

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.2 of 2016

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Dinanath Sah son of Late Shyama Nand Sah resident of Village - Khawaspur Kala,
P.S. - Doriganj, District - Saran at present residing at Kanpur - 128K 106A,
Yashoda Nagar, P.S. - Navwasta, District - Kanpur.

..... Plaintiff

.... Petitioner

Versus

1. Ganesh Prasad son of Late Ramanand Sah
2. Rajan Prasad son of Late Ramesh Sah
3. Rajesh Kumar son of Late Ramesh Sah
4. Raj Kumar son of Late Ramesh Sah All residents of Village - Khawaspur Kala,
P.S. - Doriganj, District - Saran at present residing at Mohalla - Sahebganj
Chawk, Sonarpatti, P.S. - Chapra Town, District - Saran (Bihar).
5. Radha Devi daughter of Late Ramesh Prasad, wife of Amarnath Verma C/o
Shambhu Nath Verma son of Ram Chandra Verma, resident of Nagarpalika
Road, Purvi Fal Mandi, District - Deoria (Uttar Pradesh).
6. Ragni Devi daughter of Late Ramesh Prasad, wife of Vishal Kumar Verma
resident of Mohalla - Gola Bazar, Ward No. 9, P.O. & P.S. - Gorakhpur, District
- Gorakhpur (Uttar Pradesh).

..... Defendants

.... Opposite parties

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Appearance :

For the Petitioner	: Mr. Raju Giri, Advocate Mr. Santosh Kumar Mishra, Advocate
For Opposite party No. 1	: Mr. B.P.Pandey, Sr. Advocate Mr. Rakesh Kumar Advocate
For Opposite party Nos. 3 & 4:	Mr. Ajay Kumar Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 19-05-2017

Heard Mr. Raju Giri, learned Counsel for the petitioner, and Mr.
B.P.Pandey, learned Senior Counsel appearing for the defendant –
opposite parties.

2. This revision application has been filed against the order
dated 28.9.2015 passed in Misc. Case No. 24 of 2008 by which the
learned court below has dismissed the said miscellaneous case filed for
setting aside the compromise decree passed in Partition Suit No. 527 of
2002 on the ground of fraud.



3. It would be pertinent to notice the relevant facts of the case in order to appreciate the rival submissions on behalf of the parties. Partition Suit No. 527 of 2002 was filed by the plaintiff-petitioner claiming partition of his half share in the suit property. During pendency of the said suit a compromise petition dated 30.8.2004 (Annexure 2) was filed on behalf of the parties praying for acceptance of the compromise and disposal of the suit in accordance with the said compromise. The learned Court below examined the parties to the suit on the issue of acceptance of compromise. The plaintiff-petitioner filed his examination-in-chief on affidavit on 2.5.2005 (Annexure 'A' to the supplementary counter affidavit) wherein the fact of compromise was accepted. It further transpires that in his cross-examination also he accepted the fact of compromise and affirmed his signature on the compromise petition and its identification by his Advocate. The matter was however sent to Lok Adalat by the learned court below. The Lok Adalat, after taking into notice the compromise petition filed in the suit, the signatures by the parties on the compromise petition, as well as identification of the same by their advocates and the evidence of the parties on record accepting the compromise, passed the award on 30.06.2005 (Annexure-3) in terms of the compromise and sent the records back to the court. The learned court below thereafter passed the decree(sealed and signed on 25.07.2005) (Annexure-4) disposing of the suit in terms of the compromise as recorded by the Lok Adalat and directing the compromise petition to be part of the decree.

4. The further relevant fact is that after nearly three years, the plaintiff-petitioner filed Misc. Case No. 24 of 2008 on 15.7.2008



purporting to be under Order 23 Rule 3 and Section 151 CPC praying for setting aside the compromise decree passed in the Partition Suit No. 527 of 2002 alleging perpetration of fraud by the defendants. The learned court below, however, after hearing the parties dismissed the Misc. Case No. 24 of 2008 by order dated 11.11.2008 primarily on the basis that the award passed by the Lok Adalat was unquestionable before the court. The plaintiff-petitioner challenged the order of dismissal of the said miscellaneous case before this Court in C.R. No. 235 of 2009. This Court by order dated 8.4.2013 allowed the revision application and remitted the matter back to the trial court for passing a fresh order in accordance with law.

