

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.2940 of 2006

1. Ramdeo Prasad, son of late Kamaleshwar Prasad
2. Sachindra Prasad, son of Ramdeo Prasad,
3. Dayawanti Devi, wife of Sachindra Prasad,
All residents of Village- Olha Madhubani, P.S. Sangrampur, District- East Champaran

... .. Petitioner/s

Versus

1. Vikramaditya Prasad, son of Ramdeo Prasad at and P.O. Madhubani, P.S. Sangrampur, District- East Champaran.
2(i). Usha Devi
2(ii) Rambha Devi
4. Mukurdhun Singh
5. Nawal Singh
Both sons of Mahabir Singh, resident of Village- Olha Madhubani, P.S. Sangrampur, District- East Champaran

... .. Respondent/s

Appearance :

For the Petitioner/s	:	Mr. Anil Kumar Jha, Sr. Advocate Mr. Umesh Kumar Singh, Advocate Mr. Dhananjay Kumar, Advocate
For the Respondent/s	:	Mr. Birendra Kumar, Advocate

CORAM: HONOURABLE THE CHIEF JUSTICE
ORAL JUDGMENT

Date : 19-09-2017

This is an application filed under Order 23 Rule 3 read with Section 151 C.P.C. for recalling a compromise decree passed on 02.08.1995 in First Appeal No. 333 of 1985 by a Bench of this Court.

Facts in brief goes to show that Respondent No. 1 filed the suit in question for partition being Suit No. 231 of 1982 in the court of Subordinate Judge, East Champaran against his father, brother and mother as well as the transferees seeking share to the extent of 1/3rd in the family property. In the said



suit, the Petitioner No. 3 was also impleaded as Defendant No. 4 in the capacity as Donee of Petitioner No. 1 to the extent of certain share. Be it as it may be, the suit was decreed in part. The plaintiff was granted 1/8th share in the joint family property but his suit for share in the personal property, personal in nature, acquired by the defendant was rejected. Challenging the aforesaid decree passed, the First Appeal in question was filed and it is the case of the applicants herein that when the appeal came up for hearing before the Court on 25.05.1995 on the basis of a fabricated Vakalatnama and settlement said to have been signed by Petitioner Nos. 1 and 2, the settlement was arrived at. However, after the settlement was made, the petitioners were not aware of the settlement but it was only on 31.10.2006 when the Respondent No. 1 started cutting Seesam trees and tried to dispossess the petitioners that they were made aware of the compromise and, therefore, the application was filed.

While hearing the matter, this Court taking note of the disputes pertaining to fabrication of the document and signature passed a detailed order on 21.02.2008 and directed the Registrar General of this Court to cause an inquiry and submit a report. Accordingly, the then Registrar General Sri V.K. Sinha, now a sitting Judge of this Court, conducted an inquiry and



submitted a detailed report on 26.10.2016 wherein after getting forensic laboratory report with regard to the disputed signatures and document, the learned Registrar General, as he then was, submitted the following report:-

“In view of the aforesaid facts, it clearly appears that there is a consistent evidence of petitioners, denying the filing of instant Compromise Petition dated 25.05.1995 in F.A. no. 333/1985. They have also denied their signature and thumb-impression on Compromise Petition. Though Opposite Party no. 01 has supported the case of filing Compromise Petition on Oath as well as in his Show Cause but there is no corroborative piece of evidence in his favour, rather he has not examined the maternal uncle, before whom he claims compromise was settled. Further, there is difference in plot number in Compromise Petition with the alleged case. The report of Forensic Science Laboratory also shows that there is difference between disputed signatures and admitted signatures of the Petitioner nos 01 & 02 of this MJC Petition (Respondent no. 01 & 02 of the instant First Appeal) on the documents sent for examination.

Considering the discussion made above, the Compromise Petition does not appears to be a genuine petition, rather appears to be a forged and fabricated document.”



Even though learned counsel for the respondents raised an objection and argued that this application for review after a period of more than 11 years of passing of the compromise decree is not maintainable in view of the law laid down by the Supreme Court in the case of **Sasi (dead) through Legal Representatives Vs. Aravindakshan Nair and others- (2017) 4 SCC 692** and further tried to point out certain errors in the order passed in the report submitted by the Registrar General and also contended that the settlement has been worked out and certain transactions have been effected in pursuance to the settlement, I am of the considered view that in the light of the report that has come on record, the entire settlement and compromise becomes suspicious and it is clear that the signature and thumb impression in the compromise petition are doubtful. That being so, a compromise, which is a fraud, cannot be accepted and in the facts and circumstances of the case, the application has to be allowed, the compromise decree recalled and the matter decided on merit.

The judgment rendered in the case of **Sasi (Dead)** (supra) pertaining to exercising of review jurisdiction by this Court cannot be made applicable in the facts and circumstances of the present case where, by fraudulent methods, a compromise



in a suit has been effected, which is not permissible under law. Taking note of the totality of the circumstances and the facts that have come on record, particularly the detailed finding recorded by the Registrar General in his report dated 26.10.2016, the application is allowed. The compromise judgment and decree passed by this Court on 02.08.1995 in First Appeal No. 333 of 1985 is recalled. The First Appeal is restored to its original file. It be placed for orders before the appropriate Bench.

(Rajendra Menon, CJ)

P.K.P.

AFR/NAFR	N.A.F.R.
CAV DATE	N.A.
Uploading Date	20.09.2017
Transmission Date	

