

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.59 of 2016

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1. Sagar Bhagat @ Ram Sagar Jaiswal, son of late Chuni Bhagat.
 2. Upendra Bhagat @ Upendra Jaiswal, son of late Chuni Bhagat, Both resident of village-Anjhari, P.O.-Mohanpur, P.S. Rupauli, District-Purnea.

.... Petitioner/s

Versus

1. Bikash Prasad Jaiswal son of Anandi Bhagat, resident of village-Anjhari, P.O. Mohanpur, P.S.-Rupauli, District-Purnea.
2. Anandi Bhagat, son of late Chuni Bhagat, resident of village-Anjhari, P.O. Mohanpur, P.S. Rupauli, District-Purnea.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Abbas Haider, Adv.

For the Respondent/s : Mr. Binoy Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-04-2017

Heard Mr. Abbas Haider, learned counsel for the petitioners and also learned counsel for the opposite parties.

The present revision application has been filed challenging the order by which the learned court below has allowed the prayer of the opposite party no. 1 for setting aside the compromise decree passed in T.S. No. 337 of 1990 on 02.09.1991.

The matrix of facts as apparent from the submissions, materials on record and the impugned order discloses that the T.S. No. 337 of 1990 was filed by the present petitioners wherein the opposite party no. 1 Bikash Prasad Jaiswal was impleaded as minor defendant



represented by his father. The said suit was disposed of in terms of compromise by the decree dated 24.08.1991 as contained in Annexure-2. It further transpires that the permission of the court was also obtained for entering into the said compromise on behalf of the minor. Later on, the petition on 28.07.2012 was filed by the opposite party no. 1 praying for setting aside the said compromise decree alleging that he was major at the time when the compromise was entered but he was wrongly shown as minor in the suit and therefore the compromise decree has been obtained by playing fraud. The learned court below, after hearing the parties, has come to the finding that the compromise decree suffers from fraud and has been obtained through illegal means. Accordingly, the learned court below has set aside the said compromise decree and restored the T.S. No. 337 of 1990 to its original position.

From the perusal of the impugned order, it is evident that the learned court below has not recorded any finding, on the basis of pleadings and evidence on record, that the opposite party no. 1 Bikash Prasad Jaiswal was major but was wrongly shown as minor in the said suit. As the basis of the entire case propounded by the opposite party no. 1 Bikash Prasad Jaiswal for setting aside the compromise decree was the fact that he was major on the date of filing of the suit or at least on the date when the compromise decree was passed, a finding in



that regard was sine quo non before allowing the prayer for setting aside the compromise decree. The learned court has further also not recorded the finding as to nature of the fraud or illegality which had been committed in obtaining the compromise decree in T.S. No. 337 of 1990. It needs no emphasis that the compromise decree has been passed in the year 1991 and the petition has been filed by the opposite party no. 1 in the year 2012 and in that view of the matter, the claim and case set up the opposite party no. 1 required caution and careful scrutiny by the court on the issue. This Court, therefore, concludes that the impugned order suffers from error of jurisdiction and illegality and deserves to be overturned. It is done, accordingly,

In result, this revision application is allowed and the impugned order dated 24.08.1991 passed in T.S. No. 337 of 1990 is set aside. The Misc. Case No. 24 of 2012 is remanded back to the learned court below for fresh hearing and disposal in accordance with law on the basis of the pleadings and evidence on record and granting appropriate opportunity to the parties for hearing.

(V. Nath, J)

Devendra/-

AFR/NAFR	
CAV DATE	
Uploading Date	11.05.2017
Transmission Date	

