

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.238 of 2005

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1. BINAY SINGH , Son of Late Chandradeo Singh
2. Manoj Singh, Son of late Chandradeo Singh
3. Vijay Singh, Son of Late Sakaldeo Singh
4. Lalo Singh, son of late Sakaldeo Singh

All residents of village- Ramjichak Digha, P. S. Digha, District-Patna

... .. Petitioner/s

Versus

1. Pramod Kumar Singh, son of Radhey Shyam Singh
2. Binod Kumar Singh, Son of Radhey Shyam Singh
3. Tuntun Singh minor son of Radhey Shyam Singh

Minor under Guardianship of Radhey Shyam Singh
father and natural Guardian, All residents of Village-Ramjichak, Digha, P.S.
Digha, District-Patna

4. Manorma Devi daughter of Late Sita Ram Singh wife of Abhimanyu
Singh, resident of village- Panapur, P.S. Danapur, district-Patna
5. Sachida Singh son of Late Sidheshwar Pd. Singh
6. Dipak Singh, son of Ramdeo Singh
7. Lali Singh, son of Ramdeo Singh

All residents of village- Ramjichak, Digha, P.S. Digha,
District Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Anil Kumar

For the Respondent/s : Mr. Nitya Nand Pd.Choudhary

**CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN
SINGH**

ORAL JUDGMENT

Date : 25-10-2018

The petitioners were the respondents in the Second
Appeal No. 226 of 1994. They are seeking review of the order
and decree dated 01.08.19956, passed on a compromise petition
filed on behalf of the parties including the petitioners as
respondents in that case. It is the case of the review petitioners
that they had not filed any compromise petition and even the



Vaklatnama. It is further case of the petitioners that a forged Vaklatnama purportedly signed by these petitioners was submitted before this Court and forged and fabricated compromise petition was filed based on which this Court passed the compromise decree in the second appeal.

2. Following are the petitioners in the present review application:-

- “1. BINAY SINGH , Son of Late Chandradeo Singh
2. Manoj Singh, Son of late Chandradeo Singh
3. Vijay Singh, Son of Late Sakaldeo Singh
4. Lalo Singh, son of late Sakaldeo Singh”

3. The party position in the second appeal was as follows:-

- “1. Radhey Shyam Singh, son of Late Sita Ram Singh
2. Pramod Kumar Singh, son of Radhe Shyam Singh
3. Binod Kumar Singh, son of Radhe Shyam Singh
4. Tuntun Singh, minor son of Radhe Shyam Singh, minor under the Guardianship of Radhe Shyam Singh, father and natural guardian.

All residents of Ramji Chak, Digha, P.S. Digha, District-Patna

5. Muni Devi daughter of Late Sita Ram Singh, Wife of Ram Dayal Singh, village Bishunpura, P.S. Bihta, District, Patna

6. Manorma Devi, Daughter of Late Sita Ram Singh, wife of Abhimanyu Singh of village Panapur, P.S. Danapur District-Patna

Plaintiffs.... Appellants.

Versus

1. Sidheshwar Pd. Singh, Son of Late Bayas Singh
2. Chandradeo Singh, son of Late Bayas Singh
3. Sakaldeo Singh, son of Late Bayas Singh
4. Ramdeo Singh, son of Late Bayas Singh
5. Satya Narain Singh, son of Siodheshwar Pd. Singh
6. Sachida Singh Son of Chandradeo Singh
8. Manoj Singh minor Son of Chandradeo Singh, minor



under the guardianship of Chandradeo Singh, father and natural guardians

9. Vijay Singh, Son of Sakaldeo Singh

10. Lalo Singh, Son of Sakaldeo Singh

11. Dipak Singh,

12. Lali Singh, minor son of Ramdeo Singh, minor under the guardianship of Ramdeo Singh, father and natural guardian.

All residents of village Ramjichak Digh, P.S. Digha, District-Patna

Defendants..... Respondents”

3. Petitioners No. 4 and 5 in the present review application are sons of Sakaldeo Singh. Sakaldeo Singh was impleaded as respondent No.3 in the second appeal, whereas petitioners No. 4 and 5 were impleaded as respondents No. 9 and 10 in the second appeal. Original Petitioner No.1, namely, Chandradeo Singh, who is said to have died during the pendency of this review application was respondent No.2 in the second appeal. The cause title of the second appeal goes to suggest that four sons of Late Bayas Singh, namely, Sidheshwar Pd. Singh, Chandradeo Singh, Sakaldeo Singh and Ramdeo Singh were respondents No. 1 to 4 in the second appeal. Chandradeo Singh and his sons and sons of Sakaldeo Singh have preferred the review application, alleging fraudulent execution of Vakalatnama and compromise petition. The compromise decree was passed on 01.08.1996, whereas an



application seeking quashing of the order of the compromise decree was filed giving rise to MJC No.3335 of 2013 nearly nine years thereafter on 22.06.2005. The application was, however, allowed to be converted into Civil Review application under the orders of this Court and accordingly, the present Civil Review application came to be registered. The review application stood dismissed for default on 22.02.2006 for non-compliance of the peremptory order passed in the civil review application. The petitioners, thereafter, filed an application for restoration seven years thereafter in 2013, giving rise to MJC No.3335 of 2013. By an order dated 09.09.2014, passed in MJC No. 3335 of 2013, the review application stood restored to its original file. Notices were, thereafter, issued to the respondents. After effecting service of notices upon the contesting respondents, this matter has been placed for admission.

