

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.842 of 2016

1. Maharpato Devi, Wife of Lal Babu Rai and daughter of Late Ram Chander Rai, resident of Village Jeerakhan Tola, Via Goriyasthan, P.S. Maner, P.O. Jeerakhan Tola, District Patna at present resident of Village Sahalichak, P.O. Sahalichak, P.S. Maner, District - Patna.
2. Sunder Devi @ Moti Sundar Devi, Wife of Late Ram Chander Rai, resident of village Gyanpur, P.S. Koelwar, P.O. Birampur, District Bhojpur, at Present Resident of Village Sahalichak, P.O. Sahalichak, P.S. Maner, District- Patna.

... .. Petitioner/s

Versus

1. Phulwaso Devi, widow of Late Jamuna Rai, Resident of Village Sahalichak, P.O. Sahalichak, P.S. Maner, District- Patna.
..... Defendant 1st Set/Respondents 1st Set.
2. Sugga Devi, Widow of Late Sukhdeo Rai, Resident of Village Panapur, P.S. Akilpur, Danapur, P.O. Panapur, District- Patna.
3. Panpato Devi, Wife of Ram Swaroop Rai, Resident of Village Gyanpur, Koilwar, P.O. Birampur, District- Bhojpur.
..... Defendants 2nd Set/ Respondents 2nd Set
- 4.1. Laxminia Devi wife of Late Ram Lakshan Rai.
- 4.2. Rambabu Rai son of Late Ram Lakshan Rai.
- 4.3. Chandeshwar Rai Son of Late Ram Lakshan Rai.
- 4.4. Kameshwar Rai Son of Late Ram Lakshan Rai.
- 4.5. Surendra Rai Son of Late Ram Lakshan Rai.
- 4.6. Moti Sundar Devi Daughter of Late Ram Lakshan Rai.
- 4.7. Simanti Devi Daughter of Late Ram Lakshan Rai.
- 4.8. Sangita Deiv Daughter of Late Ram Lakshan Rai.
- 4.9. Sudhir Kumar Son-in-law of Late Ram Lakshan Rai and Son of Late Krishna Rai.
- 4.10 Ritesh Kumar Son-in-law of Late Ram Lakshan Rai and Son of Late Krishna Rai.
Resident of Garipatti, P.S. Sonpur, P.O. Akhilpur, District Chapra.
5. Girjan Rai Son of Late Janak Rai.
6. Ram Bishun Rai, Son of Ram Lakshan Rai.
All Residents of Gari Pathi, P.S. Sonepur, District- Chapra.
..... Defendants 3rd Set/Respondents 3rd Set

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Jitendra Kishore Verma, Advocate with
Mr. Anjani Kumar, Advocate



For the Respondent/s : Mr. Ravi Raj, Advocate
Mr. Shreyash Goyal, Advocate and
Mr. Abhay Nath, Advocate
Mr. Lovekush Kumar, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
ORAL JUDGMENT

Date : 03-07-2023

Heard learned counsel for the parties.

2. This Civil Miscellaneous Application has been filed for setting aside the order dated 24.05.2016 passed by the learned Sub-Judge-1st, Danapur in Title Suit No. 133 of 2000 whereby and whereunder the petition filed under Section 151 of C.P.C. for conversion of Title Suit No. 133 of 2000 for setting aside of a compromise decree into a miscellaneous case has been rejected.

3. It is alleged that in Partition Suit No. 293/1989 a compromise decree was obtained playing fraud. The plaintiffs filed the instant Title Suit No. 133 of 2000 for declaration of the said compromise decree as void *ab initio* and not binding. The defendants are contesting the suit by filing written statement. The plaintiffs/petitioners filed an application under Section 151 CPC on 13.02.2014 for conversion of title suit into miscellaneous case in view of the judicial interpretation of Order 23 Rule 3 of CPC and considering that suit is barred in view of provision of Order 23, Rule 3A CPC. The learned trial Court vide the impugned order dated 24.05.2016 rejected the said petition.



