

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.171 of 2013

IN

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1. Ajay Kumar Pandey

2. Sanjay Kumar Pandey both Sons Of Late Shivshankar Pandey Resident Of
Bhabhua, Ward No. 21, P.O. & P.S.- Bhabhua, District - Kaimur

.... Petitioner/s

Versus

1. Bansidhar Pandey Son Of Badri Pandey Resident Of Village - Bhaganda, P.O.
& P.S.- Chainpur, District – Kaimur.

2. Kripa Shanker Pandey Son Of Late Badri Pandey Resident Of Ward No. 18,
P.O. & P.S. - Bhabhua, District - Kaimur

3. Dakshprajapati @ Yamuna Upadhyay Son Of Late Kashi Upadhyay Resident
Of Mauja Halta, P.S.- Chainpur, District- Bhabhua (Kaimur) At Present
Residing At Mauja Bhabhua, Ward No. 9, Bhabhua Municipality, Bhabhua
P.O.- Bhabhua, District – Kaimur.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma, Adv.

For the Respondent/s : Mr. W. Rahman, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 27-04-2017

Heard learned counsel for the parties.

This revision application has been filed challenging the
order dated 15.07.2013 passed in Misc. Case. No. 14 of 2003 by
which the learned court below has declined to allow the petition dated
17.04.2010 filed by the petitioners praying for dismissal of the
miscellaneous case as having become infructuous and directing the
parties to adduce evidence for expeditious disposal of the said case.



The facts need no notice in detail and suffice it to state that the Misc. Case. No. 14 of 2003 has been filed by the opposite party no. 1 praying for setting aside the compromise decree passed in T.S. No. 49 of 1979 on the ground that the said compromise was not legal. The present petitioners and the remaining opposite parties of this revision application have been impleaded as opposite parties in the said miscellaneous case. The petitioners filed the petition dated 17.04.2010 under Section 151 C.P.C. stating that the petitioner Bansidhar Pandey of the Misc. Case. No. 14 of 2003 had accepted the genuineness of the compromise decree passed in T.S. No. 49 of 1979 in the written statement filed by him on 01.07.2009 in T.S. No. 71 of 2007 which has been filed by the opposite party no. 2 Kripa Shankar Pandey, who is the brother of the petitioner Bansidhar Pandey. On this base, it has been claimed by the petitioners in their petition that the miscellaneous case has become infructuous in view of the changed circumstances taking place during its pendency.

By order dated 13.09.2011, the learned court below refused to accept the prayer of the petitioners as made in their petition holding that the plea as raised by the petitioners required adjudication on the basis of evidence. The petitioners questioned the legal acceptability of the said order dated 13.09.2011 before this Court by filing C.W.J.C. No. 2606 of 2012. From the order dated 16.02.2012



(Annexure-4), it transpires that this Court directed the learned court below to pass appropriate order on the petition of the petitioner dated 17.04.2010 in accordance with law. However, it also transpires that the said order by this Court has been passed primarily on the basis of the submission on behalf of the petitioners that his petition dated 17.04.2010 was pending since 17.04.2010 but the learned court below had declined to pass any order one way or the other. In the said order, this Court has also taken into notice the submission on behalf of the petitioners on the basis of the decision in **Shipping Corporation of India LTD. Vs. Machado Brothers, A.I.R. 2004 S.C. 209.**

In pursuance to the above direction by this Court, the petition dated 17.04.2010 filed by the petitioners in Misc. Case No. 14 of 2003 has been heard and disposed of by the impugned order holding that in view of the denial by the petitioner Bansidhar Pandey of the fact of filing the written statement on 01.07.2009 in T.S. No. 71 of 2007 accepting therein the legality and validity of the compromise decree passed in T.S. No. 49 of 1979, the miscellaneous case cannot be dismissed as infructuous on the said basis as the controversy requires determination on the basis of evidence.

Learned counsel for the petitioners has emphatically relied upon the decision of the Apex Court in **Shipping Corporation of India LTD.** (supra) and has submitted that in view of the



categorical admission made by the opposite party no. 1 Bansidhar Panday in his written statement dated 01.07.2009 (Annexure-2) filed in T.S. No. 71 of 2007 accepting the validity of the compromise decree in question, the proceeding of the miscellaneous case for setting aside the said compromise decree has lost its legal tenability. It has been contended that the said admission by the opposite party no. 1 Bansidhar Pandey is fully binding upon him and would also operate as estoppel against him. It has been canvassed that the subsequent filing of the petition dated 21.11.2011 (Annexure-5) by the opposite party no. 1 Bansidhar Pandey in T.S. No. 71 of 2007 praying for expunging the written statement dated 01.07.2009 filed by him in the said suit is clearly an afterthought and meant to harass the present petitioners. It has been finally submitted that the learned court below has committed error of jurisdiction in not allowing the prayer as made in the petition dated 17.04.2010 filed by the present petitioners and has ignored the tenor of the direction as contained in the order of this Court (Annexure-4).

