

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.361 of 2017

In
Civil Writ Jurisdiction Case No.3816 of 2013

Rajendra Narain Singh S/o Late Shashi Shekhar Prasad Sinha, resident of Village- Thatia, P.O. Rosera, District- Samastipur, presently Resident of 186, Pataliputra Colony, P.O. and P.S.- Patliputra, District- Patna.

... .. Petitioner/s

Versus

1. Birendra Narain Singh S/o Late Shashi Shekhar Prasad Sinha, resident of Village- Thatia, P.O.- Rosera, District- Samastipur, presently resident of 186, Pataliputra Colony, P.O. and P.S.- Patliputra, District- Patna.
2. Omkar Nath, S/o Late Kailashpati Sahay, resident of Village- Chakiya Pali, P.S.- Basantpur, District- Saran.
3. Hari Kishore Singh, S/o Late Mithileshwar Prasad Singh, resident of Village and P.O.- Sukhpur, P.S.- Supaul, District- Saharsa Supaul.
4. Pataliputra, Co-operative House Construction Society Ltd., P.O. and P.S.- Patliputra, District- Patna

... .. Opposite Party/s

Appearance :

For the Petitioner/s : Mr.Binod Kumar
Mr. Suchita Singh
For the Opposite Party No. 3 : Mr. Ranjan Kumar Dubey
For the Opposite Party No.4 : Mr. Girish Pandey

CORAM: HONOURABLE MR. JUSTICE MOHIT KUMAR SHAH
C.A.V. JUDGMENT

Date: 18.09.2019

The present review petition has been filed seeking review of the judgment dated 10.02.2017 passed in CWJC No. 3816 of 2013.

The petitioner herein had filed a writ petition under Article 227 of the Constitution of India bearing CWJC No. 3816 of 2013 questioning the legal sustainability of the order dated 28.01.2013 passed in Title (Partition) Suit No. 11 of 1983



by which the learned court below has allowed the prayer of defendant no. 5 namely Hari Kishore Singh, opposite party no. 3 in the present review petition, for appointment of Survey Knowing Pleader Commissioner for carving out the share allotted to him in the preliminary decree.

Shorn of the details, it would suffice to state that the plaintiff-petitioner herein had filed a suit in the year 1983 bearing Title Suit No. 11 of 1983 against his father namely Shashi Shekhar Prasad Sinha (defendant no. 1), mother Smt. Krishna Kumari Devi (defendant no. 2), brother Birendra Narain Singh (defendant no. 3) and two purchasers namely, Omkar Nath (defendant no. 4) and Hari Kishore Singh (defendant no. 5), apart from Patliputra Cooperative Society having been made defendant no. 6 to the said suit. The said suit was filed for declaring that transfer of Schedule-II & III property by defendant no. 1 to defendant nos. 4 & 5 are illegal and not binding on the plaintiffs as also for cancellation of the respective sale deeds. The plaintiff-petitioner had also claimed for partition of the suit property for a share in the suit property as contained in Schedule-I to the plaint. In the said Title Suit No. 11 of 1983, filed before the learned Sub-Judge-II, Patna, a compromise petition was filed on 30.09.1983 by the parties and,



accordingly, in terms of the compromise arrived at between the parties the learned Court of Additional Subordinate Judge-VIII, Patna had decreed the suit by a judgment dated 07.01.1985, relevant portion is reproduced herein below:-

“In the end therefore, it is,

Ordered

that the suit is partly decreed ex parte against the defendants except no. 4 in respect of plot no. 186 indicated above without cost. The port of plot no. 186 given to the defendant no. 5 by virtue of the compromise would be allotted to him at the time of Takhtabandi. Let a preliminary decree or partition be granted for the 1/4th share of plaintiff in respect to plot no. 186 which will be made final on his application through an advocate commissioner.

The suit is partly dismissed in terms of my finding above with respect respect to plot mo. 186. Parties to bear their own cost.”

Thereafter, the preliminary decree was prepared on 14.01.2010 for carving out the respective shares of the parties thereto. Admittedly, the defendant no. 5, by the preliminary decree prepared on 14.01.2010 was allotted and substituted over Schedule-A of the compromise petition in lieu of Schedule-III property of the plaint. It is apparent from the order dated 28.01.2013 passed in Title (Partition) Suit No. 11 of 1983 that in



Schedule-A of the compromise petition there is full description of the property given to the defendant no. 5, which is a portion of Plot No. 186, bounded as mentioned in the compromise petition, and accordingly, the learned court below by judgment dated 07.01.1985, in terms with the compromise petition, has “ordered” that the said portion of Plot No. 186 be given to the defendant no. 5 by virtue of the compromise. It appears that thereafter, the defendant no. 5 had filed a petition dated 31.07.2012 praying for appointment of a Survey Knowing Pleader Commissioner for carving out the share allotted to the defendant no. 5 in the preliminary decree and by the impugned order dated 28.01.2013, the learned court below allowed the petition of the defendant no. 5 and has directed for appointment of Pleader Commissioner, as prayed for, by the defendant no. 5.

