

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Civil Review No.321 of 2017**

**In**

**Second Appeal No.381 of 2013**

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1. Anandi Chaudhary, Son of Late Ram Roop Chaudhary, Resident of Village- Lakho, P.S. Muffasil, District- Begusarai (Bihar).
  2. Md. Soyeb @ Md. Soaib, Son of Late Abdur Rashid, Resident of Village- Sahpur, P.S. Muffasil, District- Begusarai (Bihar).
  3. Kaushalya Devi Wife of Late Raso Prasad Singh
  4. Umesh Kumar Singh @ Umesh Singh, Son of Late Raso Prasad Singh
  5. Binesh Kumar Singh @ Binesh Kumar, Son of Late Raso Prasad Singh
  6. Subodh Kumar, Son of Late Raso Prasad Singh
  7. Dinesh Singh, Son of Late Raso Prasad Singh
  8. Aniket Kumar, Minor Son of Late Rajesh Kumar
  9. Ritik Kumar, Minor Son of Late Rajesh Kumar Sl. No. 8 and 9 are under guardianship of their elder uncle Umesh Kumar Singh @ Umesh Singh All 3 to 9 are resident of Lakho, Police Station- Begusarai Muffasil, District- Begusarai.
  10. Ahilya Devi, Daughter of Late Raso Prasad Singh, Wife of Ramsagar Singh, Resident of Village- Hajipur, P.O.- Pipra Debas, Police Station- Barauni, District- Begusarai.

... .. Appellants/Petitioners

Versus

1. Most. Janak Nandani Devi, Wife of Late Mahendra Prasad Singh
2. Most. Sushila Devi, Wife of Late Mahendra Prasad Singh Both resident of Village- Ratanpur, P.S. Begusarai, District- Begusarai (Bihar).
3. Indu Devi, Wife of Ram Naresh Rai, resident of Village- Harerampur, P.S. Gashpura, District- Begusarai (Bihar).
4. Kiran Devi, Wife of Late Ram Bhushan Rai
5. Rinki Devi, Wife of Nawal Kishore Rai Sl. No. 4 and 5 are resident of Village- Rampur, P.S. Hassanpur, District- Samastipur (Bihar).
6. Neelam Devi, Wife of Arvind Singh, resident of Village- Barauni Flag, P.S. Teghra, District- Begusarai (Bihar).
7. Soni Kumari, Wife of Pawan Singh
8. Kumari Dimpal, Wife of Santosh Singh Sl. No. 7 and 8 are resident of Village- Kothia, P.S.- Matihani, District- Begusarai (Bihar).
9. Tribhuwan Nath Singh, Son of Late Mahendra Prasad Singh
10. Harihar Nath Singh, Minor Son of Late Mahendra Prasad Singh under the guardianship of his father and natural guardian Mahendra Prasad Singh Sl.No. 9 and 10 are resident of Village- Ratanpur, P.S. Begusarai, District- Begusarai (Bihar).

... .. Respondents/Opposite Parties

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**Appearance :**

For the Petitioner/s : Mr.Shashi Dhar Jha  
For the Respondent/s : Mr.

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**CORAM: HONOURABLE MR. JUSTICE PRABHAT KUMAR JHA**



ORAL ORDER

4      07-01-2019                      Heard Mr. Anil Kumar Jha, the learned senior counsel appearing on behalf of the petitioners.

Petitioners have filed this civil review petition to review the judgment and order dated 21.07.2017 passed in Second Appeal No.381 of 2013 by which the second appeal has been dismissed holding that no substantial question of law is involved in view of the concurrent finding of both the courts that the sale deed executed by defendant 4<sup>th</sup> set in favour of defendant 1<sup>st</sup>, 2<sup>nd</sup>, and 3<sup>rd</sup> set is illegal void on account of lack of title in the land.

Learned counsel for the petitioners submits that the plaintiff filed the suit for declaration of sale deed executed by defendant 4<sup>th</sup> set in favour of defendant 1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> set as illegal, void ab initio as the defendant 4<sup>th</sup> set had no title over the lands by virtue of the judgment passed in Partition Suit No.44 of 1973 on compromise. It is submitted that one of the members of the defendant 4<sup>th</sup> set was minor and no permission was granted by the court to implead the minor. It is further submitted that till date no decree has been prepared in Partition Suit No.44 of 1973 which was disposed of on the basis of compromise on 11.03.1977 and, therefore, the judgment has to be reviewed as the second appeal has been dismissed that no ground of fraud is pleaded in the pleadings of the parties.

I find no force in the submissions of the learned counsel for the petitioners on the simple ground as it appears from perusal of



the judgment that defendant 4<sup>th</sup> set and plaintiff were descendants of common ancestor. Partition Suit No.44 of 1973 was filed for partition of the property among the plaintiff and defendant 4<sup>th</sup> set. Both the parties entered into compromise. Even the minors entered into compromise by the order of the court and the court found that the compromise is in the interest of the minors. Only thereafter the suit was disposed of on the basis of compromise on 11.03.1977. The disputed plot fell in the share of the plaintiffs in the compromise judgment in Partition Suit No.44 of 1973 but the defendant 4<sup>th</sup> set executed the sale deed with regard to the lands fell in the share of the plaintiffs and the first court held that the defendant 4<sup>th</sup> set had no right and title to sell the lands fell in the share of plaintiffs by virtue of compromise in the judgment in Partition Suit No.44 of 1973. The first appellate court also on the appeal filed by defendant 3<sup>rd</sup> set concurred with the view of the trial court and accordingly, the second appeal was dismissed having no substantial question as the same issue has been concurrently decided by the court.

Having considered the facts aforesaid, I do not find any merit in this civil review petition and the same is dismissed.

**(Prabhat Kumar Jha, J)**

S.KUMAR/-

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