Heard learned counsel for the parties.

This revision application has been filed against the order dated 16.04.2013 passed in Title Miscellaneous Appeal No. 64 of 2011 whereby the learned appellate court below has set aside the order passed by the trial court dismissing the suit as abated for non

substitution of the heirs and legal representative of the deceased-defendant Omi Rajak.

The plaintiff's-opposite parties filed title Eviction Suit No. 45 of 1997 praying the reliefs for title over the suit premises and eviction of the defendant Omi Rajak from the same. The defendant Omi Rajak died during the pendency of the suit. The petition for substitution was filed by the plaintiff on 10.01.2003 praying for expunging the name of the deceased-defendant Omi Rajak and substituting the names of his heirs and legal representatives. The prayer for substitution was allowed by order dated 05.07.2004. It would be pertinent to mention here that the prayer for substitution was allowed by order dated 05.07.2004 (Annexure-1) on the basis of the statement of the plaintiff made in the substitution petition that the defendant Omi Rajak died on 23.10.2002, and on that basis it was held that the substitution petition filed on 10.01.2003 was within time.

The substituted heirs of the deceased-defendant Omi Rajak appeared after notice and filed a petition on 02.05.2007 stating therein that the defendant Omi Rajak in fact died on 22.03.2002 and not on 23.10.2002 as claimed by the plaintiff in his petition for substitution. It was, therefore, prayed that the suit had abated for non substitution of the heirs and legal representatives of

the deceased Omi Rajak within the prescribed period. It was also alleged that the order dated 05.07.2004 was obtained by the plaintiff by fraudulent misrepresentation of fact.

The trial court heard the parties on the said petition and after scrutiny of evidence came to the finding that the defendant Omi Rajak actually died on 22.03.2002. It was further also found that the plaintiff had the knowledge of death of the defendant Omi Rajak on 22.03.2002 but by making a false statement with regard to the date of death, the order dated 05.07.2004 was obtained for substitution of the heirs and legal representatives of the deceased defendant. On the base of these conclusions, the trial court came to the finding that the suit had abated for non substitution of the defendant Omi Rajak within time. The suit was dismissed as abated by order dated 08.02.2008. The plaintiff thereafter filed Miscellaneous Appeal No. 64 of 2011 against the order dated 08.02.2008. By the impugned order the appellate court below has held that the trial court had acted without jurisdiction in recalling the previous order dated 05.07.2004 allowing the prayer for substitution. It has further also been held that the said order dated 05.07.2004 has not been obtained by fraud by the plaintiff and the order has been passed by the court on the basis of application as per the knowledge of the applicant.



Mr. Verma, learned counsel appearing for the petitioners has submitted that the appellate court below has committed error of jurisdiction in allowing the miscellaneous appeal on the basis of want of jurisdiction in the trial court for recall of the order of substitution. It has been propounded that the court is always within jurisdiction to recall its order once after it reaches to the conclusion that the same has been obtained by fraud. It has been further submitted that the abatement for want of substitution takes place automatically and no specific order by the Court in this regard is required. Elaborating his submissions the learned counsel has contended that the order dated 08.02.2008 has been passed on the basis of specific finding that the defendant Omi Rajak died on 22.03.2002 and the said fact was within the knowledge of the plaintiff. It has been further submitted that the trial court in the said order has categorically found that the plaintiff had obtained the earlier order for substitution by playing fraud but the appellate court below without considering the evidence on record supporting the fact of fraud played by the plaintiff has come to the conclusion that no fraud has been played by the plaintiff.

After considering the submissions and the perusal of the materials on record, it is manifest that the order dated 05.07.2004 for substitution in the suit was passed primarily on the



basis of the statement by the plaintiff that the defendant Omi Rajak died on 23.10.2002. Subsequently, however, on the petition filed by the substituted heirs questioning the veracity of the date of death of defendant Omi Rajak the learned court below by order dated 08.02.2008 after hearing the parties and considering the evidence on the said issue had withdrawn the said order holding that the defendant Omi Rajak died on 22.03.2002 and the said fact was within the knowledge of the plaintiff who had suppressed the said fact and made fraudulent statement in that regard. This finding appears to have been recorded on the basis of the evidence adduced by the parties. However, the appellate court below has come to the finding that it was not within the jurisdiction of the trial court to recall its earlier order dated 05.07.2004 after finding that the said order was obtained fraudulently and after suppression of the real fact. It is by now well settled that if any judgment or order is obtained by fraud, it cannot be said to be a judgment or order in law. It would be fruitful here to notice the rule laid down by the Apex Court in the case of **Indian Bank vs M/s Satyam Fibres India Pvt. Limited, (1996) 5 S.C.C 550** as follows:-

"The judiciary in India also possess inherent power, specially under Section 151 C.P.C , to recall its judgment or order if it is obtained by fraud on court....."



The view of the appellate court below that the trial court had no jurisdiction to recall its earlier order, in the facts and circumstances of the case, therefore is not legally sustainable. The trial court has recorded specific finding regarding the fraud played by the plaintiff in obtaining the order of substitution by furnishing the wrong date of death. The appellate court had the jurisdiction to revive the said finding but in the impugned order it has not considered any evidence which have been considered by the trial court while recording the finding on fraud. The impugned order appears to have been passed only on the basis of generalized statement on the issue of fact and law and the same, therefore, deserves to be overturned.

In the result, this revision application is allowed and the matter is remanded back to the appellate court below for passing fresh order in accordance with law after hearing the parties. It is, however, also observed that any observation made in this order shall not prejudice the case and stand of either of the parties.

(V. Nath, J)

Ranjan/-

AFR/NAFR	NAFR
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