

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.17097 of 2014

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Sonamani Devi @ Sonamani Keshri daughter of Late Bhrigu Prasad Sah R/o Mohalla - Madhubani Bazar in the Town of Purnea, P.S. Khajanchihat, P.O. Purnea, Distt. - Purnea

... .. Petitioner/s

Versus

1. Nagina Prasad Keshri
2. Ram Chandra Prasad Keshri
3. Nand Kishore Prasad Keshri all sons of Late Sarjug Prasad Sah R/o Madhubani Bazar, P.O. P.S. Khajanchi Hat, Distt. - Purnea
4. Parmanand Prasad Keshri
5. Sadhu Saran Keshri both sons of Late Harihar Prasad Keshri R/o Madhubani Bazar, P.O. P.S. Khajanchi Hat, Distt. - Purnea
6. The State of Bihar
7. The Collector, Purnea
8. The Deputy Collector, Land and Revenue (DCLR) , Purnea, at + P.O.+P.S.+ Distt. - Purnea
9. The Circle Officer Purnea, at + P.O.+ P.S.+ Distt. - Purnea
10. Logni Devi W/o Late Bhrigu Prasad Sah R/o Mohalla - Madhubani Bazar in the Town of Purnea, P.S. Khajanchihat, P.O. Purnea, Distt. - Purnea
11. Ahilya Devi D/o Late Bhrigu Prasad Sah R/o Mohalla - Madhubani Bazar in the Town of Purnea, P.S. Khajanchihat, P.O. Purnea, Distt. - Purnea

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. Sunil Kumar Pathak, Advocate
For the Respondents No. 1 & 2)	:	Mr. J.S.Arora, Sr. Advocate
		Mr. Abbas Haidar, Advocate
For the Respondent No. 3	:	Mr. Diwakar Prasad Karan, Advocate
For the State	:	Mr. Gyan Prakash Ojha, GA-7

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CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
ORAL JUDGMENT

Date : 28-06-2019

The present writ petition has been filed for quashing the order dated 7.8.2014 passed by the learned Sub-Judge I, Purnea in Title Suit No. 210 of 1970 whereby and whereunder the miscellaneous



petition dated 27.9.2013 filed by the petitioner for preparation of final decree, after requisite alteration and reciprocal adjustment in the preliminary decree, has been rejected.

2. The brief facts of the case are that admittedly, the plaintiffs and the defendants of the suit in question i.e. Title Suit No. 210 of 1970 were the members of the Hindu Joint Family and the properties in the suit, were also joint family properties. In the said Title Suit No. 210 of 1970, a joint compromise petition was filed on 14.9.1971 after measurement of the suit land / property as well as after amicable partition of the suit property which was duly signed by all the parties and their respective lawyers, whereafter all the parties to the aforesaid suit came in separate possession according to the schedule, forming part of the compromise petition, which defined the shares allocated to the respective parties, whereafter the learned Sub-Judge, Purnea, after hearing the learned counsel for both the plaintiffs and the defendants and after being satisfied that the



compromise petition is legal, valid, genuine and lawful, accepted the compromise petition and passed an order on 14.9.1971 in the following terms:-

“Let the compromise be recorded and the suit be decreed in terms of the compromise. The compromise petition will form a part of the decree since the parties have been put in possession of their respective shares, prepared final decree on filing requisite stamps.”

3. Thus, admittedly, a compromise decree dated 14.9.1971 came to be passed in the aforesaid Title Suit No. 210 of 1970.

4. The learned counsel for the petitioner has stated that the aforesaid title suit was filed by the mother of the petitioner, namely, Lagni Devi and the petitioner herein was plaintiff no. 3 in the said suit. Subsequently, a compromise petition was filed on 14.9.1971 and the plaintiffs had also signed upon the same inasmuch as the widow mother of the petitioner herein was finding it difficulty to pursue the legal battle in question, hence she had succumbed to the nefarious design of the



defendants and agreed for compromise. Accordingly, the learned court of Sub-Judge, Purnea had passed an order dated 14.9.1971 directing to record the compromise, as also stating that the suit be decreed in terms of the compromise.

5. The learned counsel for the petitioner has submitted that the final decree was never prepared. Subsequently, it came to the notice of the petitioner that some of her shares have been illegally divested by the respondents, hence, the petitioner preferred a petition dated 27.9.2013 under Section 141 read with Section 151 of the Civil Procedure Code, inter alia, praying therein to amend the preliminary decree after considering the subsequent developments mentioned in the said application.

