

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.94 of 2015

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1. Devendra Choudhary son of Late Bishun Dayal Choudhary
2. Pawan Choudhary
3. Santosh Choudhary All sons of Shri Devendra Choudhary
4. Smt. Rubi Kumari @ Rubi Thakur D/o - Devendra Choudhary, wife of Sri Prakash Kumar All residents of village - Sursand Tole Maidan, P.S. - Sursand, District - Sitamarhi.

.... Petitioner/s

Versus

1. Most. Chandrawati Devi wife of Late Ratneshwar Choudhary
2. Balram Thakur son of Late Yogendra Thakur
3. Alok Kumar
4. Navneet Kumar Both sons of Sri Balram Thakur All are residents of village - Sutihara, P.S. - Parihar, Dist - Sitamarhi.
5. Dolli Kumari wife of Jitendra Singh resident of village - Chakwa, P.S. - Bathnaha, District - Sitamarhi.
6. Bindu Kumari wife of Rahul Kumar resident of village - Athari, P.S. - Runnisaidpur, District - Sitamarhi.
7. Nirmala Kumari D/o Late Ratneshwar Choudhary, wife of Sri Amresh Thakur resident of village - Sonapara, P.S. - Janakpur, District - Dhanusha, Nepal.
8. Most. Pramila Kumari D/o - Late Ratneshwar Choudhary, wife of Ram Prakash Thakur resident of village - Nauranga, P.S. and District Balia (U.P.)
9. Smt. Meera Kumari D/o Late Ratneshwar Choudhary, wife of Sri Lalit Choudhary resident of village - Madhapur, P.S. Sursand, District - Sitamarhi.
10. Smt. Asha Kumari D/o Late Ratneshwar Choudhary, wife of Sri Shashi Ranjan Singh resident of village & P.S. Chandrawati, District Muzaffarpur.
11. Smt. Kiran Kumari D/o - Late Ratneshwar Choduhary, wife of Sri Sunil Mishra resident of village - Pigauna, P.S. - Jaleshwar, District - Mahotri, Nepal.
12. Arun Tiwari
13. Krishna Kumar Tiwari
14. Gopal Tiwari All sons of Yadunath Tiwari and all residents of village - Radhaur, P.S. - Sursand, District - Sitamarhi.
15. Smt. Renu Devi wife of Shyamnandan Thakur resident of village - Misrolia, P.S. - Dhaka, District - East Champaran.
16. Smt. Ranjana Devi wife of Ram Adhar Thakur resident of village - Laduahi, P.S. - Parihar, District - Sitamarhi.
17. Yogendra Choudhary son of Late Lal Bihari Choudhary
18. Sanjay Choudhary son of Yogendra Choudhary
19. Jyoti Choudhary son of Sri Yogendra Choudhary All residents of village - Sursand Tole Maidan, P.S. - Sursand, District - Sitamarhi.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Rakesh Chandra
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT
Date: 14-07-2017



Heard learned counsel for the petitioners as well as learned counsel appearing for the opposite parties.

2. Petitioners have challenged the order dated 03.07.2015 passed by the learned Subordinate Judge, I Sitamarhi in Partition Suit no. 268 of 2011 by which and whereunder he rejected the petition filed on behalf of the petitioners under order VII Rule 11(d) of the Civil Procedure Code.

3. The opposite parties filed partition suit no. 268 of 2011 against the petitioners seeking relief for declaration of compromise decree in Partition suit no. 57 of 1974 as forged and fabricated and not binding upon them and also for Partition of suit property as mentioned in schedule 1 of the plaint. During pendency of the aforesaid suit, the petitioners filed a petition under Order VII Rule 11(d) of the Civil Procedure Code mentioning therein that the suit is barred by Order XXIII Rule 3A of the Civil Procedure Code and, accordingly, the same is liable to be rejected under Order VII Rule 11(d) of the Civil Procedure Code but the learned court below rejected the aforesaid petition passing the impugned order against which, this civil revision petition has been filed.

