

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.119 of 2013

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Ram Ayodhaya Prasad Singh, S/o Late Ram Janam Singh, Resident of
Mohalla - Rajputana, P.S. and Town - Dehri, District - Rohtas

... .. Petitioner/s

Versus

1. Shiv Kumar, S/o Late Dr. Sitaram
2. Runa Ghosh, W/o Late Nand Kumar
3. Subham Raj, Minor S/o Late Nand Kumar, under the natural guardianship of his mother Runa Ghosh
4. Tanu Shree (Minor), D/o Late Nand Kumar, under the natural guardianship of her mother Runa Ghosh, All resident of mohalla - Kumhar Toli, P.S. and Town - Dehri, District - Rohtas
5. Kalawati Devi, W/o Dwarika Sah & D/o Late Dr. Sitaram, Resident of Village - Ayar Kotha, P.O. and P.S. - Darihat, District - Rohtas
6. Lilawati Devi, W/o Late Raju Sah & D/o Late Dr. Sitaram, Resident of Dhobiya Mohalla - P.O. and P.S. - Daltonganj, District - Palamu
7. Chandrawati Devi
8. Durga Devi
9. Mira Devi
10. Muni Devi
All D/o Late Dr. Sitaram & resident of mohalla - Kumhar Toli, P.S. and Town - Dehri, District - Rohtas

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Ravi Kumar, Advocate
	:	Mrs. Priya Choubey, Advocate
	:	Mr. Rajiv Ranjan Singh, Advocate
For the Respondent/s	:	Mr. Ashok Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 07-03-2019

Heard learned counsel for the parties.

2. This civil revision has been preferred, under
Section 115 of the Code of Civil Procedure, against the order
dated 20.04.2013 passed by the learned Sub-Judge-IV, Sasaram



in Misc. Case No. 33 of 2011.

3. Petitioner-Ram Ayodhya Prasad Singh is a headmaster of some school. The petitioner had entered into an agreement on 31.01.2001 to purchase Survey Plot No. 743 and 1210, total area 500 square feet from Dr. Sita Ram. Since Dr. Sita Ram was not performing his part of the contract, Title Suit No. 36 of 2002 was brought by the petitioner on 22.01.2002 for specific performance of contract. During pendency of the suit, Dr. Sita Ram died and his son and daughters were substituted. On 05.07.2011, the petitioner filed a petition before the trial court for withdrawal of the suit for the reason that the suit is pending since long and the well wishers have settled the grievance of the petitioner outside the court. According to that settlement, outside the court, the petitioner was to get, from the opposite parties Rs.1,00,000/- (one lac) which was advanced consideration money paid by the petitioner along with Rs.1,50,000/- (one lac fifty thousand) additionally. Total Rs.2,50,000/- (two lacs fifty thousand) was paid by the opposite parties through bank draft and the petitioner received the aforesaid amount and encashed in his account. Thereafter, the petitioner filed Misc. Case No. 33 of 2011 before the court below under Order 23, Rule 3 read with section 151 of the Code



of Civil Procedure to recall the order dated 02.08.2011 passed in Title Suit No. 36 of 2002 whereby suit was permitted to be withdrawn. The prayer has been refused by the impugned order dated 20.04.2013.

4. While refusing the prayer, the court below has considered that the suit was consciously and voluntarily withdrawn by the petitioner after receiving back the consideration money along with additional charge of Rs.1,50,000/- (one lac fifty thousand) through bank draft and after encashment of the same fictitious litigation was brought after lapse of period of limitation.

5. Contention of the learned counsel for the petitioner is that when the allegation was of fraud, in withdrawal of the suit, committed against the petitioner, the court below should have at least enquired the matter on fraud and misrepresentation as alleged by the petitioner before rejecting the prayer of the petitioner and, as such, the court below has failed to exercise the jurisdiction vested in it, rather acted with material irregularity and illegality. Reliance has been placed on case of **Jang Bahadur Sahni Vs. Jagan Sahni** reported in **2013(3) PLJR 501** and on case of **Maimun Nisa and another v. Mohammad Khodabin and others** reported in **AIR 1985**



Patna 55.

6. None of the aforesaid cases are applicable in the present facts and circumstances of this case. The judgment in Jang Bahadur Singh's case was passed in quite different facts and circumstances of this case while considering the requirement of Order 9, Rule 13 of the C.P.C. In Maimun Nisa's case, the parties had filed a compromise petition under Order 23, Rule 3 of the Code of Civil Procedure, as such, the proviso to sub-section 3 was attracted in that case which reads as follows:-

“provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.”

Explanation if the agreement or the compromise which is void or voidable under the Indian Contract Act, 1872 shall not be deemed to be lawful within the meaning of this rule.

7. There is no such provision in Rule 1 of Order



23 of the C.P.c. which relates to withdrawal or abatement of the suit or part of a claim. This is a case wherein the petitioner withdrew the suit, the consideration money was refunded to the petitioner through bank draft and the petitioner encashed the same without making any objection. After encashment of the same, the petitioner can not be allowed to raise the grievance that fraud was played with him. Therefore, in my view, the impugned order requires no interference.

8. Accordingly, this civil revision application is dismissed.

(Birendra Kumar, J)

Kundan/Rajan

AFR/NAFR	N.A.
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