

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.9 of 2015

=====

1. Abhash Chakrapani
2. Abhay Shoolpani, both sons of Dr. Gaya Prasad Sharma and Late Gayatri Devi, Both residents of Village- Lodipur, P.S.- Konch, District- Gaya, at present of Mohalla- Rampur, P.S.- Rampur, District & Town- Gaya.

.... Petitioner/s

Versus

1. Smt. Urmila Devi W/o Sri Pramod Kumar.
2. Sri Pramod Kumar S/O Late Lakhandeo Singh Both 1 and 2 residents of village- Maw, P.S.- Tekari, District- Gaya.
3. Chanchal Devi W/O Sudhir Kumar, D/O Gaya Sharma, R/O Village- Chitab, P.S.- Sherghati, District- Gaya.
4. Pushpa Sharma W/O Ramakant Sharma, D/O Gaya Sharma. R/O village- Orbiga, P.S.- Kurtha, District- Jehanabad.
5. Poonam Devi W/O Anil Kumar Vats, D/O Gaya Sharma, R/O Village- Lodipur, P.S.- Mehandia, District- Arwal.
6. Dr. Gaya Sharma @ Gaya Prasad Sharma, R/O village- Lodipur, P.S.- Konch, District- Gaya, at present of Mohalla- Rampur, District and Town- Gaya.

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Arbind Kumar Singh

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR
JHA
ORAL ORDER

9 26-09-2018 Heard Mr. Arvind Kumar Singh, learned counsel appearing on behalf of the petitioners and Mr. S.S.Dvivedi, learned senior counsel appearing on behalf of the opposite party Nos.1 and 2.

The petitioners have filed this civil revision petition against the order dated 16.12.2014 passed in Misc. Case No.18 of 2011 by which learned Munsif III, Gaya dismissed the



miscellaneous case of the petitioner as not maintainable.

Admitted facts are that O.P. No.2, Pramod Kumar is full brother of Gayatri Devi. Gayatri Devi filed Partition Suit No.170 of 1993 on 06.04.1993. A compromise petition was filed on 03.05.1993 and vide order dated 15.05.1993, the compromise was accepted and the partition suit was decreed. When Gayatri Devi came to know about the judgment and decree passed in Partition Suit No.170 of 1993, she filed Title Suit No.377 of 1993 for setting aside the compromise decree on the ground that his brother fraudulently obtained her signature on vakalatnama and on a plain paper and filed Partition Suit No.170 of 1993. His brother also filed compromise petition and the Court without examining the plaintiff, Gayatri Devi accepted the compromise. During the pendency of Title Suit No.377 of 1993, Gayatri Devi died and petitioners, sons of Gayatri Devi were substituted. O.P. Nos.1 and 2 appeared and filed petition under Order VII Rule 11 of the C.P.C. that in view of the provisions as contained in Order XXIII Rule 3A, the suit is not maintainable for setting aside the compromise decree allegedly obtained on fraud. The petitioners also filed a petition to convert the suit itself into miscellaneous case but the petition of the petitioners was also dismissed and the suit was also dismissed under Order VII Rule 11 C.P.C. on the



ground that suit is not maintainable in view of the provisions of Order XXIII Rule 3A. The petitioners filed CWJC No.12793 of 2011 against the order passed by the court rejecting the petition of the petitioners for conversion of Title Suit No.377 of 1993 into miscellaneous case but this Court held that since before hearing on the petition of the petitioners, learned court below passed order on the petition filed by the defendant under Order VII Rule 11(A) & (D) of the C.P.C. and held that the suit is not maintainable, the petition of the petitioners for converting the same is of no consequence. The petitioners also filed title appeal before the District Judge against the order rejecting the plaint under Order VII Rule 11(A) & (D).

Learned counsel for the petitioners submits that petitioners filed petition for withdrawal of the appeal and the petitioners left pairvi in the appeal. Immediately thereafter, the petitioners filed Misc. Case No.18 of 2011 but the learned Munsif vide order dated 16.12.2014 dismissed the petition that since the suit for setting aside the compromise decree allegedly obtained on the ground of fraud has already been dismissed under Order VII Rule 11(A) & (D), this miscellaneous case is not maintainable. Learned counsel for the petitioners submits that learned Munsif has not stated any reason for non-maintainability of the



miscellaneous case. The petitioners have got only remedy to file miscellaneous case for setting aside the compromise decree fraudulently obtained by nonelse than the own maternal uncle of the petitioner after duping his own sister, mother of the petitioner and obtained her signature on different papers including vakalatnama.

Mr. S.S.Dvivedi, learned senior counsel appearing on behalf of the opposite parties submits that since the appeal against the order of rejection of plaint is also pending, the petitioners cannot be allowed to pursue two remedies and the Munsif has rightly dismissed the miscellaneous petition.

Having considered the submission of both sides and on perusal of the impugned order, I find that Title Suit No.377 of 1993 filed by the mother of the petitioners was rejected on the ground that in view of the provisions of Order XXIII Rule 3A, no suit for setting aside a compromise decree is maintainable and the only remedy left to the petitioners is to file miscellaneous case before the same court for setting aside the compromise decree allegedly obtained on the ground of fraud but the learned Munsif without assigning any reason or ground for non-maintainability of the miscellaneous case dismissed the miscellaneous case as not maintainable simply on the ground that the petitioners accepted



the rejection of the plaint under Order VII Rule 11(1)(A) & (D) and the same cannot be a ground for non-maintainability of the miscellaneous case. Therefore, I find that the learned Munsif has committed jurisdictional error in dismissing the miscellaneous case and the order suffers from illegality.

Accordingly, this civil revision petition is allowed. The order dated 16.12.2014 passed in Misc. Case No.18 of 2011 is set aside. Matter is remanded to the Court of Munsif to decide miscellaneous case afresh on its own merit after hearing both the parties.

(Prabhat Kumar Jha, J)

Saurabh/-

U			
---	--	--	--