4. Learned counsel appearing for the petitioners submits that the plaint of opposite parties goes to show that the opposite parties sought relief for declaration that the compromise petition filed in partition suit no.57 of 1974 was forged and fabricated and the



decree was passed on the basis of compromise petition is illegal and is not binding upon them and, also sought relief for partition in respect of schedule I property of the plaint. He further submits that it is not in dispute that schedule I property was the subject matter of compromise petition filed in Partition suit no. 57 of 1974. It is further submitted that according to Order XXIII Rule 3A of the Civil Procedure Code, no suit shall lie for setting aside decree on the ground that the compromise on which the decree is based was not lawful. He further submits that Order VII Rule 11(d) of the Civil Procedure Code says that if the averments made in the plaint disclose that the suit is barred by any law, the plaint shall be rejected. Admittedly, the suit for setting aside the compromise decree is barred by law and, therefore, the plaint of Partition suit no. 268 of 2011 was liable to be rejected under Order VII Rule 11(d) of the Civil Procedure Code but the learned court below committed error in passing the impugned order and on erroneous grounds rejected the petition filed on behalf of the petitioners.

5. On the other hand, learned counsel for the opposite parties refuted the above stated submissions arguing that in Partition suit no. 268 of 2011, not only the lands which were subject matter of compromise decree but other lands are also the subject matter of the partition suit no. 268 of 2011 and the opposite parties have sought partition of other lands also which were not covered by the



compromise decree passed in Partition suit no. 57 of 1974. Therefore, even if it is assumed that the Lower court had no jurisdiction to entertain a suit for setting aside the compromise decree, then also the present suit is maintainable as some other lands are also involved in the present suit and, therefore, the learned court below rightly rejected the petition filed on behalf of the petitioners.

6. Having heard the rival contentions of the parties, I went through the photo copy of the plaint of Partition suit no. 268 of 2011, which has been brought on record as Annexure-1 to the petition. From perusal of the photo stat copy of the plaint of Partition suit no. 268 of 2011, I find that the opposite parties have sought relief for declaration that compromise filed in Partition suit no. 57 of 1974 was forged and fabricated and not binding upon them and furthermore, for partition of schedule I, property of the plaint and also for issuance of temporary injunction. The plaint of the opposite parties is completely based on relief no. 1, which is for setting aside the compromise decree and the relief no. 2 depends upon the out come of the suit but Order XXIII Rule 3A of the Civil Procedure Code says that no suit shall be entertained for setting aside a decree passed on the ground of compromise and apart from this, Section 96 of the Civil Procedure Code says that no appeal shall lie against the compromise decree and, therefore, it is an admitted fact that no fresh suit can be entertained for setting aside a compromise decree on the ground that the said



compromise decree, is not lawful. In course of argument, learned counsel for the opposite parties raised question that apart from lands covered under the compromise decree, some other lands are also involved in the Partition suit no. 268 of 2011 but it would appear from perusal of the plaint that the relief for partition has been sought for only for the lands mentioned in schedule I of the plaint and it is apparent from schedule I of the plaint. Admittedly, lands mentioned in schedule 1 of the plaint were subject matter of partition suit no. 57 of 1974 and no other lands have been included in the aforesaid schedule! Of the plaint. Therefore, on the basis of aforesaid discussions, I am of the opinion that the learned court below committed error in rejecting the petition filed under Order 7 Rule 11(d) of the Civil Procedure Code. Accordingly, this Civil Revisions petition is allowed and the impugned order dated 3.07.2015 passed by the learned Sub-Judge-I, Sitamarhi in Partition suit no.268 of 2011 is set aside as a result whereof the plaint of Partition suit no. 268 of 2011 is rejected. However, it is made clear that the opposite parties may file fresh suit in respect of the properties which are not covered by the compromise decree passed in partition suit no. 268 of 2011.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NAFR
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