# IN THE HIGH COURT OF JUDICATURE AT PATNA

**Criminal Miscellaneous No.35054 of 2014**

Arising Out of PS.Case No. -1284 Year- 2012 Thana -PATNA COMPLAINT CASE District-PATNA

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1. Shakuntala Kumari Verma W/o Late Satyapal Verma @ Surendra Kumar
2. Sumit Kumar Verma, S/o Late Satyapal Verma @ Surendra Kumar
3. Amit Kumar Verma, S/o Late Satyapal Verma @ Surendra Kumar
4. Annu Verma D/o Late Satyapal Verma @ Surendra Kumar
   All are permanent residents of Mohalla Gabhtal, Akhara Road, P.S. Danapur, District- Patna, at present residing at Mohalla- Nakhas Pind, P.O.- Begumpur, P.S.-Malsalami, Patna City, District-Patna.

.... .... Petitioner/s

Versus

1. The State of Bihar.
2. Rajiv Ranjan @ Satyendra Kumar S/o Late Chandeshwar Prasad Singh, R/o Mohalla-Gabhtal, Akhara Road, Danapur, P.S.-Danapur, District-Patna.

.... .... Opposite Party/s

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**Appearance :**
For the Petitioner/s : Mr. Sanjay Kumar, Advocate
For the Opposite Party/s : Mr. Sanjay Singh, Advocate
For the State : Mr. Umanath Mishra, APP

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**CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY**
C.A.V. JUDGMENT
**Date: 23 -08-2017**

The instant application for quashing the order dated 19.04.2014 passed by Sri Uma Shankar, Judicial Magistrate, 1st Class, Danapur in Complaint Case No. 1284 (C) of 2012 has been filed by the petitioner basically on the ground that the present case is a civil dispute and the opposite party no.2 has given a cloak of criminal offence and as such the present case is an abuse of the process of law and as such this Court in exercise of the jurisdiction under Section 482 Cr.P.C. should interfere in the matter.

2. Counsel for the opposite party no.2 on the contrary submitted that the scope of interference under Section 482

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Cr.P.C. is very limited and the Court should exercise this jurisdiction very sparingly.

3. The instant case originated out of dispute as to partition of joint family property between the petitioners and opposite party no.2. The partition suit, bearing Partition Suit No. 112 of 1986, was compromised by the opposite party no.2 without impleading the husband of petitioner no.1, who was coparcener/co-sharer in the joint family. The husband of petitioner no.1 filed Misc. Case No. 4 of 2006 for setting aside the decree in the Partition Suit No.112 of 1986 on the ground that he was not made party in the Partition Suit, although he was necessary party being the member of the family. The learned Sub-Judge-II, Patna vide order dated 24.09.2010 set aside the judgment passed in the Partition Suit on compromise and thereafter a civil revision was preferred before this Court by the opposite party no.2, being Civil Revision No. 769 of 2010 and this Court dismissed the Civil Revision vide order dated 30.11.2011. The Apex Court also dismissed the S.L.P preferred by the opposite party no.2 and another against the order of this Court in C.R. No. 769 of 2010 vide order dated 13.07.2012.

4. In the aforesaid background, the instant complaint petition was filed by the opposite party no. 2 on 12.11.2012 alleging cheating, breach of trust and fabricating forged document etc. on the

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ground that during the pendency of the Title Partition Suit No. 112 of 1986, the petitioners have approached the Revenue Authority for mutation of joint family properties. The relevant paragraphs of complaint petition reads as follows:

> "2. That Complainant filed the Title Partition Suit No. 112 of 1986 for partition of the joint family properties in the year 1986, which is still pending before the Court of Sub-Judge-II, Danapur for disposal in which next date is fixed for 04.12.2012.
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> 3. That in the year 1987 above suit was compromised between the parties to the suit & order vide order dated 22/05/1987 & 15/01/88 passed. In said suit one of the Co-sharer namely Late Surendre Kumar, Husband of accused No.1 has not made party with his consent as he had left no share in the properties because of arrangement was made to get the properties from Nanihal as was made between the father Chandeshwar Prasad Singh and his sons including late Surendra Kumar (husband of accused No.1) and according to the said arrangement against the share of Sri Surendra Kumar in joint family properties, a deed of gift was got executed in his favour by the maternal grandmother Mehta Devi Kuer on 23.05.82 with the consent of Chandeshwar Prasad Sinha, his wife Om Prabha Devi and the brothers of

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late Surendra Kumar by execution and registration of the said deed of gift & only on the said circumstances late Surendra Kumar had left no share in the ancestral properties according to his own sweet will hence in such circumstances he will not made as party to above title suit.