By the judgment under review dated 10.02.2017, passed in CWJC No. 3816 of 2013, this Court has held as follows:-

“4. After considering the submissions and the materials on record including the impugned order, it is manifest that factum of preliminary decree passed in T.P.S. No. 11 of 1983 on the basis of compromise petition has not been denied by the plaintiff who has contested the prayer as made by the defendant in his petition dated 31.7.2012. The objection of the plaintiff-petitioner resisting the prayer of defendant No. 5 is only on the basis that



*he has filed Testamentary Suit No. 1 of 2011 seeking grant of probate for the **will** executed in his favour by his mother and, therefore, the partition of the suit land cannot be done. It appears from the impugned order that the properties mentioned in Schedule 'A' of the compromise petition, which have been allotted to defendant No. 5, is not the subject matter of the Testamentary Suit No. 1 of 2011 said to be pending before this Court. The learned Court below has also noticed the joint submission on behalf of the parties that there can be more than one final decree in a suit for partition.*

5. This Court, therefore, does not find that the learned Court below has committed any illegality or irregularity in passing the impugned order. Further, it has been rightly observed by the learned court below that defendant No. 5-respondent is unnecessarily being deprived of the fruits of the decree in his favour.

6. This petition sans merit is accordingly dismissed."

The learned counsel appearing for the review petitioner has submitted that preparation of final decree is a prerequisite for carving out the share of any of the parties and the preliminary decree cannot be followed in piecemeal or in isolation, bereft of its totality, hence, it is prayed that the order passed by this Court earlier dated 10.02.2017 be reviewed and the order passed by the learned court below dated 28.07.2013 be set aside. It is also submitted by the learned counsel for the petitioner that since Testamentary Case No. 2 of 2010,



converted into Test Case No. 11 of 2011 is pending adjudication regarding grant of probate for the will executed by the mother of the petitioner in his favour, the share of the suit land in question, cannot be appropriated to the respective parties in terms of the judgment dated 07.01.1985 passed in Title (Partition) Suit No. 11 of 1983.

Per contra, the learned counsel for the opposite party no. 3 (defendant no. 5) has submitted that the petitioner herein has been intentionally prolonging the said case since a long period of about 28 years and in collusion with the other defendants is preventing the defendant no. 5 from enjoying the fruit of the decree despite the plaintiff-petitioner herein having entered into a compromise with open eyes, on the basis of which the learned court below had passed the judgment dated 07.01.1985 in Title (Partition) Suit No. 11 of 1983. It is further submitted that the properties mentioned in Schedule-A of the compromise petition, which has been allotted to the defendant no. 3, is not the subject matter of Testamentary Suit No. 1 of 2011, hence the submission made by the learned counsel for the petitioner to the said extent is incorrect and baseless, thus, there is no impediment in appropriating share in terms of the judgment dated 07.01.1985 passed in Title (Partition) Suit No.



11 of 1983 as also in terms of the preliminary decree passed on 14.01.2010. Lastly, it is submitted that the learned court below has also noticed the joint submission made on behalf of the parties that there can be more than one final decree in a suit for partition, hence, it is submitted that there is no question of the preliminary decree being executed in isolation.

I have heard the learned counsel for the parties and perused the materials on record. It is a well settled law that the power of the High Court in review proceedings under Order 47 Rule 1 of the Code of Civil Procedure, 1908 is very limited and narrow and the same cannot be equated in their ambit and scope to an appeal or rehearing. A review proceeding cannot be permitted to be converted into an appeal against the judgment of the same Bench. It is equally a well settled law that in review proceeding, the Court should not act as Court of appeal and re-appreciate the entire case. According to the provisions contained in Order 47 Rule 1 C.P.C., a person aggrieved by a decree or order and who, from the discovery of new and important matter or evidence which, after exercise of due diligence, was not within his knowledge and could not be produced by him at the time when the decree was passed or order was made, or on account of some mistake or error



apparent on the face of the record, or for any other sufficient reason, may seek for review of the decree or order passed against him.

Now, coming back to the present case, this Court finds that none of the grounds as envisaged under Order 47 Rule 1 of the Code of Civil Procedure, 1908, warranting review of the earlier order of this Court dated 10.02.2017 exist and in fact the ground raised in the review petition are repetition of what was argued in the writ proceedings and moreover, neither any new or important evidence has been brought on record of the review petition nor there is any mistake apparent on the face of the record of the case, hence this Court finds that there is no substance in the present review petition and the same has been filed only to delay and prolong the proceedings and deprive the defendant no. 5 i.e. the opposite party no. 3 herein from the fruits of the compromise petition rendered by the learned court below inasmuch as firstly the petitioner had filed a writ petition bearing CWJC No. 3816 of 2013, which was kept pending till the year 2017 and the same culminated into the judgment under review, which came to be passed only on 10.02.2017, whereafter, immediately on 08.09.2017, the present review petition was filed, which the petitioner has been successful in



keeping it alive till date i.e. till the month of September, 2019.
This Court deprecates such practice and it is only on account of such unscrupulous litigants that the judiciary is over burdened with massive backlog of cases.

Having regard to the facts and circumstances of the case and for the reasons mentioned herein above, there is no merit in the present review petition, hence the same is dismissed.

(Mohit Kumar Shah, J)

S.Sb/-

AFR/NAFR	
CAV DATE	11.09.2019
Uploading Date	19.09.2019
Transmission Date	