6. The respondents herein had filed reply to the aforesaid petition of the petitioner dated 27.9.2013, stating therein that the petitioner herein, on the basis of compromise decree, has been in possession of her shares of lands and by



virtue of different registered sale deeds has sold her lands for valuable considerations to different persons, whereafter the said purchasers of the land of the petitioner herein have also been put in possession over the said lands. It has also been stated in the said reply that the petitioner herein has not only admitted the compromise decree but has also acted upon the same by selling of her shares which has devolved upon her as a consequence of the aforesaid compromise decree, thus, she is estopped from challenging the aforesaid compromise decree. The said factum regarding the petitioner, having sold part of her share, devolved upon her as a result of the compromise decree, has not been denied by the petitioner.

7. The learned trial court i.e. the learned court of Sub Judge I, Purnea appears to have heard the learned counsel for the parties on the aforesaid miscellaneous petition dated 27.9.2013 filed by the petitioner and thereafter, by the impugned order dated 7.8.2014 had refused to interfere in the



matter by coming to a finding that on the basis of the compromise arrived at in between the parties and a petition having been submitted by the parties along with the measurement and demarcation of their respective shares, the order dated 14.9.1971 was passed by the court in the pending Title Suit No. 210 of 1970 and the court having merely observed that final decree shall be prepared on filing the requisite stamps, will not mean that till that date, final decree was not passed.

8. The learned counsel for the petitioner has vehemently argued and submitted that since the final decree has not been prepared, the preliminary decree can be altered in view of the subsequent developments.

9. The learned counsel for the petitioner has relied upon a judgment reported in **(2011) 9 SCC 788 (Ganduri Koteswaramma & Anr. vs. Chakiri Yanadi & Ors.)**, paragraphs no. 14 and 21 whereof are reproduced hereinbelow:-

“14. A preliminary decree determines the rights and interests of the parties.



The suit for partition is not disposed of by passing of the preliminary decree. It is by a final decree that the immovable property of joint Hindu family is partitioned by metes and bounds. After the passing of the preliminary decree, the suit continues until the final decree is passed. If in the interregnum i.e. after passing of the preliminary decree and before the final decree is passed, the events and supervening circumstances occur necessitating change in shares, there is no impediment for the court to amend the preliminary decree or pass another preliminary decree redetermining the rights and interests of the parties having regard to the changed situation.

21. It is true that final decree is always required to be in conformity with the preliminary decree but that does not mean that a preliminary decree, before the final decree is passed, cannot be altered or amended or modified by the trial court in the event of changed or supervening circumstances even if no appeal has been preferred from such preliminary decree. The view of the High Court is against law and the decisions of this Court in Phoolchand and S.Sai Reddy."

10. Thus, the submission of the learned counsel for the petitioner is that though the final decree is required to be in conformity with the preliminary decree but then before the final decree is passed, the trial court can obviously alter or amend or



modify the preliminary decree in the event of changed or supervening circumstances.

11. Per contra, the learned Senior Counsel appearing for the respondents has submitted that firstly, a compromise decree was affected in between the parties long back by a judgment and decree dated 14.9.1971 and after a lapse of about 41 years, the petitioner cannot be permitted to raise frivolous pleas and seek alteration of the decree, especially when the petitioner has already acted upon the same by not only coming into possession of her share but also selling a large portion of the same, hence, the petitioner is estopped from seeking modification of the aforesaid judgment / decree dated 14.9.1971 passed in Title Suit No. 210 of 1970.

12. The learned Senior Counsel for the respondents has relied upon a judgment of this Court reported in **2013 (3) PLJR 428 (Smt. Nootan Mishra vs. The State of Bihar & Ors.)**, to contend that a compromise decree defining not only the shares but also the allotment of the



property between the parties, is a final decree. It would be relevant to reproduce paragraph nos. 7 to 10 of the said judgment, hereinbelow:-

“7. In this background, the Court will first consider as to what would be the effect of compromise decree, which has been discussed and decided in the case of Bimal Kumar and Another vs. Shakuntala Debi and Others [2012(2) PLJR (SC)151]. The Supreme Court has observed that it is a well settled law that a preliminary decree declares the rights and liabilities, but in a given case, the decree may be both preliminary and final or partly preliminary and partly final. A compromise decree defines not only the shares but also defines the allotment of the property between the parties; therefore, it would appear that a compromise decree is a final decree.

8. The submissions on behalf of the petitioners that the entire appeal would abate ought to have been raised before the Apex Court, in any event it would appear that the Supreme Court had decided and set aside the judgment of the High Court dated 21st May, 2004 on merits holding that the reasonings given by the Court for quashing the order dated 7.6.2002 was not in accordance with law. At the time when the order of the High Court as noted above was passed on 21st May, 2004, the defendants were alive, therefore, as far as the order of the High Court is concerned, it was not passed against a dead person. At the stage when it was challenged,



the defendants were alive. Therefore, it cannot be contended that the order of the High Court would revive because the entire appeal abates as per the submissions of the Counsel for the petitioners.

