

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.13 of 2019

1. Jagdish Mahto son of Late Kauleshwar Mahto (Male) R/O Village-Chanakap, Post-Narendrakhap, P.S. Kutumba, Dist.-Aurangabad
2. Girija Mahto @ Girija Mehta son of Late Kauleshwar Mahto R/O Village-Chanakap, Post-Narendrakhap, P.S. Kutumba, Dist.-Aurangabad
3. Ram Dinesh Mahto @ Ram Dinesh Mehta son of Jagdish Mahto R/O Village-Chanakap, Post-Narendrakhap, P.S. Kutumba, Dist.-Aurangabad
4. Shankar Mahto @ Shankar Mehta son of Jagdish Mahto R/o Village-Chanakap, Post-Narendrakhap, P.S. Kutumba, Dist.-Aurangabad
5. Brajesh Mahto @ Brajesh Mehta son of Jagdish Mahto R/o Village-Chanakap, Post-Narendrakhap, P.S. Kutumba, Dist.-Aurangabad
6. Kamlesh Mahto @ Kamlesh Mehta son Girija Mahto R/o Village-Chanakap, Post-Narendrakhap, P.S. Kutumba, Dist.-Aurangabad
7. Indal Mahto @ Indal Mehta son of Girija Mahto R/o Village-Chanakap, Post-Narendrakhap, P.S. Kutumba, Dist.-Aurangabad
8. Ramnandan Mahto @ Raghunandan Mehta son of Girija Mahto R/o Village-Chanakap, Post-Narendrakhap, P.S. Kutumba, Dist.-Aurangabad
9. Deonandan Mahto @ Devnandan Mehta S/o Girija Mahto R/o Vill.-Chanakap Post Narendrakhap, P.S. Kutumba, Dist.-Aurangabad

... .. Petitioner/s

Versus

1. Manmati Devi W/o Rekha Mahto R/o Chankap Post Narendrakhap P.S. Kutumba, Dist.-Aurangabad
2. Rekha Mahto S/o Kauleshwar Mahto R/o Village- Chanakpa, Post Narendrakhap, P.S. Kutumba, Dist.-Aurangabad
3. Munna Mahto @ Hari Gopal Mahto S/o Ram Chandra Mahto R/o Vill.-Koiri Bigha, P.O. & P.S. Amba, Dist.-Aurangabad
- 4.(a) Krishna Mahto S/o Kameshwar Mahto R/o Pipari Biranhitpur, Post Ankapa P.S. Amba, Dist.-Aurangabad
- (b) Sarjoo Mahto, S/o Kameshwar Mahto R/o Pipari Biranhitpur, Post Ankapa P.S. Amba, Dist.-Aurangabad
- (c) Lal Mohan Mahto S/o Kameshwar Mahto R/o Pipari Biranhitpur, Post Ankapa P.S. Amba, Dist.-Aurangabad
- (d) Deep Narayan Mahto S/o Kameshwar Mahto R/o Pipari Biranhitpur, Post Ankapa P.S. Amba, Dist.-Aurangabad
- (e) Shiv Mahto S/o Kameshwar Mahto R/o Pipari Biranhitpur, Post Ankapa P.S. Amba, Dist.-Aurangabad
- (f) Urmil Devi D/o Kameshwar Mahto R/o Pipari Biranhitpur, Post Ankapa P.S. Amba, Dist.-Aurangabad
- (g) Dulari Devi D/o Kameshwar Mahto R/o Pipari Biranhitpur, Post Ankapa P.S. Amba, Dist.-Aurangabad.



... .. Opposite parties.

Appearance :

For the Petitioner/s : Mr. Lakmesh Marvind, Adv.
For the Opp. Parties : Mr. Anil Kumar Sinha, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 05-12-2023

Heard Mr. Lakmesh Marvind, learned counsel for the applicants- petitioners and Mr. Anil Kumar Sinha, learned counsel for the opposite parties.

