

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.424 of 2018

1. Suresh Singh @ Ganauri Singh (deleted vide order dt. 21.07.2022) Son of Late Brahmdeo Singh, Resident of Village- Dangraha, P.S. and District- Arwal.
2. Kapildeo Singh, Son of Suresh Singh, Resident of Village- Dangraha, P.S. and District- Arwal.

... .. Petitioner/s

Versus

1. Bhagwat Singh (deleted vide order dt. 21.07.2022) son of Late Brahmdeo Singh, Resident of Village- Dangraha, P.S. and District- Arwal. at present Resident of Village- Tal, P.O. Sihari, P.S. Haspura, District Aurangabad.
2. Bisundeo Singh, son of Bhagwat Singh, Resident of Village- Dangraha, P.S. and District- Arwal. at present Resident of Village- Tal, P.O. Sihari, P.S. Haspura, District Aurangabad.
3. Rambabu Singh, son of Bhagwat Singh, Resident of Village- Dangraha, P.S. and District- Arwal. at present Resident of Village- Tal, P.O. Sihari, P.S. Haspura, District Aurangabad.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Dr. Mayanand Jha, Sr. Adv.
For the Respondent/s : Mr.Arvind Prasad Singh

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

5 07-11-2022 Heard learned Counsel for the parties concerned.

The petitioner has challenged the order, dated 06.02.2018, passed by learned Trial Court (Sub Judge-I, Aurangabad), in Misc. Case No. 42 of 2017, by which the cancellation of the recall order passed by the learned Court below has been rejected.

The brief facts of the case is that Partition Suit No. 312 of 2015 was filed by the original respondent-plaintiff, in which a compromise petition was filed on 09.11.2015, giving



the details of the plots/properties of the parties, described in Schedule क and Schedule ख. In the said compromise petition, an amendment petition has been filed by the original respondent-plaintiff for addition of Khata No. 4, Plot No., 832, having an area of 0.37 decimals in Schedule B of the plaint, containing the details of the entire properties of the parties inasmuch as as per the case of the plaintiff, in Schedule ख of the compromise petition, plot no. 882 has been typed instead of plot no. 832. Accordingly, in the amendment petition, the original respondent sought an amendment at page 3 in Schedule क (K) of the compromise petition, by adding Khata No. 4, Plot No. 832, having an area of 0.37 decimals, but inadvertently and due to typographical mistake, in the amendment petition, the proposed amendment ii) has been typed as follows:

“ii) at page 3 in Schedule ‘K’ of the compromise petitioner

“Khata no.	Plot no.	Area	Boundary
04	832	0.37 dec.	N Ramdahin Gope S Siwana Darbeshpur E Laxyman Dhobi W Siwana Malmari Nirulah”

According to the respondents, the aforesaid Schedule ‘क (K)’ should have been written as ‘ख (Kh)’ because the



amendment petition has been filed by the plaintiff for correction in the compromise petition and the plot no. 882 mentioned in Schedule ख allotted in the share of the plaintiff does not belong to the joint family.

Learned Senior Counsel for the petitioner submits that the amendment petition was filed for correction in the compromise petition to the extent of addition of plot no. 832 in page 3 of Schedule क (K) and the same was allowed by the learned Court below on 03.02.2016. Thereafter the affidavits in support of the compromise petition was filed by the parties including the original plaintiff on 30.05.2016 and based upon the said compromise petition, an order was passed for preparation of final decree in the partition suit. The amendment, which was allowed by the learned Court below with regard to the plot no. 832 was added in the compromise petition at page 3 and by virtue of this, the said plot was given to the petitioner and on the basis of the said decree, on 15.09.2016, mutation of the plot no. 832 was also done by the revenue authorities in the name of the petitioner.

After the allotment of plot no. 832 and finalization of the mutation on the basis of the compromise decree, in September, 2016, and after disposal of the suit, the original



respondent-plaintiff filed a recall petition on 27.10.2016, for recalling the order of amendment, dated 03.02.2016, by which plot no. 832 was added in the share of the original petitioner-defendant. The recall petition was allowed by the learned Court below by order, dated 22.11.2016.

Aggrieved by the impugned order allowing the recall of the amendment by which plot no. 832 was allotted in the share of the defendants, the original petitioner filed a miscellaneous case praying therein to enquire into the matter and recall the order dated 22.11.2016, by which the amendment allowed in favour of the original petitioner-defendant has been recalled. The said miscellaneous case of the petitioner has been rejected and by order, dated 06.02.2018, the learned Court below refused to recall the order, dated 22.11.2016 on the ground that the amendment was recalled on the basis of 'no objection' granted by learned Counsel appearing for the defendant in the suit on 03.11.2016.

The submission of learned Senior Counsel for the petitioners is that after disposal of the suit and preparation of the final decree, learned Counsel appearing for the defendants becomes funtus officio, and the vakalatnama, if any, which was issued in their favour during the pendency of the suit stands



discharged. He, accordingly, submits that the original petitioner was not given any adequate opportunity before recalling the amendment. The 'no objection', which was given by the previous counsel is of no consequence. As such, the order, dated 22.11.2016 is not sustainable and is violative of the principle of natural justice also.

On the other hand, learned Counsel for the respondents submits that there is no infirmity in the impugned order inasmuch as after having consent from learned Counsel appearing on behalf of the original petitioner, the recall of the amendment was allowed by the learned Court below and plot no. 832, which was wrongly added in Schedule 'क' of the compromise petition, was recalled. He further submits that the fact of the matter is that plot no. 882 has been mentioned in Schedule 'ख' of the compromise petition and since there was no plot as plot no. 882, belonging to the joint family, as such, plot no. 832 was given in the share of the respondents-plaintiff, for which an amendment petition was filed by the plaintiff for correction in the schedule of properties mentioned in the plaint as well as in the compromise petition, but by mistake, instead of Schedule 'Kh', Schedule 'K' has been typed in the amendment petition, which has been understood by the parties as Schedule



‘क (K)’; whereas plot no. 832 should have been mentioned in Schedule ‘ख’ of the compromise petition.

I have heard the rival submissions advanced on behalf of the parties.

It is admitted position that the compromise decree has been passed and plot no. 832 has been allotted in Schedule ‘क (K)’ belonging to the petitioners and after the decree having been prepared, a petition for correction/recall of the amendment/plot no. 832 in Schedule ‘क (K)’ has been filed by the respondents-plaintiff, which has been allowed by the learned Court below without giving an opportunity to the original petitioner-defendant to contest the recall of amendment/correction of plot no. 832 in the schedules of the compromise petition as well as compromise decree. The learned Court below has rejected the objection of the original petitioner on the ground that on 03.11.2016, the ‘no objection’ was given for the recall of amendment sought by the respondents-plaintiff. It is admitted position that the decree in the partition based upon the compromise was passed on 08.07.2016. After passing of the decree, the concerned counsel becomes *funtus officio* and his vakalatnama stands discharged. Accordingly, the concerned counsel who was appearing for the original petitioner-defendant



in the suit had no authority to give ‘no objection’ after disposal of the suit and preparation of compromise decree.

In view of the above, I come to the conclusion that the impugned order is not sustainable on this ground alone and the same is set aside. The matter is remanded back to the learned concerned court for taking a fresh decision in Misc. Case No. 42 of 2017 filed by the petitioners in accordance with law.

This application is disposed with the aforesaid observation and direction.

(Anil Kumar Sinha, J.)

Prabhakar Anand/-

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