5. After the remit, the trial court, after hearing the parties has passed the impugned order dismissing the miscellaneous case holding that the fraud in the compromise as alleged has not been established.

6. Calling in question the legal defensibility of the impugned order, Mr.Giri, learned counsel for the petitioner, has mainly dwelt upon the ambit and sweep of the provisions pertaining to the limit of the jurisdiction of a Lok Adalat constituted under the Legal Services Authorities Act, 1981. It has been submitted that a Lok Adalat has no jurisdiction to entertain property disputes and even otherwise also a Lok Adalat can have the jurisdiction over the matter only when it reaches to the Lok Adalat in accordance with the prescribed procedure where again the consent of the party for reference of their dispute for resolution by a Lok Adalat is prerequisite. It has been contended, on the basis of the celebrated legal principle, that the power must be exercised in the prescribed manner alone and in no other manner. Highlighting the facts



of the case, it has been submitted that the parties never agreed for the reference of the suit before Lok Adalat and further the petitioner never appeared before Lok Adalat and admittedly did not put his signature upon the award which was signed by the son of defendant no.1 falsely claiming to have been authorized by the petitioner to do so. It has been, thus, argued that the fraud in obtaining the award by Lok Adalat is explicit but the learned court below has conveniently sidelined the glaring facts before passing the impugned order. It has also been propounded that fraud vitiates even the most solemn act and as such the award by the Lok Adalat in the present case cannot be legally sustained and in the facts and circumstances of the case, the same ought to have been held to be non-est in the eye of law also for the reason of absence of inherent jurisdiction of Lok Adalat to entertain the dispute. In order to bolster the submissions, reliance has been placed on the decision in the case of ***Sri Niwas Raj Vs. Mahendra Raj, 2014 (1)PLJR 476, Bibi Sayeeda Khatoon Vs. The State of Bihar, 2014(4)PLJR 232, A.V.Papayya Sastry Vs. Govt.of A.P., 2007 (4)SCC 221 and Hukam Chand Shyam Lal Vs. Union of India, AIR 1976 SC 789.***

7. Per contra, Mr. Pandey, learned senior counsel for the opposite parties, at the outset, has put stress on the fact that the impugned order has been passed in pursuance to the remand order of this Court in C.R.No.235 of 2009 directing the court below to investigate the issue of fraud in the compromise as alleged by the petitioner. It has been contended that a bare perusal of the order dated 08.04.2013 (Annexure-6) passed in C.R.No.235 of 2009 would reveal that this Court, after considering the entire facts as well as submission on behalf of the



parties, has come to the conclusion that even the award passed by a Lok Adalat can be questioned on the anvil of fraud before a civil court either in a suit or in a miscellaneous case under Order 23 Rule 3 C.P.C. It has been propounded, on this base, that the learned court below has committed no illegality in determining the issue of fraud in the compromise and recording the finding of fact in that regard, in terms of the order of this Court. Learned senior counsel has further emphasized that the issue of lack of jurisdiction of Lok Adalat in the matter, so adroitly put forth on behalf of the petitioner, was there before this Court in C.R.No.235 of 2009 or in any view of the matter, would be deemed to be there between the parties in the said revision application and this issue now cannot be raised again in this revision application for assailing the impugned order. It has been also argued that the fact of compromise has been accepted by the petitioner in his deposition before the court and it is nowhere his case that he never deposed before the court accepting the settlement of dispute by compromise and therefore the learned court below has committed no error of jurisdiction or illegality in negating the allegation of fraud as made by the petitioner and the impugned order does not deserve interference in the revisional jurisdiction. Lastly, it has been submitted that the fact of reference of the suit before Lok Adalat by the learned court below now requires no emphasis in view of the allegation of fraud in the compromise becoming the core issue after the order of this Court in previous revision application of the petitioner.

8. The ambit and scope of Order 23 Rule 3 CPC along with proviso therein came up for consideration before the apex court in the



case of **Banwari Lal vs.Chando Devi (1993) 1 SCC 581**. Their lordships have observed as follows:

“7. By adding the proviso along with an explanation the purpose and the object of the amending Act appears to be to compel the party challenging the compromise to question the same before the court which had recorded the compromise in question. That court was enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner. The explanation made it clear that an agreement or a compromise which is void or voidable under the Indian Contract Act shall not be deemed to be lawful within the meaning of the said rule.....”