4. That during the lift time late Surendra Kumar did not made any objection and after his death an application filed on 31.10.2006 by accused No.-1 to 4 wife & children of late Surendra Kumar a Misc. Case No.-4 of 2006 for set aside/cancel the order dated 22.05.1987 & 15.01.88 by which the preliminary decree and final decree was passed on the ground that one of the Co-shares are not made party in above suit.

5. That the said Misc. Case was allowed by the sub-judge court against which Complainant filed Civil Revision No. 769 of 2011 of Hon'ble High Court, Patna which was disallowed and complainant ultimately filed Special Leave to Appeal No. 11140/12 against the order passed in Civil Revision No. 769 of 2011 of Hon'ble High Court, Patna in which matter involved for set aside Compromise Decree and the said Special Leave to Appeal No.20608/12 is pending for disposal & sub-judice till date.

6. That in the meantime accused no.1 to 4

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impleaded as party in said very suit by the learned court vide order dated 25.08.2010.

7. That before they impleaded as party the accused person no. 1 to 4 had filed a application before the Circle Officer, Danapur on 11.08.10 to entering their name in Jamabandi of mutation. This fact has not mentioned by the accused person in their written statement filed before the Sub-Judge-II dated 24.09.2010.

8. That further on 24.08.2011 the Halka Karmachari & Circle Inspector falsely report that accused no.1 to 4 has allotted the land vide order passed in Misc. Case No.4 of 2006.

9. That further accused no.8 has shown in his record that notice was issued to complainant & others for any objection but the fact no notice was ever served and in active conspiracy and connivance of all accused person made a false report by fabricating the false signature of the Complainant & others to show that the notice was served on the Complainant. The said signature is totally false and forged and the Complainant or other has not signed the above paper as submitted by the process server.

10. That although the entire record has in knowledge of the accused no.-8 but by suppressing the fact that overlooking the law that matter is still subjudice and right and title with regard to share is not till decided by the court of sub-judge and it has only recall of the

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decree, the accused no.8 intentionally and illegally under conspiracy passed the illegal order dated 11.10.10 vide which accused no.8 himself decided the case of title suit and also decided the share of accused no.1 to 4 instead of pendency of title suit before the court and also decided the plot no. & Kheshra no. on which part jamabandi has got be allowed to accused no.1 to 4.

11. That it is to put on record that accused persons 1 to 4 themselves filed their written statement in T.P.S. 112/86 on 24.09.2010 for contesting the suit and still contesting the suit and matter is pending from Civil Court to Apex court that whether they are eligible to the share or not and the suit is in initial stage.

12. That accused 1 to 4 themselves made an averment & pray before the court in Para-15 of their W.S. stated that under the Circumstances the suit for partition is fit to be decreed with 1/4$^{th}$ share of the persons as given in paragraph 13 above which includes 1/4$^{th}$ share of these defendants together, which still is not decided till date as this Complainant has objection.

13. That the defendant accused no.1 to 4 further in para -17 stated that the suit of partition may be decreed with 1/4$^{th}$ share to these defendants and the plaintiff is not entitled to any relief nor the suit is fit to decreed contrary to what have been submitted above by these defendants.

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Which still is not decided till date as this Complainant has objection.

14. That further in Para -19 it is stated by the defendant accused that while passing decree of partition in the aforesaid suit it is required to be specifically ordered that the properties being given in the Schedule below be not allotted to these defendants by the advocate commissioner, rather those properties should be allotted only to the plaintiff and other defendants who have sold of by the plaintiff and other defendants. Which still is not decided till date as this Complainant has objection.

15. That further when the Complainant came to know about the said order of accused no. 8 then he made a protest and filed Mutation Appeal No. 14 of 2011-12 before DCLR Danapur stating the whole fact but it is surprising that accused no. 9 instead of set aside the said order threaten complainant that he will pay money for doing so and passed a suppressing order overlooking the principles of law on 28.07.12."

5. Thus, in the given situation, any prudent man can understand that the present complaint case is designed to pressurize the petitioners and it is practically a cloak of criminal offence. As stated above in the preceding paragraphs, the basic dispute is Title Partition Suit and share in the joint family property. At one point of

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time, the partition suit was compromised behind the back of the husband of the petitioner no.1, who was essentially coparcener and necessary party in the partition suit. The compromise decree between the parties in Title Partition Suit was set aside, as it was vitiated by fraud and misrepresentation. The Court in exercise of civil jurisdiction has the occasion to discuss in detail the conduct of the opposite party no.2 herein, in the matter of practicing fraud in procuring a decree in title partition suit. The relevant paragraphs of the judgment are quoted herein below to appreciate the background of the present complaint case.