2. This Civil Revision application is directed against the order dated 05-12-2018 passed by the learned 1st Additional District Judge, Aurangabad in Miscellaneous Case No. 01/2007/15/2017 (for brevity 'learned court below') whereby the learned court below rejected the petition dated 06-11-2007 filed by the petitioners under Order 23 Rule 3 read with Section 151 of the Code of Civil Procedure (for brevity 'CPC') for setting aside the decree passed on the basis of compromise in Title Appeal No. 37/1999/30/2003 by the 5th Additional District Judge, Aurangabad whereby a compromise was entered into and a decree was drawn after accepting the compromise under Order 23 Rule 3 of the CPC.

3. The brief factual background of the case is that the plaintiff/opposite party No.2, namely, Rekha Mahto (husband of opposite party no.1) filed Title Partition Suit No. 22/1993/100/1994 for carving out of 1/5 share in the suit property given in



schedule-A of the plaint by appointment of Survey knowing Pleader Commissioner. The said partition suit was decreed on 23-06-1999, as it was held that the plaintiff-opposite party No.2, in the present case, has got valid cause of action to the suit and he is entitled for decree of partition.

4. Being aggrieved by the aforesaid judgment and decree, Smt. Manmati Devi wife of Rekha Mahto (plaintiff-opposite party No.2) preferred Partition Appeal No. 37/1999/30/2003. After summon, petitioner Nos. 1 and 2 appeared through their counsel and filed their '*vakalatnama*'. The further case of the petitioners' is that Jagdish Mahto (petitioner No.1) was the '*pairvikar*' of the case. Unfortunately, due to criminal case lodged against him, he could not do '*pairvi*' in the aforesaid case and taking advantage of the absence of the petitioners, the opposite parties prepared a forged compromise petition by making forged signature of petitioner Nos. 1 and 2 and filed before the learned lower appellate court. It is contended that Rekha Mahto and Manmati Devi also filed separate '*vakalatnama*', over which, a forged signature of petitioner Nos. 1 and 2 was made and was filed in the lower appellate Court. Though the sons of petitioner Nos. 1 and 2, who are petitioner Nos. 3 to 9 were party to the Partition Suit up to the appeal, but their signatures were not taken



on the compromise petition. It is submitted that first compromise petition dated 06-03-2003 was filed by Rekha Mahto and Manmati Devi with forged signature of Jagdish Mahto and Girija Mahto, which was not pressed and again filed a compromise petition dated 19-06-2003 making the forged signature of Jagdish Mahto and Girija Mahto. Signature of other petitioners were also not taken on the compromise petition though they had become major. These petitioners Nos. 3 to 9 were shown minors and on their behalf Mr. Ramashishi Sharma, Advocate signed as guardian *ad litem* (GAL). In the light of compromise petition, the Title Appeal No. 37/1999/30/2003 was decreed on the basis of alleged compromise petition dated 19-06-2003. It is submitted that on perusal of compromise petition dated 19-06-2003, it transpires from 1st page to its last page that the date given is 19-06-2003 with the seal of the court, but the signature of guardian *ad litem* (Ramashish Sharma, Advocate) on behalf of petitioner Nos. 3 to 9 is made on 23-07-2004. The said signature of the guardian *ad litem* on the date of order on compromise petition dated 23-07-2004 itself shows interpolation in the compromise petition. It is submitted that the minors, who had already attained majority on the date of filing of the compromise petition, without disclosing it to learned Advocate, namely, Ramashish Sharma, signed on



behalf of the minors. It is also submitted that the acts done by Rekha Mahto and his wife Manmati Devi were kept secret and was not disclosed anywhere. For the first time, they disclosed it in the year 2007 and claimed that the land which is in possession of petitioner Nos. 1 and 2, the petitioners inspected the original records of Partition Appeal No. 30/2003 and found that the said Partition Appeal was compromised with the forged signature of petitioner Nos. 1 and 2. It further came to light during the inquiry that the petitioner Nos. 3 to 9 were present and signed by an Advocate as guardian *ad litem* though they had attained majority. Petitioners filed Miscellaneous Case No. 1/2007 under Order 23 Rule 3 read with Section 151 of the CPC for setting aside the compromise decree dated 03-08-2004 before the learned lower appellate court on the grounds, as stated above.