9. The petitioners have referred to several judgments to support his contention that if there is a possibility of conflict of a decree, then the entire suit will abate. Firstly, Counsel for the petitioners relies on the case of Ramagya Prasad Gupta and Others vs. Murli Prasad and Others [AIR 1972 S.C. 1181]. The facts of the case were that the Chapra Electric Supply Works Limited had a license from the Government of Bihar for the electrification of the Chapra Town. Murli Prasad was the highest bidder. He alongwith his five partners was granted license. Later, the partnership was dissolved and new partners were introduced. A suit was filed for dissolution of the partnership and rendition of accounts. During the said suit, an intervention application was filed on behalf of some of the members of the joint family and that Paras Nath was holding 1 anna share not only as a partner of the firm, but also on behalf of the joint family. The Trial Court framed issues and after that negated the claim of Murli Prasad that he was the sole proprietor of the said firm. There was an appeal against the judgment of the Trial Court before the High Court. The High Court set aside the decree of the Trial Court and the suit of Paras Nath was dismissed. The facts reveal that several appeals were filed and in the course of the proceedings, one Jagdish Narayan died who is said



to have a share in the partnership firm, no attempt was made to bring his heirs on record, subsequently, the appeal not only abated against the deceased Jagdish Narayan but the appeals abated as a whole. On the basis of this judgment, Counsel for the petitioners contends that the appeal before the Supreme Court would abate as a whole which would result in the revival of the order of the High Court vis-à-vis the defendants 7, 13 and 15. The facts of this case do not apply to the facts of the present case as the appellants have not derived any title or benefit from respondents 7, 13 and 15.

10. The principle has been laid down with respect to abatement in the case of *Shahazada Bi and Others vs. Halimabi* [AIR 2004 S.C. 3942] as well as in the case of *Sardar Amarjit Singh Kalra and Others vs. Pramod Gupta and Others* [(2003)3 SCC 272]. In all these cases, the question was that the heirs or the other respondents had come forward to challenge the decree/judgment passed by the Trial Court or the High Court. In the present case, the heirs have not come forward to challenge the compromise decree. In fact, the present petitioners derive their right from the defendants 2 and 2(a) who were the persons who had entered into the compromise decree, they do not derive any right from the defendants 7, 13 or 15. The heirs of these defendants have not come forward. It is also well settled that the other defendants in the original suit could have either filed a miscellaneous case to set aside the compromise decree or filed a



separate partition suit."

13. The learned Senior Counsel for the respondents has further relied upon a judgment rendered by the Hon'ble Apex Court in the case of ***Bimal Kumar & Anr. vs Shakuntala Debi & Ors.***, reported in 2012(2) PLJR 151 (SC), paragraph nos. 15, 16, 23, 24, 27 and 29 are reproduced hereinbelow:-

"15. The two seminal and spinal issues that had emanated before the executing court and the High Court and have also spiralled to this Court are whether the decree passed by the court of first instance on the basis of compromise had become enforceable or it had the status of a preliminary decree requiring completion of a final decree proceeding to make it executable and whether the execution proceeding was untenable being hit by the law of limitation.

16. We shall advert to the first issue first. On a perusal of the tenor of the entire compromise application, we are of the considered view that the parties to the compromise settled the entire controversy. The defendant No. 3 who was the predecessor-in-interest of the present appellants was not allotted any share. As is perceptible from the terms of the compromise which formed a part of the decree, the parties had



conceded that they were in separate and exclusive possession of the properties respectively belonging to them and further had obtained separate and exclusive possession of the properties allotted to their respective shares. Thus, their respective shares and exclusive possession were admitted on the basis of the said compromise petition and a decree had been drawn up. The Court had taken note of the contents of the compromise wherein it had been prayed that the decree be passed in accordance with the terms of the compromise. It is clearly evincible that the Court had proceeded on the basis that it was finally disposing of the suit in accordance with the terms set out in the compromise petition. The factum of exclusive possession had also been recorded in the application of compromise. It had been clearly stated that parties have been put in separate possession of the various immovable properties.

23. Applying the principles laid down in the aforesaid authorities, it is graphically clear that in the case at hand, the parties entered into a compromise and clearly admitted that they were in separate and exclusive possession of the properties and the same had already been allotted to them. It was also admitted that they were in possession of their respective shares and, therefore, no final decree or execution was required to be filed. It is demonstrable that the compromise application does not contain any clause regarding



the future course of action. The parties were absolutely conscious and rightly so, that their rights had been fructified and their possession had been exclusively determined. They were well aware that the decree was final in nature as their shares were allotted and nothing remained to be done by metes and bounds. Their rights had attained finality and no further enquiry from any spectrum was required to be carried out. The whole thing had been embodied in the decree passed on the foundation of compromise.

