

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1200 of 2009

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1. Ishakh Miyan @ Ishahak Dhobi, S/o Late Mauj Miyan,
 2. Deo Saran Singh, S/o Ram Bachan Singh,
 3. Nageshwar Singh,
 4. Rameshwar Singh, Both are s/o Late Shoe Narayan Singh,
 5. Parasuram Singh,
 6. Ram Pujan Singh, S/o Late Ramjash Singh,
 7. Baljee Rai, S/o Late Jokhu Rai,
 8. Tazama, W/o Late Isharail Miyan,
 9. Lallan Singh,
 10. Dukhi Singh, Both are S/o Late Shobhan Singh,
 11. Rajdeo Sharma, S/o Late Ramayan Sharma,
 12. Om Prakash Sharama, S/o Late Rajendra Sharama,
 13. Ram Naresh Rai, S/o Late Bhagrashan Rai,
 14. Kanti Devi, W/o Late Shadhu Saran Singh,
 15. Bidha Sagar Singh, S/o Late Ram Kripal Singh,
 16. Lok Nath Singh, S/o Late Shri Kishun Singh,
 17. Ram Badai Singh,
 18. Sheo Balak Singh,
 19. Jagat Narayan Singh, All are sons of Late Shankar Singh, resident of Village- Jaijor, Pargana Andar, PO- Nandpur Amwari, PS- Andar, District- Siwan.
 20. Gangadayal Singh, S/o Late Chhathu Singh, R/o Village- Baheliya, Pargana Andar, PS- M.H. Nagar, Hashanpura, District- Siwan.

.... Petitioner/s

Versus

1. Kishun Singh, S/o Late Gaya Mahato, resident of Village- Jaijor, PS- Andar, District- Siwan.
2. Anil Kumar son of Late Meena Devi
3. Kaldhari Singh H/o Late Meena Devi
4. Jitendra son of Late Meena Devi, All R/o Dudahatola, Karshar, P.S.- Raghunathpur, Distt- Siwan
5. Soniya Devi, W/o Surendra Singh,
6. Manju Devi, W/o Mahatam Singh, Both are D/o Late Bikrama Mahato, R/o of Village- Amwari, PO- Nandpur Amwari, PO- Raghunathpur, District- Siwan.

.... Respondent/s

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Appearance :

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

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL ORDER

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01.11.2017

1. Heard learned counsel for the petitioners as



well as learned counsel for respondent no.1. No one appeared on behalf of the remaining respondents in spite of repeated call.

2. Petitioners have filed this petition under Order 23 rule 3 and section 151 of the CPC for recall of compromise decree dated 20.1.2000 passed by a bench of this court in F.A. no. 208/1979.

3. Admittedly, one Most. Rameshwari filed Title Partition suit no. 626/1972/29/1978 against Gaya Mahto and others and during the pendency of the aforesaid title partition suit, Most. Rameshwari transferred her share to respective petitioners either by executing registered sale deed or by executing gift deed. Moreover, in the aforesaid Title Partition suit no. 626/1972/29/1978, preliminary decree was passed which was challenged before this court by filing F.A. no. 208/1979. During the pendency of the above stated F.A. no. 208/1979, Most. Rameshwari died and appellant got expunged name of Most. Rameshwari on the ground that Most. Rameshwari died without leaving any legal representative and accordingly, vide order no. 23 dated 13.7.1999 of F.A. no. 208/1979, name of



Most. Rameshwari was expunged. However, it appears that appellant of F.A. no. 208/1979 intentionally suppressed this fact that before her death Most. Rameshwari had already transferred her interest in the suit property to the petitioners of the present petition. It would further appear from perusal of the record that after death of Most. Rameshwari, appellant Gaya Mahto and respondent no.2, Bikrama Mahto filed compromise petition before this court in F.A. no. 208/1979 and in the aforesaid compromise petition, they pleaded that after death of Most. Rameshwari, they became entitle for half and half share in the suit property and on the basis of pleadings of the aforesaid compromise petition, this court disposed of F.A. no. 208/1979 vide order dated 20.1.2000 in terms of compromise.