5. On summon, opposite party Nos. 1 and 2 appeared and filed their rejoinder against the aforesaid Miscellaneous Case and prayed for dismissal of this Miscellaneous Case on the ground that the signatures of parties were genuine and no fraud was committed by them in presenting the compromise petition. On the request of petitioner Nos. 1 and 2, their signatures were sent to the handwriting expert for examination whether signatures of petitioner Nos. 1 and 2, on the compromise petition, were genuine



or forged one. Photocopy of the six specimen signatures of Jagdish Mahto and Girija Mahto were sent for examination before the handwriting expert through the registered post. It is contended that the signatures were scientifically examined and a report was submitted by handwriting expert before the learned lower appellate Court on 13-05-2016/26-07-2016 (Annexure-5). The handwriting expert found that the signatures of Jagdish Mahto and Girija Mahto (petitioner Nos. 1 and 2) on the compromise petition did not match with the specimen signatures of Jagdish Mahto and Girija Mahto. The handwriting expert was cross-examined on behalf of the opposite parties. The learned lower Court has held that the report of expert is based on the signatures of a disputed signature along with non admitting signature, as the signature which has been taken as admitted document, has been challenged by opposite parties, and as such, Exts. 1 and 1/A were marked with objection and Exts. X and X/1 were marked only for identification. It is further held that signature made on original document either on written statement or on the '*Vakalatnama*' may be admitted document, but it has not been taken into consideration and there is possibility that at the time of taking signatures of aforesaid Jagdish Mahto, might have changed the signature willingly and that can differ from his original signatures. The signature of other



parties on compromise petition has not been brought on record which may prove this fact that aforesaid Jagdish Mahto was not present and he has not made any signature. It is also held that there is no evidence whatsoever regarding absence of Jagdish Mahto at the time of filing of compromise petition and also at the time of disposal of the case, and as such, the whole story of the applicants- petitioners appears not to be proved. Objections raised with regard to minority of the parties also does not appear genuine as those persons have also not appeared as witness of the applicants. The objection regarding properties in compromise petition is more than the property in Suit also does not appear proper as the whole property has been mentioned with consent of all the parties in compromise petition and there is no restriction to add any property either in suit or in compromise petition during trial, if both parties have given their respective consent. On the aforesaid grounds, the learned lower appellate Court has rejected the Miscellaneous Case No. 01/ 2007 on 05-12-2018, against the said order the present Revision application has been preferred.

6. The learned counsel for the petitioners submits that compromise petition does not bear affidavit hence, the compromise petition without an affidavit is illegal in the eyes of law. It is also submitted that the learned lower appellate Court



before which it is alleged by one of the parties to the alleged compromise that no such compromise had been entered between the parties that Court has to decide whether the agreement or compromise in-question was lawful and not void or voidable under the Indian Contract Act. If the agreement which was compromised itself is fraudulent, then it shall be deemed to be void within the meaning of the explanation to the proviso to Rule 3, and as such, not lawful. In this regard, reliance has been placed on the decision reported in *AIR 1993 SC 1139 (Banwari Lal v. Smt. Chando Devi (through L.R.) and Anr.* as well as in the case of *Srimati Sabitri Thakurain v. F.A. Savi* reported in *AIR 1927 Patna 354(2)*, wherein it has been held that the provision under Order 23 Rule 3 of the CPC of recording the compromise is not a mere matter of form but of substance. In order to avoid such mischief, Order XXIII, Rule 3 requires that the court should inquire into and be satisfied as to the compromise having been lawfully arrived at and should direct that the compromise be recorded only after having been so satisfied. The non compliance with the provisions of the rule has affected the authority of the order of the subordinate Judge and the decree passed on the basis of that order.