4. An application seeking condonation of delay of nine years and five months in filing the civil review application has been filed being I.A. No. 639 of 2006. It is the case of the petitioners set out in the application seeking condonation of delay that they were unaware of passing of the order in SA No. 226 of 1994 since they had not received any notice nor they had entered appearance. They, for the first time, applied for certified



copy on 15.02.2005, within two days after acquiring knowledge of passing of the decree and order based on the compromise petition dated 05.01.1996. They obtained certified copy of on 22.02.2005, whereafter they filed Miscellaneous Judicial Jurisdiction Case giving rise to MJC No. 1273 of 2005, which was subsequently converted under the orders of this Court into Civil Review No. 238 of 2005. It is accordingly their case that since the forged compromise petition was filed without their knowledge they were taken by surprise to learn about the compromise decree.

5. Mr. Anil Kumar, learned counsel appearing on behalf of the petitioners has placed reliance on Supreme Court's decisions in case of ***Bakshi Dev Raj and another Vs. Sudheer Kumar (AIR 2011 SC 3137)***, ***M/s Green View Tea & Industries Vs. Collector Golaghat (AIR 2004 SC 1738)***, ***Board of Control for Cricket, India Vs. Netaji Cricket Club (AIR 2005 SC 592)*** and in case of ***Pushpa Devi Bhagat Vs. Rajinder Singh (AIR 2006 SC 2628)*** to make out a case for review of the compromise decree which according to him, has been obtained fraudulently. He contends that the present review is maintainable, in view of the Supreme Court's observations in paragraphs 15 and 19 in case of ***Bakshi Devi Raj Vs. Sudheer***



Kumar (supra).

6. Mr. Nityanand Pd. Choudhary, learned counsel appearing on behalf of the respondents, on the other hand, has vehemently argued that this review application on the grounds taken in the petition is not maintainable. He has also contended that the review application is hopelessly barred by limitation and the plea which has been taken for condonation of delay is absurd and not at all tenable.

7. I have heard learned counsel for the parties and perused the records of S.A. No. 226 of 1994 and the present Civil Review application and I have given my anxious consideration to the submissions advanced on behalf of the parties.

8. What is easily noticeable from the cause title of the second appeal and the present review application that the respondents in second appeal are/were closely related being agnates. The suit was filed by the plaintiffs/appellants for redemption of a land appertaining to Plot No. 892 under Khata No. 1333 admeasuring 51 decimals in Mouza Makhumpur, Digha, Patna. The suit was dismissed by the trial Court after recording a finding that the plaintiffs failed to prove their interest over Plot No. 892 and also that the actual mortgage was



for plot No. 892 and, therefore, they did not have the right to redeem the said plot. The findings stood affirmed by the first appellate Court by judgment and order dated 18.03.1994 by the learned XII Additional District Judge, Patna, passed in Title Appeal No. 14 of 1985.

9. After second appeal having been preferred before this Court, a joint compromise petition was filed on behalf of the appellants and respondent Nos. 12(a), 4,3,5,6,11 and 12 of the second appeal which bears, *inter alia*, signature of Sakaldeo Singh, father of the petitioner Nos. 4 and 5. It also appears from the record that Chandradeo Singh had died and accordingly, his wife Most. Savitri Devi and his two sons, namely, Binay Singh and Manoj Singh (petitioners No. 2 and 3 herein) were substituted in his place in the second appeal. Petitioner No.2 was described as major son of Chandradeo Singh, whereas petitioner No.3 as minor son of Chandradeo Singh. The records show presence of Vakalatnama of Savitri Devi also in the second appeal, who is admittedly mother of the petitioner Nos. 1 and 2. The petitioners in the present review application are disputing the signature of Sakaldeo Singh as available at page no.2 of the vakalatnama since according to them, the date of execution is absent in the Vaklatnama.



10. Upon close examinations of the plea taken in the application seeking condonation of delay of nine years and five months, I am of the view that such explanation is not *bona fide* and acceptable to this Court. It is not acceptable to this Court that after nine years of passing of the decree that, too, for redemption of mortgage, the petitioners would acquire knowledge about the fact that compromise decree was obtained fraudulently.

11. I do not find any merit in the application seeking condonation of delay. I.A. No. 639 of 2006 is, according, dismissed.

12. Resultantly, Civil Review application also stands dismissed.

13. I.A. No. 1142 of 2006 and I.A. No. 1143 of 2006 also stand disposed of.

(Chakradhari Sharan Singh, J)

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AFR/NAFR	NAFR
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