> "10. Keeping in view, the above said well laid principles can it be said that a court, in view of the facts brought to its notice revealing prima facie commission of fraud and abuse of its process, refuse to hold enquiry in order to find out truth and pass corrective orders in appropriate cases? The answer is clearly in negative. This, however, leads to the issue of the locus standi of a person who is not a party to the proceeding before the court but prejudiced by the order obtained in the said proceeding by practising fraud, to file and maintain a petition for recall of the same before the said Court.
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> 11. It is true that a person who is not a party to the suit in which the compromise decree has

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been passed can maintain a suit for seeking the declaration that the said compromise decree will not be binding upon him but after the widening of the power of the Court under Order 23 Rule 3 C.P.C. as noticed earlier it would now be difficult to hold that the court which has passed the compromise decree has no jurisdiction to entertain a petition by the said person seeking recall of the order recording the compromise allegedly obtained by fraud. It has not been disputed that by invoking the inherent jurisdiction of the Court or by filing a suit, in the present facts and circumstances, the same result would ensue. As such it would not be "a correct disposition to permit the expense and delay of separate suit." (See-36 I.A 197 Privy Council). 12. While considering the locus standi of the third party to invoke the inherent jurisdiction of the Court for recalling the order vitally affecting his rights, a learned Single Judge in (Rash Bihari Majumdar Vs. Keeran Kumari Sinha)A.I.R. 1925 Cal. 1145 has held:

**"The application being one under Section 151 of code of civil procedure invoking the inherent powers of the courts to make an Order necessary for the ends of justice, the question as to the locus standi of the Applicant can hardly arise. The Petitioner was, no doubt, not a party to a mortgage**

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**suit, but it cannot be urged for a moment that he is not vitally interested in the order which had been passed which he seeks to be vacated"**

On the basis of the above discussions, it is held that a person, even though not a party to the suit, can invoke the inherent jurisdiction of the Court seeking recall of the order recording a compromise decree obtained by the parties to the suit collusively and fraudulently vitally affecting the rights of the said person. The jurisdiction of the Court under Order 23 Rule 3 C.P.C has been purposefully expanded by amendment to avoid multiplicity of the proceeding and prolonging of litigation.

13. In the present case the fact of Surendra Kumar @ Satyapal Verma as one more son of Chandeshwar Prasad Singh and thus a coparcener having a share in the suit property had been actively suppressed by the parties to the suit for obvious reasons. The fact of relinquishment by him of his share in the joint family property after accepting "Nanihali" property by gift, which might have justified his non-impleadment as party to the suit, had also not been mentioned in the pleadings. The court was clearly made to believe that all the persons interested in the suit property and having a share in it were present before it and had settled their dispute by compromise. The court, thus,

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had accepted the compromise in the background of the facts as presented before it by the parties to the suit. 14. The issue of suppression of material facts amounting to commission of fraud upon the court has come to be examined by a bench of this Court in (Bindeshwari Pd. Chaudhary Vs. Debendra Pd. Singh & Ors. (AIR 1958 Patna 618), and it has been observed as follows:-

> **"… If fraud has been committed upon the party and as a result of that fraud the court has been misled into passing certain orders which otherwise it would not have passed, then it is a fraud upon the court itself and that in such case, under its inherent powers the Court is not only entitled to, but it must, set aside any order or orders which may have been passed by it upon a false representation…"**

The Hon'ble Supreme Court has also considered the facets of fraud upon court and the exposition of law in this regard made in (Ramchandra Singh Vs. Savitri Devi) 2003 (4) PLJR 208 (SC) is as follows:-

> **"18. A fraudulent misrepresentation is called deceit and consists of leading a man into damage by willfully or recklessly causing him to believe an act on falsehood. It is a fraud in law if a party makes representations which he knows to**

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**be false, and injuries ensue therefrom although the motive from which the representations proceeded may not have been bad."**

It has been further observed:

**"An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to property would render the transaction void ab initio. Fraud and deception are synonymous".**

Similar view has been expressed by the apex court in (S.P. Chengalvaraya Naidu Vs. Jagannath )1994 1 SCC 1 observing as follows:-

**"… The courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands … The fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another loss. It is a cheating entertained to get an advantage … A litigant, who approaches the court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to get advantage on**

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**other side then he would be guilty of playing fraud upon the court as well as on the opposite party…"**

15. The parties to T.P.S. No. 112/1986 clearly colluded with each other in keeping out Surendra Kumar @ Satyapal Verma from the suit and suppressing the fact of his share in the suit property and obtained the compromise decree by making the court to believe that all the share holders in the suit property had settled their dispute by way of compromise. Nothing prevented the parties to T.P.S.No. 112/86 from stating the facts of family arrangement and relinquishment of his share in the ancestral property (suit property) by Surendra Kumar @ Satyapal Verma in the suit itself and entering into compromise in the suit thereafter in presence of Surendra Kumar @ Satyapal Verma who would have no objection to the same, if those facts were true. This conduct of the parties to T.P.S. No. 112/86, in itself, is expression of their intention to gain something surreptitiously.

