

IN THE HIGH COURT OF JUDICATURE AT PATNA
Second Appeal No.443 of 2011

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1. Keshav Prasad
 2. Chhote Lal Prasad
 3. Krishna Mohan Prasad
 4. Amar Prasad, all sons of Ramchandra Prasad deceased, resident of Village Pakariya Harsidhi, P.S. Harsidhi, District East Champaran
 5. Rasmani Devi, wife of Narayan Prasad, D/o Ramchandra Prasad, resident of Village Maldahiya, P.S. Harsidhi, District East Champaran
 6. Sushila Devi, wife of Moti Lal Prasad, D/o Ramchandra Prasad, resident of Village Noniya, P.S. Paharpur, District East Champaran
 7. Shreepati Devi @ Shreemati Devi, wife of Veer Bahadur Prasad, resident of Bahrupia, P.S. Turkauliya, District East Champaran
- Plaintiffs Respondents

.... Appellants

Versus

1. Dhurendhu Mahto @ Dhurendra Mahto, son of Darshan Mahto deceased, resident of Village Jogiharan Pipra, P.S. Jogapatti, District West Champaran, presently Jogirahan Pakaria, P.S. Harsidhi, District East Champaran Defendant..... Appellant
2. Madan Mahto, son of Darshan Mahto deceased, resident of Village Jogiharan Pipra, P.S. Jogapatti, District West Champaran, presently resident of Village Pakaria, P.S. Harsidhi, District East Champaran Defendant Proforma Respondent

.... Respondents

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Appearance :

For the Appellant/s : Mr. ABHINAY RAJ
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 09-05-2017

Heard Mr. D.K.Sinha, learned Senior Counsel appearing for the appellants.

2. The plaintiffs are the appellants in this appeal against the judgment and decree of reversal dismissing the suit of the plaintiffs.

3. The matrix of facts discloses that the plaintiffs filed the suit for declaration of their title over the suit plot on the basis of compromise decree dated 10.6.1964 passed in T.S. No. 27 of 1954. The facts further appear from the submission as well as the judgments of both the courts below that T.S. No. 27 of 1954 (Partition) was filed by one of the co-



sharers of the plaintiffs and the defendants and that suit was decreed in terms of compromise. However, another T.S. No. 69 of 1958 was filed by the defendants of the earlier suit praying for setting aside the earlier compromise decree in T.S. No. 27 of 1954 and allied reliefs. It appears that this later suit was decreed holding that the compromise decree passed in earlier T.S. No. 27 of 1954 was not legally sustainable and accordingly the same was set aside the same. However, it further transpires that in this later suit i.e. T.S. No. 69 of 1958 also a compromise petition was again filed on 6.5.1959 between the predecessor in interest of the plaintiffs of the present suit and the defendants of the present suit. It further appears that in the year 1963 a petition was filed in the earlier T.S. No. 27 of 1954 praying for revival of the said suit. During pendency of the said application a compromise petition was again filed on 10.6.1964 (Ext. 1) between the parties and the said suit was disposed of in terms of the compromise. The present suit has been filed by the plaintiffs claiming that the suit plot has been allotted in their share in the compromise decree dated 10.6.1964 in T.S. No. 27 of 1954.

4. The trial court decided the issues against the defendants and granted the decree to the plaintiffs as prayed. However, the appellate court below on reappraisal of evidence has reversed the findings of the trial court and dismissed the suit by the impugned judgment and decree.

5. Mr. Sinha, learned Senior Counsel appearing for the appellants, has made two fold submissions. Firstly, it has been submitted that after the compromise decree in T.S. No. 27 of 1954 was set aside in



the later T.S. No. 69 of 1958, the proceeding of T.S. No. 27 of 1954 would automatically revive. It has been next submitted that the burden of proving that the compromise dated 2.6.1964 filed in the court on 10.6.1964 in T.S. No. 27 of 1954 was fraudulent and not a genuine document was required to be established by the defendants of the suit and therefore the appellate court below has committed error in coming to the conclusion that the plaintiffs have failed to establish the genuineness of the compromise dated 10.6.1964 filed in T.S. No. 27 of 1954. No other submission has been made on behalf of the appellants.

6. After considering the submissions and perusal of the judgments of both the courts below it is transparent that the compromise decree in T.S. No. 27 of 1954 was set aside in the later suit T.S. No. 69 of 1958. It further transpires that in the later suit a compromise petition was filed on behalf of the predecessor in interest of the plaintiffs and the defendants of the same suit. However, it is not the case of the appellants that there was a direction in the later suit i.e. T.S. No. 69 of 1958 for revival of the earlier T.S. No. 27 of 1954. It is also pellucid from the judgments of both the courts below that a petition for revival of the earlier T.S. No. 27 of 1954 was filed by some of the parties thereto and when the issue of maintainability of that petition was pending, a compromise petition was filed and the said suit T.S. No. 27 of 1954 was disposed of in terms of the said compromise on 10.6.1964. The trial court has refrained from recording any finding on the legality and propriety of the compromise decree dated 10.6.1964 passed in T.S. No. 27 of 1954, but the appellate court below after scrutiny of evidence including the order-sheet of T.S. No. 27 of 1954 has come to the conclusion that there was



no order for revival/restoration of the said suit and during pendency and consideration of the issue of maintainability of the revival application, the compromise petition was filed and the suit (T.S. No. 27 of 1954) was disposed of in terms of the said compromise. The appellate court below, therefore, has rightly concluded that without revival of T.S. No. 27 of 1954, the same could not have been disposed of in terms of the compromise filed between the parties. No provision of law or procedure has been cited on behalf of the appellants to persuade this Court to take the view that there would be automatic revival of the earlier suit when the compromise decree in the said suit is set aside in the later suit.

7. The next submission on behalf of the appellants is that it was for the defendants, who questioned the genuineness of the compromise decree dated 10.6.1964 passed in T.S. No. 27 of 1954, to establish that the said compromise was tainted by fraud and it was not for the plaintiffs to establish the same. In view of the provisions of Section 102 of the Evidence Act this submission appears to be misconceived in view of the fact that it was the plaintiffs who propounded the said compromise and the decree thereupon as the basis of their title over the suit property and once after the denial and challenge to its validity by the defendants it was for them (plaintiff) to establish the same by leading cogent evidence in that regard. The appellate court below has considered this aspect of the matter and has come to the conclusion that no effort has been made by the plaintiffs to establish the genuineness of the thumb impression of the parties appearing on the said compromise filed in T.S. No. 27 of 1954.

8. The findings by the appellate court below have been recorded on the basis of evidence which were acceptable and could have



been relied upon. This Court has not been persuaded to find that the conclusions by the appellate court below are perverse or unreasonable in any manner.

9. Ex consequenti, this Court does not find any substantial question of law arising for consideration in this appeal, which is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	
CAV DATE	N/A
Uploading Date	19.06.2017
Transmission Date	N/A