4. Learned counsel appearing for the petitioners submitted that the impugned order dated 20.1.2000 goes to show that prior to filing of compromise petition, purchasers had filed intervener petition but this court was misled by the appellant and respondent no.2 of the aforesaid first appeal placing this



argument that interest of purchasers interveners had been conceded in compromise petition and due to the above stated misleading statement of appellant and respondent no.2 of F.A. no. 208/1979, a bench of this court disposed of the aforesaid F.A. no. 208/1979 in terms of compromise petition.

5. Learned counsel for the petitioners further submitted that, as a matter of fact, nothing had been mentioned in the compromise petition in respect of purchasers of the share of Most. Rameshwari which is evident from perusal of annexure 5 to the compromise petition filed in F.A. no. 208/1979. He, further, submitted that after disposal of F.A. no. 208/1979, Execution case no. 05/2004 was filed and when the concerned Nazir went on the spot to effect delivery of possession, petitioners came to know about disposal of F.A. no. 208/1979 as well as fraud played by appellant and respondent no.2 of the aforesaid first appeal and thereafter, they immediately, filed present petition for recall of order dated 20.1.2000 passed in F.A. no. 208/1979.

6. Learned counsel for the respondent no.1



refuted the above stated submissions arguing that, no doubt, petitioners are purchasers of share of Most. Rameshwari but, as a matter of fact, this court considered the claim of the purchasers at the time of passing the impugned order dated 20.1.2000 and that is the reason a bench of this court observed in the impugned order dated 20.1.2000 that claim of the petitioners had been conceded in compromise petition. He, further, submitted that moreover, petitioners have come before this court more than after nine years of passing the order dated 20.1.2000 and they have no any plausible explanation of the aforesaid delay.

7. Order 23 rule 3 of the CPC says that no suit shall lie to set aside a decree on the ground of compromise on which decree is based was not lawful and, therefore, the aforesaid provision goes to show that even if compromise decree is obtained by playing fraud, then also, a fresh suit can not be filed. There is nothing in the Code of Civil Procedure as to how a compromise decree can be challenged, if compromise decree is obtained by playing fraud upon the court. Therefore, there is only one way to aggrieved party to



challenge fraudulent compromise decree by filing petition under section 151 of the CPC before the concerned court and, therefore, in my view, petitioners have rightly filed the present petition before this court for recall of the order dated 20.1.2000 by which F.A. no. 208/1979 was disposed of in terms of compromise petition.

8. From perusal of record of the present case as well as record of F.A. no. 208/1979, I find force in the contentions of learned counsel for the petitioners that nothing had been mentioned in compromise petition filed on behalf of the appellant and respondent no.2 of F.A. no. 208/1979 in respect of purchasers-interveners though it was placed before a bench of this court at the time of passing the order dated 20.1.2000 that interest of purchasers of share of Most. Rameshwari was protected in compromise petition. Therefore, it is obvious from the aforesaid fact that fraud was played upon the court and hence, in my view, the order dated 20.1.2000 passed in F.A. no. 208/1979 can not be sustained in the eye of law.

9. Although petitioners were not made party to



the aforesaid F.A. no. 208/1979 but they ought to have been made party to the aforesaid first appeal after death of Most. Rameshwari as they had already purchased the share of Most. Rameshwari. It appears that appellant of the aforesaid appeal did not take steps for impleadment of the petitioners in the aforesaid first appeal and, therefore, the impugned order dated 20.1.2000 appears to have been passed against dead person because petitioners being purchaser of share of Most. Rameshwari were necessary party to the appeal.

10. Therefore, in the aforesaid circumstances, I have no option except to recall the order dated 20.1.2000 passed in F.A. no. 208/1979. Accordingly, this petition is allowed and the order dated 20.1.2000 passed in F.A. no. 208/1979 is recalled. Office is directed to list F.A. no. 208/1979 before the concerned bench under appropriate heading.

11. In the aforesaid manner, present petition stands disposed of.

Shahid

(Hemant Kumar Srivastava, J)

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