

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.15 of 2014

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Om Prakash Sah S/O Chhathu Sah Resident Of Village- Lalura, P.S And District- Begusarai.

.... Petitioner

Versus

1. Janak Sah S/O Sri Chhathu Sah
2. Pramila Devi W/O Sri Janak Sah
3. Ratnesh Kumar Sah S/O Janak Sah All Resident Of Village- Larurara, Pargana Malki, Police Station And District- Begusarai.
4. Chhathu Sah S/O Late Kiro Sah.
5. Jai Prakash Sah S/O Shri Chhathu Sah
6. Rajesh Sah S/O Sri Jai Prakash Sah
7. Rajiv Sah S/O Sri Jai Prakash Sah
8. Jai Kishun Sah S/O Chhathu Sah
9. Neelam Devi W/O Jai Kishun Sah
10. Sharwan Kumar Sah S/O Chhathu Sah All Resident Of Village- Larurara, Pargana Malki, Police Station And District Begusarai.
11. Ravish Sah S/O Sri Janak Sah
12. Triloki Sah S/O Sri Janak Sah All Resident Of Village- Larurara, Pargana Malki, Police Station And District- Begusarai

.... Opposite Parties

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Appearance :

For the Petitioner/s : Mr. T.N.Maitin, Sr.Adv.

Mr.Rajeev Kumar Sinha, Adv.

For the Opp.Party Nos.1 to 3:Mr. Pravin Chandra Prasad, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 20-10-2016

Heard Mr. T.N.Maitin, learned senior counsel
appearing for the petitioner and Mr.Pravin Chand Prasad, learned
counsel appearing for the plaintiff-opposite parties.

By the impugned order the learned court below
has overruled the objection raised on behalf of the defendant-
petitioner regarding the maintainability of the suit and dismissed the
petition filed in that regard by the defendant as not maintainable.



The T.S.No.133/2006 was filed by the plaintiff-opposite parties seeking the main relief for declaration that the compromise decree obtained in earlier suit was fraudulent one and was obtained by practicing fraud and forgery, and praying for setting aside the same. After appearance the defendant filed the petition praying for rejection of the plaint in view of the bar envisaged under Order 23 Rule 3(A) C.P.C. It has been canvassed by learned senior counsel for the petitioner that the averments made in the plaint as well as the relief prayed in the suit clearly attract the said bar. Mr. Maitin, learned senior counsel has further relied on a decision by the apex court in the case of ***Horil Vs. Keshav, 2012(2)PLJR (SC) 73***, in support of his assertions.

The learned counsel for plaintiff-opposite parties, however, has supported the impugned order.

After considering the submissions and perusal of the impugned order as well as the plaint of T.S.No.133/2006 (Annexure-1) it becomes evident that the primary relief, which has been sought in the suit, is for setting aside the compromise decree passed in earlier suit, alleging fraud. The provision as contained in Order 23 Rule 3(A) clearly bars the maintainability of such suit. It has been provided that any person seeking to challenge the compromise decree on the ground of fraud will have to approach the same court by filing



appropriate petition in accordance with law. No provision or precedent could be placed on behalf of the plaintiff-opposite parties to sustain the maintainability of the suit in the facts and circumstances.

The learned court below while passing the impugned order has committed error of jurisdiction as well as material irregularity in rejecting the prayer of the defendant-petitioner. The impugned order, therefore, is held to be not legally sustainable and is accordingly overturned.

The revision application is allowed and the suit filed by the plaintiff is held to be not maintainable. However, the plaintiff-opposite parties shall have the liberty to seek redressal of their grievances against the compromise decree in accordance with law.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	14.12.2016
Transmission Date	