16. The learned counsel appearing on behalf of the Petitioners has strongly relied upon a decision reported in 2009(2)PLJR 168(SC) to buttress his submission that the compromise decree passed in T.P.S.No. 112/86 would not be binding upon the Applicants as they were not parties thereto and as such they cannot be said

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to be aggrieved by the same and they are not entitled to maintain the petition for setting aside the compromise decree. However, this decision by the Apex Court has been rendered in entirely different setting of facts and although the bar of limitation has been dealt with but the question of maintainability of a petition, by a stranger to the decree for setting aside the Compromise decree has no where been considered. In the present case, there is no evidence brought on record to show that the Applicants had the prior knowledge of the T.P.S.No.112/1986 and the compromise decree passed therein.

17. In view of the aforesaid well settled principles of law there is no escape from the conclusion that the parties to T.P.S. No.112/1986 had played a fraud upon the court as well as upon the Applicants (opposite parties in this revision application) by suppressing the material facts from the notice of the court relating to the interest of the Applicants or their predecessor in the suit property. There is, therefore, no legal infirmity in the conclusion reached upon by the learned court below that the decree on the basis of compromise had been obtained by the Petitioners of this revision application surreptitiously and consequently it is held that there is no illegality in the impugned order of the Court compromise decree as null and void after setting aside the

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orders dated 02.05.1987 and 15.01.1988."

6. It is true that the jurisdiction under Section 482 Cr.P.C. is to be exercised sparingly, but if the situations cry out, the Court for the ends of justice is required to exercise jurisdiction under Section 482 of the Cr.P.C. In the totality of the facts and situation of this case, I am of the considered view that the present complaint case is pure and simple case of civil dispute with over tone of criminal offence. The basic dispute is partition of the joint family property and the is still pending in Title Partition Suit No. 112 of 1986 and the respective share of the parties will abide by the decision in the partition suit. Mutation or entries in the Revenue record in favour of either party does not confer any right, title and interest. Their respective right, title and interest in the property in question is to be governed to the final adjudication of the pending partition suit no. 112 of 1986 and during the pendency of the said proceeding any order passed by revenue authority is of no consequence.

7. For the ends of justice, this Court is of the view that the dispute as to the respective share in the joint family property will come to a rest by the final adjudication in the pending title partition suit and as such the entries made in the revenue record would finally abide by the decision in the title partition suit and as such the present complaint case, in the backdrop of the pending

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dispute with regard to the share in the joint family property, is uncalled for. The Hon'ble Supreme Court has noticed the growing tendency amongst the litigant to give civil cases colour and complexion of criminal cases. The Apex Court in the case of **G. Sagar Suri & Another Vs. State of U.P. & Ors**., reported in **(2000) 2 SCC 636** noted that civil dispute has been given cloak of criminal offence. The judgment of the Apex Court judgment in case of **Paramjeet Batra v. State of Uttarakhand**, reported in **(2013) 11 SCC 673** is also on the same line. Para 12 of the same is quoted herein below for ready reference:

> "12. While exercising its jurisdiction under Section 482 of the Code the High Court has to be cautious. This power is to be used sparingly and only for the purpose of preventing abuse of the process of any court or otherwise to secure ends of justice. Whether a complaint discloses a criminal offence or not depends upon the nature of facts alleged therein. Whether essential ingredients of criminal offence are present or not has to be judged by the High Court. A complaint disclosing civil transactions may also have a criminal texture. But the High Court must see whether a dispute which is essentially of a civil nature is given a cloak of criminal offence. In such a situation, if a civil remedy is available and is, in fact, adopted as has

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happened in this case, the High Court should not hesitate to quash criminal proceedings to prevent abuse of process of court."

8. Thus the Court in the totality of the fact situation of this case comes to the conclusion that the dominant purpose of the present case is vexatious, as it is basically a civil dispute couched in the criminal case format and it is thus covered by the Apex Court judgment in case of **State of Haryana and others Vs. Ch. Bhajan Lal and others**, reported in **AIR 1992 SC 604**. The Court finds substance in the submission of the petitioners that the present case is an abuse of the process of law and accordingly the order dated 19.04.2014 passed by Sri Uma Shankar, Judicial Magistrate, 1st Class, Danapur in Complaint Case No. 1284 (C) of 2012 is hereby quashed.

9. The application is accordingly allowed.

**(Anil Kumar Upadhyay, J)**

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