

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.181 of 2016

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Anandi Sah S/o Late Ram Uchit Sah resident of Village Malati, PS Ujiarpur,
Dist Samastipur

... .. Petitioner/s

Versus

1. Jagannath Sah and Ors
2. Amaranth Sah
3. Baidyanath Sah
4. Bachcha Sah null All resident of of Malati, PS Ujiarpur, Dist Samastipur
defendant nos 2 to 5/ Respondandents 1st set ...opp .Party 1st set
5. Ram Vilash Sah late Ram Uchit Sah
6. kishori Lal Sah
7. Lal Babu Sah s/o Rambilash Sah All resident of of Malati, PS Ujiarpur, Dist
Samastipur defendant nos 2 to 5/ Respondandents 1st set ...opp .Party 1st set
8. Ram Sagar Sah S/o Late Akalu Sah
9. Ramkali Devi W/o Rama Sagar Sah All resident of of Malati, PS Ujiarpur,
Dist Samastipur defendant nos 2 to 5/ Respondandents 1st set ...opp .Party
1st set

... .. Opposite Parties

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Appearance :

For the Petitioner/s	:	Mr. Jitendra Kishore Verma, Advocate Mr. Anjani Kumar, Advocate
For the O.P. No. 8&9	:	Mr. Ratan Kumar Sinha, Advocate
For the O.P. No. 1-7	:	Mr. Shreyansh Goyal, Advocate Mr. Ravi Rai, Advocate Mr. Sweta Rai, Advocate Mr. Abhay Nath, Advocate

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

17 09-02-2023 Heard learned counsel for the petitioner and learned
counsel for the opposite parties.

This Civil Revision has been filed against the order
dated 06.05.2016 passed by learned District Judge, Samastipur
in Partition Appeal No. 16 of 2015/03 of 2015 whereby
dismissing the appeal as barred by law of limitation and



confirming the compromise judgment and decree dated 11.05.1988 passed in Partition Suit No. 25 of 1988 by learned Munsif 2nd, Samastipur.

Learned counsel for the petitioner submits that the said partition suit was filed on 19.04.1988 and soon after compromise decree was passed on 11.05.1988 and at the time of filing of the said suit, defendant nos. 2 to 5 were minor sons of petitioner/defendant no. 1. It is further submitted that the petitioner had never signed on the compromise decree.

Learned counsel for the petitioner further submits that the petitioner got knowledge of Title Suit No. 54 of 2014, which was filed by the opposite party 3rd set in the Court of Sub Judge 1st, Dalsinghsarai on 28.02.2015, thereafter, the petitioner appeared on 04.03.2015 in the said Title Suit No. 54 of 2014 and after perusal of the copy of plaint, first time he came to know about the judgment and compromise decree dated 11.05.1988 passed by Munsif 2nd Samastipur in Partition Suit No. 25 of 1988 and after enquiring into the matter, he applied for obtaining certified copy of judgment and decree dated 11.05.1988. Further, it is submitted that he received the certified copy of the said judgment thereafter, he filed the Title Appeal No. 16 of 2015 along with application of condonation of delay.



Learned counsel for the petitioner further submits that it is apparent from the record of the case that the said compromise decree is prepared within 22 days from the date of filing of the said partition suit. It is also submitted that there was nothing on record brought by the contesting parties to show that earlier the petitioner had knowledge of the fraudulent compromise decree and the purported signature of the petitioner on the compromise petition in which, reliance was placed to impute knowledge was itself in dispute. Further, the appellate order is purely mechanical order which was passed without having regard to the facts of the case and the case put forward for explaining the delay and the court cannot expect from a party to prove the negative. It is further submitted that the petitioner has been deprived of his valuable right to property and on account of refusal to condone the delay and dismissal of the appeal, he has suffered irreparable injury and loss. Learned counsel for the petitioner further submits that the impugned order is wholly illegal, perverse and mechanical is liable to be set aside on account of failure to exercise jurisdiction.

Learned counsel for the petitioner submits that earlier a Partition Suit No. 85 of 1984 was filed and the same was dismissed for default in the year, 1988 thereafter, again Partition



Suit No. 25 of 1988 was filed. It is submitted that Ram Uchit Sah had two sons namely Ramesh Bilash Sah and Anandi Sah (petitioner) and declared that they will keep 1/3 share instead of 1/4 share and it is also declared that father and mother i.e. O.P. No. 6 and 7 shall be maintained by all three parties. It is also submitted that O.P. No. 8 was defendant no. 8 in Title Suit No. 25 of 1988, O.P. No. 9 is the wife of O.P. No. 8. It is also submitted that the O.P. No. 8 is the son of second wife of Ram Uchit Sah namely Shanichari Devi from her first husband namely Akalu Sah and in this context he opposes that they are not entitled to keep share in the category of Co Parcener.

Learned counsel for the opposite party no. 8 and 9 filed their counter affidavit in this case and vehemently opposed the submission of the learned counsel for the petitioner.

Learned counsel for the O.P. No. 8 and 9 filed counter affidavit, wherein, they stated that petitioner is residing in the same house and he has full knowledge of the compromise decree and it is also submitted that the petitioner took a plea that they came to know about the compromise decree on 28.02.2015 from a co-villager which is wrong as stated in paragraph 1 of the limitation petition filed in Partition Appeal No. 16 of 2015. It is also submitted that the petitioner filed an application under



Section 32 of the Consolidation Act and the opposite party nos. 8 and 9 paid the fine of Rs. 250/- on 10.08.2009 and 28.08.2009 against the order of Collector, which was modified by a Co-ordinate Bench of this Court in C.W.J.C. No. 967 of 2007 and C.W.J.C. No. 444 of 2007 and *vide* order dated 13.01.2009 and 09.01.2009 respectively wherein, the writ petition was disposed of. It is also submitted that the petitioner failed to explain the delay of 27 years in filing the title appeal.

After analyzing the order of Partition Appeal No. 16 of 2015, the learned appellate court only on realisation of the endorsement over the compromise petition which was signed on 11.05.1988 and it is presumed that it is genuine and thus relied upon two decisions “*Heera Lal Versus Board of Revenue & ors reported in AIR 2001 Raj 318 and Gram Panchayat Malout versus Prem Singh reported in 1998 SCC Online P&H 432*” wherein it is held that the appeal has been filed after lapse of 27 years from the date of passing of the judgment and decree on compromise basis. Sufficient cause has not been assigned in the said application and held that appeal is time barred. After perusal of the records of the Civil Revision Application it is revealed that the partition suit was filed on 19.04.1988 and judgment and compromise decree was prepared on 11.05.1988.



There is no material on the record to show that the said compromise decree was acted upon and therefore there is no question of knowledge of the compromise decree to the petitioner.

In the aforesaid circumstances, the impugned order is set aside and learned lower appellate court is directed to decide the appeal on merit within nine months.

(Khatim Reza, J)

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