

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.110 of 2014

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1. Nand Lal Singh son of Late Baijnath Singh
2. Manish Singh @ Bhola
3. Satendra Singh
4. Amar Singh All (2 - 4) are sons of Late Lallan Singh
5. Mostt. Dulari Devi, wife of Lallan Singh All resident of Mohalla - Koerpurwa
in town of Buxar, P.S. & District - Buxar

.... Petitioner/s

Versus

1. Mostt. Ram Deiya Devi wife of Late Bishwanath Singh
2. Sunaina Devi D/o Late Bishwanath Singh & wife of Motilal Singh, resident of
Mohalla - Koerpurwa, Brahm Asthan, Mallah Toli in town of Buxar, P.S. &
District - Buxar

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr Arbind Kumar Singh
Mr. Manish Rai Sharma
For the Respondent/s : Mr. Shashi Shekhar
Mr. Ranjan Kumar Debey
Mr. Parth Housar

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR

SRIVASTAVA

ORAL JUDGMENT

Date: 11-08-2017

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

2. This Revision petition has been filed against the order dated 26.04.2014 passed by the learned Sub-Judge, 1st, Buxar in Miscellaneous Case No. 16 of 2012 by which and whereunder he allowed the aforesaid Misc. Case no. 16 of 2012 setting aside the compromise decree passed in Title suit no. 128 of 2009 and restored the aforesaid Title suit no. 128 of 2009 to its original number.



3. The brief facts are as follows:- The petitioners filed Title suit no. 128 of 2009 against Bishwanath Singh, who appeared in the above stated Title suit no. 128 of 2009 but, subsequently, compromise petition was filed and after filing of the compromise petition, the learned court below examined the parties to the aforesaid compromise petition including Bishwanath Singh and on the basis of compromise petition, the suit was decreed vide order dated 03.08.2009 and, thereafter, final decree was prepared.

4. However, on 09.10.2012, the aforesaid Bishwanath Singh filed Misc. Case No. 16 of 2012 before the court below under section 151 of the Civil Procedure Code challenging the compromise decree passed in Title suit no. 128 of 2009 on the ground that fraud was played upon the court in obtaining the compromise decree and, as a matter of fact, the petitioners obtained his thumb impression and signature on plain paper and converted the said paper into compromise decree. The petitioners appeared in Misc. Case no. 16 of 2012 and raised objection and the evidences of both parties were recorded and having considered the evidence available on the record as well as pleadings of the parties, the learned Sub-Judge 1st, Buxar passed the impugned order against which the revision petition has been filed.

5. It is pertinent to note that during pendency of Misc.



Case no. 16 of 2012, the original applicant Bishwanath Singh died and in his place, the opposite parties being his wife and daughters were substituted respectively.

6. Learned counsel appearing for the petitioners submits that the learned Sub-Judge 1st, Buxar committed error in passing the impugned order as the learned Sub-Judge 1st, Buxar did not consider the evidences available on the record in its right perspective. He further submits that the learned Sub-Judge 1st, Buxar failed to take note of this fact that the original applicant namely, Bishwanath Singh was examined by the court in support of the aforesaid compromise petition and in his deposition, Bishwanath Singh accepted the genuinenesses of the compromise petition. He further submits that the learned Sub-Judge 1st, Buxar has not whispered even a single word in respect of deposition of Bishwanath Singh. He also submits that the Misc. Case No. 16 of 2012 was filed after three years of passing the compromise decree but the learned court below, without considering the period of limitation, passed the impugned order which is not in accordance with law and, therefore, the impugned order is liable to be set aside.

7. On the other hand, learned counsel appearing for the opposite parties refuted the above stated submissions arguing that the scope of revisional court is very limited because section 115 of Civil



Procedure Code does not give power to the revisional court to interfere into the order of Subordinate court unless the Subordinate court fails to exercise its jurisdiction or transgress the jurisdiction vested in it by law or acted illegally or with material irregularity. He further submits that Order 23 Rule 3A of the Civil Procedure Code says that no suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful and therefore, if a person wants to challenge a decree passed on the basis of compromise, the said person has only remedy to file a petition under section 151 of the Civil Procedure Code. In support of his contentions, he relied upon a decision rendered **in the case of Banwari Lal v/s Smt. Chando Devi & Anr. reported in AIR 1993 S.C 1139** in which their lordship have held that if a decree is passed on the basis of compromise and the party to the aforesaid decree wants to challenge the aforesaid compromise decree, the only remedy available to file appeal or to file a petition under section 151 of the Civil Procedure Code before the concerned court. He further submits that in the present matter, the learned court below has considered all pros and cons of the matter and passed the impugned order and, therefore, there is no scope for this Court to interfere into the matter.

8. Having heard the rival contentions of both the parties, I went through the record. It is an admitted position that Title suit no.



128 of 2009 was decreed on the basis of compromise filed by the parties to the aforesaid Title suit no. 128 of 2009. Furthermore, it is also an admitted position that near about after three years of passing decree in Title suit no. 128 of 2009, the original defendant of that Title suit no. 128 of 2009 filed Misc. Case No. 16 of 2012 under section 151 of the Civil Procedure Code for setting aside the aforesaid compromise decree on the ground that the compromise was taken by playing fraud upon him. The impugned order reveals that in course of inquiry, the parties adduced their evidences and the learned court below passed the order on the basis of evidences placed before him. The impugned order further reveals that the deposition of original defendant/applicant namely, Bishwanath Singh recorded in Title suit no. 128 of 2009 was not brought on the record by either of the parties to the aforesaid proceeding and, therefore, learned Sub-Judge 1st, Buxar did not get an opportunity to discuss the deposition of Bishwanath Singh recorded in Title suit no. 128 of 2009. Moreover, it is well known fact that wrong consideration of fact is excusable but non consideration of any fact is not excusable. In the present case, the opposite parties admitted in their petition that Bishwanath Singh original defendant/ applicant had appeared in Title suit no. 128 of 2009 and deposed before the court but only stand of the opposite parties is that the aforesaid original applicant/ defendant Bishwanath



Singh was not aware about the factum of the compromise. Therefore, in my view, this matter should be sent to the court of Sub-Judge 1st, Buxar for giving specific finding on the deposition of Bishwanath Singh recorded in Title suit no. 128 of 2009.

9. Accordingly, the impugned order dated 26.04.2014 is, hereby, set aside and the matter is sent back to Sub-Judge 1st, Buxar with direction to him to pass a fresh order in the aforesaid Misc. Case No. 16 of 2012 after giving sufficient opportunity to both the parties to adduce evidence on the point of deposition of original defendant/applicant Bishwanath Singh recorded in Title suit no. 128 of 2009.

10. Accordingly, this Civil Revision petition stands disposed of.

(Hemant Kumar Srivastava, J)

N.K/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	31.08.2017
Transmission Date	