7. On summon, only opposite party No. 1 appeared and filed her counter affidavit stating therein the main grievance of



Opposite party No.1 is that the learned lower appellate Court, after hearing the parties, rightly dismissed the Miscellaneous Case No. 01/2007 on 05-12-2018. She has stated the allegation of forged and fabricated signatures of Jagdish Mahto and Girija Mahto (petitioner Nos. 1 and 2) over the compromise petition, is wrong rather they are quite genuine, legal and is in accordance with law. Both of them had put their signatures with full knowledge along with respective lawyers after filing compromise petition. On the basis of report of *Sharistedar*, the Court ordered proper and final order was passed on 23-07-2004 and that was held to be a part of the judgment and, accordingly, both the parties were in possession of the land mentioned in their schedule land and accordingly order was passed and decree was also prepared. In so far as, objection with regard to report of handwriting expert is concerned, the report of expert is not scientific and it is doubtful. Handwriting expert was cross- examined by opposite party No.1 and in his cross-examination, he has stated that fingerprint is more scientific than the thumb impression. The handwriting expert has not stated the distance of the letters and difference which took place in the speed of writing with increasing age, has also not been mentioned in his report. He has not written the alignment of circumstances, in which it has been written. He has also not written in his report that



how much degree will be made on how much pressure. Learned counsel for the opposite parties further submits that it has been established that in the circumstances of the case, the court can refuse to place any reliance on the information of an expert which is in support by any reason and, in the present case, the petitioner No.1 has neither proved his judicial custody nor ill health at the time of disposal of the case nor the report of expert appears to be scientific nor comparison of disputed signature with admitted signature has been brought on record. The signature of other parties on compromise petition has not been brought on record which may prove this fact that the aforesaid Jagdish Mahto was not present and he has not made any signature.

8. Before going to merit of this case, it is necessary to deal with the provisions envisaged under Order 23, Rule 3 of the Code which reads as follows:

“3. Compromise of suit.-

“Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit,



whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit]:

[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.- An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]"

9. It is manifest from a plain reading of the above that in terms of the proviso to Order 23 Rule 3 where one party alleges and the other denies adjustment or satisfaction of any suit by a lawful agreement or compromise in writing and signing by the parties, the court before whom such question is raised, shall decide the same. What is important is that in terms of explanation to Order 23 Rule 3, the agreement or compromise shall not be deemed to be lawful within the meaning of the said Rule if the same is void or voidable under the Contract Act 1872. It follows that in every case where the question arises whether or not there has been a lawful agreement or compromise in writing and signed



by the parties, the question whether the agreement or compromise is lawful has to be determined by the court concerned. What is lawful will in turn depend upon whether the allegations suggested any infirmity in the compromise and the decree that would make the same void or voidable under the Contract Act. More importantly, Order 23 Rule 3A clearly bars a suit to set aside a decree on the ground that the compromise on which the decree is based was not lawful. This implies that no sooner a question relating to the lawfulness of the agreement or compromise is raised before the Court that passed decree on the basis of any such agreement or compromise it is that court and that court alone who can examine and determine that question.

10. The judgment of *Banwari Lal V. Smt. Chando Devi* reported in *(1993)1 SCC 581* was referred to and relied upon by this Court wherein the Hon'ble Apex Court held that no sooner a question relating to lawfulness of the agreement or compromise is raised before the court that passed the decree on the basis of any such agreement or compromise, it is that court and that court alone which can examine and determine that question. The Scheme of Order 23 Rule 3 of the CPC is to avoid multiplicity of litigation and permit parties to amicably come to a settlement which is lawful, is in writing and voluntary act on the part of the



parties. The court can be instrumental in having an agreed compromise effected and finally attached to the same. The court should never be party to imposition of a compromise upon unwilling party, still open to the question on an application under the proviso to Order 23 Rule 3 CPC before the court.

11. By adding the proviso along with an explanation the purpose and the object of the amending Act 1976 appears to compel the party challenging the compromise to question the same before the court which had recorded the compromise in-question. That court was enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner. The explanation made it clear that an agreement or a compromise which is void or voidable under the Contract Act shall not be deemed to be lawful within the meaning of the said Rule. Having introduced the proviso along with explanation in Rule 3 in order to avoid multiplicity of the suit and prolonged litigation. The aforesaid observation was made in the case of ***Banwari Lal*** (supra). The Hon'ble Apex Court has further held the court recorded the alleged agreement and compromise in a casual manner. It need not be impressed that Rule 3 of Order 23 CPC does not require just a seal of approval from the court to alleged agreement or compromise said to have been entered into between



the parties. The Statute requires the court to be first satisfied that the agreement or compromise which has been entered into between the parties is lawful, before accepting the same. Court is expected to apply its judicial mind while examining the terms of the settlement before the suit/appeal is disposed of in terms of the agreement arrived at between the parties.