4. Learned counsel for the petitioners submits that the learned Court below passed the impugned order in a mechanical manner and failed to appreciate that a regular title suit for setting aside of a compromise decree can be converted into a miscellaneous case as it shall cause no prejudice to the defendants.

5. He further submits that there is no specific provision for conversion of title suit into a miscellaneous case and the same can be done under its inherent power under Section 151 CPC. The issues have not been framed in the suit and no witnesses have been examined and there is no statutory bar for conversion of title suit for setting aside of a compromise decree into a miscellaneous case at any stage in the suit. The suit was filed by mistake in place of miscellaneous case and the suit can be treated as a miscellaneous case under proviso to Order XXIII Rule 3 CPC and if the impugned order is allowed to stand then it will occasion failure of justice and lead to multiplicity of proceedings.

6. On the other hand, learned counsel for the respondents supports the impugned order and submits that the petitioners may withdraw the suit and may file the miscellaneous case in accordance with law. The conversion of title suit into miscellaneous case is not permissible and not required in the facts



and circumstances of this case and the petitioners have no merit either in suit or in this application and are liable to be dismissed.

7. The Hon'ble Supreme Court in **Banwari Lal vs Smt. Chando Devi and Anr. (AIR 1993 SC 1139)** observed that a party challenging a compromise can file a petition under proviso to Rule 3 of Order XXIII or an appeal under Section 96 (i) of CPC, in which he can question the validity of compromise in view of Rule 1A of Order XLIII of CPC. The Division Bench of this Court in **Guru Charan Singh & Ors. vs. Mahatam Singh & Anr. (2006 (3) PLJR 345)** held that the title suit challenging a decree drawn on basis of compromise on ground of fraud etc. would not be maintainable in view of the clear bar created under Order XXIII Rule 3A CPC.

8. This Court in **Smt. Prabhawati Sinha vs. Heera Rai 2010 (1) PLJR 5** in para 21 has observed that "the procedure for disposed of the miscellaneous case would also be similar to that which has been prescribed in the code for disposal of the suit. Therefore, in my opinion, if the suit is allowed to be converted into a miscellaneous case, then it will prejudice none of the parties. Thus, *ex debito justitiac* this Court thinks it proper that the plaintiffs/opposite parties may be allowed to convert the suit into a miscellaneous case. This prayer of the opposite parties is allowed.



They may be allowed by the trial Court to convert the title suit concerned into a miscellaneous case within two months from the date of receipt or production of a copy of this order.”

9. The Hon’ble Supreme Court in **Sree Surya Developers and Promoters vs. Sailesh Prasad and others** reported in **(2022) 5 SCC 736** dealt with the earlier decisions in R. Janakiammal vs. S. K. Kumaraswamy (D) Thr. Lrs. (2021) 9 SCC 114, R. Ranjanna vs. S. R. Venkataswamy (2014) 15 SCC 478, Triloki Nath Singh Vs. Anirudh Singh (2020) 6 SCC 629 and other judgments of Hon’ble Supreme Court and observed that a party to a consent decree based on a compromise to challenge the compromise decree on ground that the decree was not lawful i.e. it was either void or voidable has to approach the same Court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.

10. In view of the aforesaid discussion, the Title Suit filed on behalf of plaintiffs/petitioners for setting aside of a compromise decree on the ground of fraud ought to have been converted into a Miscellaneous case.

11. Accordingly, the impugned order is set aside and this Miscellaneous Application is allowed with a direction to the learned Court below to dispose of the case expeditiously.



12. Both the parties are also directed to co-operate in the learned Court below for expeditious disposal of the case without giving unnecessary adjournments.

13. On filing the application by the petitioners, this Court direct the learned District Judge, Patna to transfer aforesaid suit/case pending before the trial Court to the Court concerned or its successor Court, which has passed the compromise decree.

14. With the above direction and observation, this Civil Miscellaneous Application is disposed of.

(Sunil Dutta Mishra, J)

Anand Kr.

AFR/NAFR	NAFR
CAV DATE	
Uploading Date	
Transmission Date	