24. It is to be borne in mind that the term 'compromise' essentially means settlement of differences by mutual consent. In such process, the adversarial claims come to rest. The cavil between the parties is given a decent burial. A compromise which is arrived at by the parties puts an end to the litigative battle. Sometimes the parties feel that it is an unfortunate bitter struggle and allow good sense to prevail to resolve the dispute. In certain cases, by intervention of well-wishers, the conciliatory process commences and eventually, by consensus and concurrence, rights get concretised. A reciprocal settlement with a clear mind is regarded as noble. It signifies magnificent and majestic facets of the human mind. The exalted state of affairs brings in quintessence of sublime solemnity and social stability. In the present case, as the factual matrix would reveal, a decree came to be passed on the



bedrock of a compromise in entirety from all angles leaving nothing to be done in the future. The curtains were really drawn and the Court gave the stamp of approval to the same. Thus, the inescapable conclusion is that the compromise decree dated 3.4.1964 was a final decree.

27. It is well settled in law that a preliminary decree declares the rights and liabilities, but in a given case, a decree may be both preliminary and final and that apart, a decree may be partly preliminary and partly final. It has been so held in Rachakonda Venkat Rao vs. R. Satya Bai⁷. It is worth noting that what is executable is a final decree and not a preliminary decree unless and until the final decree is a part of the preliminary decree. That apart, a final decree proceeding may be initiated at any point of time. It has been so enunciated in Hasham Abbas Sayyad vs. Usman Abbas Sayyad and Others.

29. Regard being had to the aforesaid principles and having opined that the decree passed on the basis of a compromise in the case at hand is the final decree, it is to be addressed whether the execution is barred by limitation. Article 136 of the Limitation Act (for brevity ‘the Act’) reads as follows:

<i>“Description of Period of application</i>	<i>Time from which period begins to run</i>
<i>136. For the Twelve</i>	<i>When the decree or order becomes</i>



<i>years of any execution decree (other than a decree granting a mandatory injunction) or order of any civil court.</i>	<i>enforceable or where the decree or any subsequent order directs any payment of money or the delivery of any property to be made at a certain date or at recurring periods, when default in making the payment or delivery in respect of which executing is sought, takes place: Provided that an application for the enforcement or execution of a decree granting a perpetual injunction shall not be subject to any period of limitation."</i>
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14. It is, thus, contended by the learned Senior Counsel for the respondents that since a compromise petition was filed by the plaintiffs and the defendants, alongwith, not only their respective signatures on the same but also bearing the signatures of their lawyers and with the



same, a schedule containing the details of the respective shares of the parties of the land in question along with their measurement / demarcation and the factum of the respective parties being in possession of their shares was also filed, which is also demonstrable from the fact that the petitioner has, subsequently after the said decree dated 14.9.1971, sold a large portion of her share, the said compromise decree dated 14.9.1971 is not a preliminary decree but a final decree, hence the same cannot be altered or modified or amended, thus, there is no infirmity in the impugned order dated 7.8.2014, passed by the learned court of Sub Judge I, Purnea.

15. I have heard the learned counsel for the parties and gone through the materials on record and I find that the petitioner herself has stated in the present writ petition that compromise petition was filed by the parties on 14.9.1971, containing a schedule showing the respective shares of the parties to the compromise and they, having been put in possession of their respective shares,



whereafter the learned trial court, acting upon the same, by an order dated 14.9.1971 had passed an order recording the compromise and had decreed the suit in terms of the compromise, thus there is no doubt that the said preliminary decree has the status of a final decree, as has been held by the Hon'ble Apex Court in the case of **Vimal Kumar** (supra), hence, is not amenable to any amendment or modification or alteration. This Court further finds that the petitioner has indisputedly engaged in sale of her share, thus, acting upon the compromise decree dated 14.9.1971, which is irreversible at her behest, hence on this ground as well, no interference is required in the decree dated 14.9.1971. Lastly, for the reasons unknown, the petitioner has approached the learned court below after a lapse of about 41 years, for which no plausible explanation whatsoever has furnished, hence, her petition dated 28.9.2013 is marred by delay and laches.

16. Last but not the least, the judgment relied upon by the learned counsel for the petitioner



rendered by the Hon'ble Apex Court in the Case of ***Ganduri*** (supra), is absolutely distinguishable in the facts and circumstances of the present case inasmuch as in the said case, the Hon'ble Apex Court was dealing with a judgment and preliminary decree passed by the learned trial court on merits and was not dealing with a case wherein a compromise decree has been passed, hence, the principles to be followed in a case of compromise decree would be different, thus, the said judgment, relied upon by the learned counsel for the petitioner, has got no relevance in the present case.

17. For the reasons mentioned hereinabove and having regard to the facts and circumstances of the present case, I do not find any merit in the present writ petition, accordingly, the same is dismissed, however, without any order as to costs.

(Mohit Kumar Shah, J)

ajay gupta/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	27.08.2019
Transmission Date	NA