(emphasis supplied)

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“ . 14.....The court before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that court has to decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act. If the agreement or the compromise itself is fraudulent then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3 and



as such not lawful.....”.

(emphasis supplied)

9. It is demonstrably clear from the dictum of the apex court as above that a party to the compromise in a suit either before its acceptance or after its acceptance resulting into a compromise decree, can question the fact as well as the legal validity of the compromise before the same court and then the said court is enjoined to decide the said question as to whether adjustment or satisfaction has been arrived at between the parties to the suit in a lawful manner.

10. Evincibly, therefore, the moot question to be considered in such a case pertains to lawful adjustment or satisfaction by way of compromise between the parties with regard to the dispute(s) arising between them in the suit. This aspect is also glaring from a bare reading of the provisions as contained in Order 23 Rule 3 CPC. Inference, is thus inevitable that once after such adjustment of satisfaction between the parties is established before the Court, the disposal of the suit as a follow up action in terms thereof is only consequential.

11. From perusal of the averments made in the petition filed under Order 23 Rule 3 CPC and Section 151 CPC upon which the Misc. Case No. 24 of 2008 was instituted it is transparent that the main thrust of the plaintiff-petitioner is upon the denial of the compromise or settlement of the controversy in the suit with allegation that the compromise petition filed therein is the result of the active fraud played by the opposite parties. However, it is nowhere the case of the plaintiff-petitioner that he never appeared before the court for deposition in support of the compromise and had never made the statements as



recorded by the court. Significantly, it is also not the case of the petitioner that he had deposed before the court accepting the compromise in terms mentioned in the compromise petition under coercion, undue influence or misrepresentation. Considered in this backdrop, the allegation that the compromise petition was manufactured by the defendant-opposite party on the plain papers with signatures of the petitioner obtained thereupon, stands completely diluted. Learned court below in the impugned order has elaborately scrutinized the facts and evidence on behalf of the parties before rejecting the plea of fraud as raised by the petitioner. The findings by the learned court below are based upon evidence which were acceptable and could have been relied upon and this Court is not persuaded to hold the same to be perverse or unreasonable in any manner.

12. With regard to the contention on behalf of the petitioner pertaining to the invalidity of the award by Lok Adalat on the ground of fraud and lack of jurisdiction, noticeably it is not the case of the petitioner that the compromise petition, which was placed before the Lok Adalat and accepted by it as the basis of the award, was not the same compromise petition as filed in the suit and affirmed by the petitioner before the court in his deposition. There is also no allegation of interpolation or change in the terms of compromise as mentioned in the compromise petition. Evidently enough, the allegation of fraud was to be enquired into with regard to the said compromise, and, in fact, after the order of this Court in C.R.No.235 of 2009 (Annexure-6), there was definite convergence of the controversies between the parties to this point alone. It would be fruitful to notice the relevant parts of the said



order as follows:

“.. Thus even where the signature of the petitioner as a plaintiff is said to be occurring on the plaint, the compromise and his deposition on the compromise before the trial Court, the petitioner was well within his jurisdiction to question the compromise decree by filing a miscellaneous case in order to establish that the compromise decree is a fraud practiced by the other parties to the compromise.

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Nodoubt, an award passed by a Lok Adalat in terms of the Act is a decree and is not appealable but just as a compromise decree can be questioned by a party to a compromise under the proviso to Order 23 Rule 3 of the Code read with Section 151 thereof before the Court which passed the decree on grounds of fraud, even the awards passed by the Lok Adalat can be questioned on the anvil of fraud before the Civil Court by way of a suit or a miscellaneous case, as the case may be. Since in the present case, the compromise was filed before the trial Court and was referred to the Lok Adalat and after the Award of the Lok Adalat, the trial Court has passed a compromise decree in the light of the award, the petitioner very rightly filed the miscellaneous case in question under



the proviso to Order 23 Rule 3 read with Section 151 of the Code.....