12. The order dated 23-07-2004, passed by the learned Additional District Judge- V, in Title Appeal No. 37/99/30/03 on compromise petition, reads as follows:

“उभय पक्ष की ओर से हाजरी दी गई।
संधि पत्र पर सिस्तेदार का प्रतिवेदन देखा। अतः संधि
के आधार पर वाद में निर्णय पारित किया गया। संधि पत्र
जय पत्र का अंश होगा। कार्यालय समयावधि के अंदर
वाद को अभिलेखागार में जमा करें।”

13. Meaning thereby, the order of the Additional District Judge-V, dated 23-07-2004, directing the suit to be decreed in terms of the compromise. The provisions in the Code requires recording the compromise not to be a mere matter of form but of substance. The duty of the Court in order to avoid such a mischief of Order 23, Rule 3, requires that the court should inquire into and be satisfied as to the compromise having been lawfully arrived at and should direct that the compromise be recorded only after having been so satisfied. The omission to comply with the requirements of that Rule goes to the root of the jurisdiction of the Court to pass a decree in accordance with the compromise. The



non-compliance with the provisions of the Rule has affected the authority of the order of the learned Additional District Judge-V dated 23-07-2004, and the decree passed on the basis of that order.

14. On perusal of the Lower Court Records, it appears that the compromise petition was filed on 19.06.2003 without an affidavit. Moreover petitioner nos. 5 to 9 (who were majors at the time of filing of compromise petition) were not present at the time of filing of the said compromise petition. Mr. Ramashis Sharma, Advocate, who signed on the compromise petition as guardian ad litum (GAL) on behalf of the petitioner Nos. 5 to 9 on 23.07.2004 the date on which the order was passed on the compromise petition itself by the learned Additional District Judge-V. It is also apparent from the order sheets of Title Appeal No. 37/1999/30/2003 that the learned court below did not grant leave to guardian ad litum (GAL) to enter into compromise on behalf of the minors. Order 6 Rule 15(i) of the Code stipulates that every pleading shall be verified at the foot by the party or by one of the parties pleading or by some other persons proved to the satisfaction of the Court to be acquainted with the facts of the case. Sub-rule (4) was inserted to Order 6, Rule 15 of CPC by Act No. 46 of 1999 w.e.f. 01-07-2002, which stipulates that person verifying the pleading shall also furnish an affidavit in support of



his pleadings. However, the Court below accepted the compromise petition, decreed the suit on the terms and condition of the said compromise. Though the said compromise petition was defective, due to non-compliance of the aforesaid provision, the said fact was not taken note of. On this background, the court below has not considered whether fraud has been practiced or not taking into consideration the provisions, as discussed above. The LCR further reveals that the order sheets, in which the compromise was recorded, without assigning any reasons. The learned Additional District Judge-V, without application of mind, passed the order dated 23-07-2004 and directed to prepare decree in terms of the compromise. These aspects of the matter were not considered by the learned Additional District Judge-1st, who passed the impugned order dated 05-12-2018, in Miscellaneous Case No. 01/2007/15/2017. The order of the Additional District Judge-1st, dated 05-12-2018, dismissing the Miscellaneous application filed under Order 23, Rule 3 CPC read with Section 151 CPC, is set aside as well as order dated 23-07-2004 passed in Title Appeal No. 37/1999/30/2003 whereby directing the suit to be decreed in terms of the compromise and the compromise decree must also be set aside and the appeal is restored to its original number to be



taken up from the stage at which the compromise was filed and disposed of in accordance with law.

15. In the aforesaid background, this Court, therefore, does find that the learned Court below has committed error of jurisdiction and material illegality in passing the impugned order. Accordingly, the Civil Revision application is allowed.

(Khatim Reza, J)

shyambihari/-

AFR/NAFR	NAFR
CAV DATE	31-10-2023
Uploading Date	13-12-2023
Transmission Date	N/A