Learned counsel for the opposite party no.1 however, has supported the impugned order and has submitted that in the facts and circumstances of the case, the learned court below has not committed any error of jurisdiction or illegality in passing the impugned order. It has been contended that the opposite party no. 1



has refused to own the said written statement dated 01.07.2009 said to have been filed on his behalf in T.S. No. 71 of 2007 which fact is supported by his petition dated 21.11.2011 praying for expunging the said written statement as well as the rejoinder (Annexure-6) filed by him in the miscellaneous case with definite stand that the said written statement is forged and fabricated and has been got prepared by the present petitioners themselves.

After considering the submissions and the perusal of the impugned order as well as the materials on record, it is manifest that the basis of the prayer made by the petitioners in their petition dated 17.04.2010 for disposal of the Misc. Case. No. 14 of 2003 as infructuous is the statement said to have been made by the opposite party no. 1 Bansidhar Pandey, who is the sole petitioner in the said Misc. Case No. 14 of 2003, in the written statement said to have been filed by him on 01.07.2009 in T.S. No. 71 of 2007. According to the learned counsel for the petitioners, the said statement of the opposite party no. 1 Bansidhar Pandey is admission on the crucial issue arising in the miscellaneous case after which the proceeding further with the miscellaneous case would be flogging a dead horse. The fact however, has not been denied that the opposite party no. 1 Bansidhar Pandey has filed the petition dated 21.11.2011 (Annexure-5) in T.S. No. 71 of 2007 disowning the written statement said to have been filed by him



in that suit on the ground that the same has been fraudulently filed by the present revision petitioners. In his rejoinder to the petition dated 17.04.2010 filed by the petitioners, he (Bansidhar Pandey) has denied to have filed any such written statement in T.S. No. 71 of 2007 as claimed and has dubbed the same as forged and fabricated document.

The effect of admission with regard to its conclusiveness is by now well settled in several authoritative pronouncements in that regard. Section 31 of the Evidence Act also stipulates that admission are not conclusive proof of the matters admitted but they may operate as estoppel under certain circumstances. Evincibly, therefore, the policy of law with regard to conclusiveness of admission leans towards investigation of truth by all expedient method and therefore the weight of admissions is made dependent upon the facts and circumstances under which they were made with the right to the maker to explain the circumstances and show that those admissions were made under misapprehension of facts or were untrue. It would be fruitful here to notice the dictum laid down by their lordships in the case of **Basant Singh Vs. Janki Singh, A.I.R. 1967 S.C. 341** as follows:-

“5.....Thus, even under the English law, a statement in a pleading sworn, signed or otherwise adopted by a party is admissible against him in other actions. In *Marianski v.*



Cairns, (1852) 1 Macq 212, the House of Lords decided that an admission in a pleading signed by a party was evidence against him in another suit not only with regard to a different subject matter but also against a different opponent. Moreover, we are not concerned with the technicalities of the English law. Section 17 of the Indian Evidence Act, 1872 makes no distinction between an admission made by a party in a pleading and other admissions. Under the Indian law, an admission made by a party in a plaint signed and verified by him may be used as evidence against him in other suits. In other suits, this admission cannot be regarded as conclusive, and it is open to the party to show that it is not true.

(emphasis supplied)

The similar view has been spelt out by the Apex Court in the case of **Union of India vs. Ibrahim Uddin, 2013 (1) SC 48** as follows:-

“23.....In view of the above, the law on the admissions can be summarized to the effect that admission made by a party though not conclusive, is a decisive factor in a case unless the other party successfully withdraws the same or proves it to be erroneous. Even if the admission is not conclusive it may operate as an estoppel. Law requires that an opportunity



be given to the person who has made admission under cross-examination to tender his explanation and clarify the point on the question of admission.....”

(emphasis supplied)

It is graphically clear, therefore, that even if the statements made in the written statement dated 01.07.2009 by the opposite party no. 1 Bansidhar Pandey in T.S. No. 71 of 2007 can be said to be the admissions of facts by him, still the same cannot alone be the basis for disposal of the miscellaneous case in question as prayed by the petitioners. The law requires that an opportunity be given to the opposite party no. 1 Bansidhar Pandey (the petitioner in Misc. Case No. 14 of 2003) to tender his explanation and to show the same to be untrue. The principles as laid down in **Shipping Corporation of India LTD.** (supra) relied upon on behalf of the petitioners has been rendered in a different settings of facts where there was no dispute to the basic fact on which the prayer for dismissing the proceeding as infructuous was based.

For the aforesaid reasons and discussions, this Court holds that the learned court below has not committed any error or material irregularity in passing the impugned order declining the prayer made by the petitioners for dismissing the Misc. Case No. 14 of 2003 as infructuous and disposing of the petition dated 17.04.2010



filed by the petitioners accordingly.

This revision application, sans merit is, accordingly,
dismissed.

(V. Nath, J)

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