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It is incomprehensible why the trial court did not proceed to record a compromise in accordance with law and rather deemed it proper to refer the matter to the Lok Adalat even when there was no such request by any of the parties to the compromise. The second instance of abdication is the order impugned. The moment a party questions a compromise decree on the anvil of fraud, it is the bounden duty of the Court passing a compromise decree to make an enquiry into the application and afford all the opportunity to the party complaining, to establish the fraud...”

13. It would be further evident from the above order dated 08.04.2013 that the legal validity of the award passed by Lok Adalat was directly in question before this Court in C.R.No.235 of 2009 filed by the petitioner and this Court, after considering the entire facts and circumstances, had remitted the matter back to the trial court for investigating only the issue of fraud in the compromise. The petitioner had accepted the order of this Court and joined the proceeding in the court below for determination of the said limited issue of fraud in the compromise. Once after the said issue has been decided against him, the petitioner now cannot be allowed to reagitate the invalidity of the award or the decree passed on that basis on ground other than the fraud as alleged. The issue of invalidity of the award for the reasons other than



the fraud in the compromise would be deemed to have been finally settled between the parties by this Court in the remand order passed in C.R.No.235 of 2009 which now cannot be reopened in view of the principles laid down by this Court in ***Sunder Vs. Phuljharla, AIR 1957 Patna 534.***

14. Examining this matter from another angle also, a studied scrutiny of the submission on behalf of the petitioner in this regard reveals definite digression from the main issue pertaining to the legal validity of the compromise in terms of the proviso to Order 23 Rule 3 C.P.C. read with Explanation thereto. It is the factum of the compromise and its legal validity which can be examined in such a proceeding and that is exactly the substance of the direction of this Court in the order dated 8.4.2013 (Annexure 6) passed in C.R. 235 of 2009. The controversy, so ardently sought to be raked up on behalf of the petitioner, pertaining to lack of jurisdiction of Lok Adalata to pass the award or its vulnerability for other reasons appears to be only a maladroit effort to create concavity in the matter after the remand order of this Court and further after the determination of the issue of fraud in the compromise as alleged by the petitioner. It is all the more so in view of the fact in prominence that there is singular compromise between the parties as evidenced by the compromise petition filed in the suit and there was no separate compromise before Lok Adalat. There remains therefore no scintilla of doubt that the core question for determination before the court was as to whether the compromise entered into between the parties to the Partition Suit No. 527 of 2002 was lawful or not in terms of the explanation to Order 23 Rule 3 CPC.



15. From perusal of the impugned order it is apparent that the learned court below has considered the submission and evidence adduced on behalf of the parties and thereafter has come to the conclusion that the allegation of fraud in the compromise as alleged could not be established by cogent and convincing evidence. Noticeably it is not the case on behalf of the plaintiff-petitioner that the learned court below has omitted to consider any material evidence on behalf of the parties. At this juncture, it is condign to repeat that neither in the court below nor before this Court, the petitioner has denied or explained his deposition before the court in the proceeding of the suit where he has affirmed the compromise in question.

16. The limits of the revisional jurisdiction of the High Court under Section 115 CPC has been considered by the Apex Court in ***M/s D.L.F. Housing and Construction Company, Delhi vs. Sarup Singh, (1969) 3 SCC 807*** and it has been ruled as follows:-

“5. The position thus seems to be firmly established that while exercising the jurisdiction under Section 115, it is not competent to the High Court to correct errors of fact however gross or even errors of law unless the said errors have relation to the jurisdiction of the Court to try the dispute itself.....”

17. Examining the matter on the anvil of the above dictum, indubitably the learned court below has the jurisdiction to entertain the dispute as raised in Misc. Case No. 24 of 2008 and the findings of fact recorded by the learned court below in the impugned order cannot be questioned in the revisional jurisdiction on the pleas centering around reappraisal of evidence. Even otherwise also this Court has not been



persuaded to conclude that the findings recorded by the court below are perverse or unreasonable in the sense that such finding could not have been arrived on the basis of evidence and materials on record.

18. For the aforesaid reasons and discussions this Court does not find merit in this revision application, which is accordingly dismissed.

(V. Nath, J.)

Snkumar/-

AFR/NAFR	NAFR
CAV DATE	N/A
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