

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.1899 of 2018

Parmeshwar Bhagat, Son of Late Radhey Bhagat, Resident of Village- Milik Magurjan, Police Station- Barhara Kothi, District- Purnea at Present resident of Village- Dharhar Jamunia, Ward No. 14, Police Station-Dhamdaha, District- Purnea.

... .. Appellant

Versus

1. Kundan Bhagat, Son of Late Badri Bhagat, Resident of Village- Sukhasan Kothi, Milik Mangurjan Police Station- Barhara Kothi, District- Purnea.
2. Anju Kumari, Daughter of Late Badri Bhagat, Resident of Village- Sukhasan Kothi, Milik Mangurjan Police Station- Barhara Kothi, District- Purnea.
3. Asha Devi, Daughter of Late Badri Bhagat, Resident of Village- Sukhasan Kothi, Milik Mangurjan Police Station- Barhara Kothi, District- Purnea.

... .. Respondents

Appearance :

For the Appellant	:	Mr. Suraj Narain Yadav-Advocate Mr. Binod Kumar Sinha-Advocate
For the Respondents	:	Mr.

CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

12-09-2019

Heard learned counsel for the petitioner.

2. This application under Article 227 of the Constitution of India has been filed by the petitioner challenging the order dated 04.09.2018 passed by the learned Subordinate Judge-1st, Purnea in Misc. Case No.47 of 1988 by which he has rejected the application dated 22.02.2018 seeking leave to file the compromise decree passed in Title Suit No.268 of 1970 dated 07.11.1973 and to take the same into evidence.

3. Learned counsel for the petitioner submitted that the Court below by order dated 04.09.2018 illegally and



arbitrarily rejected the petition dated 22.02.2018 filed by the petitioner. It failed to appreciate that marking the certified copy of the compromise decree as an exhibit, in no manner, would have prejudiced the case of the respondents. He also failed to appreciate that it was not an attempt to bring on record a new evidence. He has produced a copy of the order dated 20.10.2000 passed in C.R. No.1097 of 1999 by this Court in support of his contentions. Let the same be kept on record.

4. Having heard the petitioner and perused the materials on record, it would be pertinent to note here that Title Suit No.268 of 1970 for partition was disposed of in terms of compromise order dated 09.09.1971. The aforesaid order reveals that on the basis of joint petition of compromise filed by the parties, compromise was recorded and the suit was decreed in terms of compromise. The compromise petition was directed to form part of decree. It was clarified in the said order that the parties have already been put in possession of their respective shares. As such, office was directed to prepare formal final decree after filing requisite stamps. Consequently, on 05.11.1973, the plaintiff filed non-judicial stamps for preparation of final decree. Thereafter, on 07.11.1973, direction was given to draw final decree. It was prepared and notified on



13.11.1973 and was sealed and signed on 16.11.1973.

5. The original plaintiff Radhey Bhagat in Title Suit No.268 of 1970 died and thereafter his two sons filed Misc. Case No.47 of 1988 under Section 151 C.P.C. stating therein that certain interpolation and erasing have been made in the schedule of the plaintiff and certain insertions of land which were allotted to the plaintiff in the schedule of the defendant.

6. Vide order dated 24.03.1999, the trial Court dismissed the said Misc. Case observing that the application was hopelessly barred by limitation and also held that the ancestors of the applicant never came forward with such allegation of interpolation and insertion in schedule of the compromise petition. However, while dismissing the Misc. Case, the trial court observed that since the allegation fell within the purview of fraud committed by the other side in the compromise petition a regular suit was required to be filed for setting aside the compromise decree.

7. The said order dated 24.03.1999 was challenged before this Court in Civil Revision No.1097 of 1999.

8. After hearing the parties, this Court set aside the order dated 24.03.1999 and remitted the matter to the trial Court to decide the Misc. Case treating the same to have been



filed under proviso to Rule 3 of Order 23 of the Code of Civil Procedure on the basis of evidence brought on record by the parties, on its own merit and in accordance with law. The operative part of the order dated 20.10.2000 passed in Civil Revision No.1097 of 1999 is extracted herein under:-

“In my view, trial court committed jurisdictional error in passing the impugned order. In fact under Order 23, Rule-3A of the Code of Civil Procedure, a specific bar has been prescribed in respect of institution of a separate suit for setting aside a decree passed on the basis of compromise. However, party challenging compromise can file a petition under proviso to Rule 3 of Order 23 or an appeal under Section 96(1) of the Code, in which he can now question the validity of compromise in view of Rule-1A of Order 43 of the Code. Applications for exercise of power under proviso to Rule 3 of Order 23 can be limited under Section 151 of the Code, but when by amending Act specifically such power has been vested in the court, before which the petition for compromise had been filed, the power in appropriate cases has to be exercised under the said proviso to Rule 3. Accordingly, even after a compromise was recorded, the court concerned can entertain an application under Section 151 of the Code, questioning the legality and validity of the compromise.

I, therefore, set aside impugned order and



remit the matter to the trial Court to decide Misc. Case, treating the same to have been filed under proviso to Rule 3 of Order 23 of the Code, on the basis of evidence brought on record by the parties, on its own merit and in accordance with law.”

9. It would be evident from the aforesaid order dated 20.10.2000 passed by this Court that the matter was remitted to the trial Court to decide on the basis of evidence brought on record by the parties in accordance with law.

10. I find that the trial Court while passing the order impugned has taken note of the fact that the Misc. Case is pending for final argument since 05.03.1994 and the order dated 05.03.1994 of Misc. Case No.47 of 1988 would show that the counsel for the petitioner had prayed for fixing the record on argument and, on his prayer, the record was fixed for argument.

11. Since the record was remitted to the Court below for deciding the case afresh on the basis of evidences already brought on record, in the opinion of this Court, the trial Court committed no error in rejecting the application filed by the petitioner for taking into evidence the certified copy of the decree passed in Title Suit No.268 of 1970 marking the same as exhibit after 30 years of filing of Misc. Case at the stage of argument.



12. In that view of the matter, in exercise of the supervisory jurisdiction under Article 227 of the Constitution of India, I am not inclined to interfere with the order impugned.

13. Accordingly, the application is dismissed.

(Ashwani Kumar Singh, J)

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AFR/NAFR	NAFR
CAV DATE	N.A.
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