

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.210 of 2012

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1. Hridya Gond @ Hridya Prasad Gond @ Hridya Ram Gond Son of Munshi Gond @ Munshi Ram Gond.
 2. Angad Kumar @ Angad Gond.
 3. Rishi Kumar @ Rishi Gond.
 4. Kapil Kumar @ Kapil Gond.
All Sons of Hridya Gond @ Hridya Prasad Gond @ Hridya Ram Gond.
 5. Balwant Gond.
 6. Narendra Gond.
 7. Rajeshwar Gond.
All Sons of Late Ganga Gond.
 8. Bindhyachal Kumar @ Bindhyachal Gond.
 9. Chandrama Kumar @ Chandra Gond.
All Sons of Balwant Gond.
 10. Mansha Kumar @ Mansha Gond.
 11. Anup Kumar @ Teju Gond.
Both Sons of Rajeshwar Gond.
 12. Niranjana Kumar Gond @ Niran Gond (Minor)
 13. Sonu Kumar @ Manoranjan Gond (Minor).
Both Sons of Narendra Prasad Gond @ Narendra Gond.
Both under the natural guardianship of his father namely Narendra Prasad Gond @ N.Gond.
All residents of Bhabhua , Ward No.19 near old police station, P.S.- Bhabhua District Kaimur (Bhabhua)..

.... Petitioners

Versus

1. Dinanath Gond.
2. Dadan Gond.
3. Shiva Gond.
4. Amarjit Prasad Gond.
All Sons of Late Lali Devi Wife of Late Shambhu Prasad Gond.
5. Urmila Devi.
6. Sugina Devi.
All daughters of Late Lali Devi Wife of Late Shambhu Prasad Gond.
All resident of village-Ishiya, P.O.-Baradhi, P.s.-Chainpur, District-Kaimur (Bhabhua).
7. Murali Kumar Wife of Late Ram Gahan Gond.
Resident of Bhabhua , Ward No.10, P.S.-Bhabhua, District-Kaimur (Bhabhua).
8. Murati Kumar Wife of Late Bhushan Gond.
Resident of Village-Gaighat, Anchal-Sasaram, District-Rohtas (Sasaram).

.... Opposite Parties.

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Appearance :

For the Petitioner/s : Mr. Pramod Kumar Singh, Adv.
For the Respondent/s : Mr. Uma Shankar Sharma, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 08-02-2017



Mr.Pramod Kumar Singh, learned counsel appearing for the petitioners, at the outset has pressed the interlocutory application (I.A.No.709/2017) which has been filed for substitution of the heirs and legal representatives of the deceased petitioner no.5 stating that the petitioner no.5 died on 10.11.2016 leaving behind his heirs and legal representatives, as mentioned in paragraph-2 of the said application.

The learned counsel for the opposite parties has raised no objection to the prayer for substitution.

Accordingly, the prayer made in the said interlocutory application is allowed and the heirs and legal representatives of the deceased petitioner no.5, as mentioned in paragraph-2 of the said application is substituted in his place after expunging his name from the revision application.

It has been further stated by the learned counsel for the petitioners that the heirs and legal representatives of the deceased petitioner no.5 have already appeared by filing Vakalatnama.

Heard the learned counsel for the parties on merits of the revision application.

The present revision application has been filed against the order passed by the learned court below in Miscellaneous Case No. 21/2001 whereby and whereunder the compromise decree



filed in T.S.No.326/1999 has been set aside and the suit has been restored to its original file.

The facts are not in dispute that the plaintiff Lali Devi (since deceased through L.R.) filed the T.S.No.326/1999 for partition of her share in the suit properties. From the impugned order , it transpires that the suit was filed on 22.12.1999 and was admitted on 23.12.1999 with 03.01.2000 fixed as the next date. It further transpires that on the said date, though, the plaintiff was absent but a compromise petition was filed by the defendants. By later order, the compromise petition was accepted and the suit was disposed of in terms of the compromise. The plaintiff Lali Devi by filing the Miscellaneous Case No.21/2001 has prayed to set aside the compromise decree alleging fraud on the part of the defendants of the suit in filing the compromise and getting the suit disposed of on the said basis.

After hearing the parties and considering the evidence and materials on record, learned court below has come to the conclusion that the compromise decree was tainted by fraud and therefore the suit was not disposed of by any lawful agreement between the parties .

Mr.Singh, learned counsel for the petitioners has submitted that the admitted thumb impression of the plaintiff Lali



Devi with the disputed thumb impression was examined by the handwriting expert, who submitted the report that the two thumb impressions tallied with each other. It has been canvassed that the learned court below has committed error in not considering the said circumstance and evidence indicating the validity of the compromise between the parties.

During the course of argument, however, learned counsel for the petitioners could not explain the other findings of the court below as to how the advocate appearing for the defendants could have represented the plaintiff as well and could have identified the signature/L.T.I. of the plaintiff on the compromise petition.

The learned counsel appearing for the opposite parties has supported the impugned order.

After considering the submissions and perusal of the materials on record including the impugned order, it is manifest that the compromise decree has been challenged by the plaintiff of the suit on the ground that the same was fraudulent and not on the basis of a lawful agreement between the parties. The learned court below has recorded its findings on the basis of the evidence and the materials available on record that the compromise petition was vitiated by fraud. From the perusal of the findings, this Court is not persuaded to conclude that the findings are perverse or unreasonable. Even



otherwise also, the findings recorded by the trial court in the impugned order are based upon the appreciation of evidence which were acceptable and could have been relied upon. The learned counsel for the petitioners has placed his reliance upon the decision of the apex court in the case of **Nanshibhai Vs. Bhupendra P. Popat**, AIR 2008 SC 76, in support of his contention that the consent decree should not be lightly interfered with. However, the said decision was rendered in entirely different setting of facts and, in any view of the matter, in the present case the learned court below has elaborately discussed the evidence and materials on record before coming to the conclusion that the compromise decree was vitiated by fraud and fit to be set aside. This Court, therefore, does not find that any error of jurisdiction or material irregularity has been committed by the learned court below in passing the impugned order.

The revision application sans merit is accordingly dismissed.

(V. Nath, J)

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