

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.6 of 2024

Prabhavati Devi D/O Late Ram Avtar Sah Mauja- Rajpur, P.S.- Nasriganj,
Post- Rajpur, District- Rohtas, Bihar

... .. Petitioner/s

Versus

1. Ashok Kumar S/O Late Bengali Prasad R/O Mauza- Rajpur, P.S.- Nasriganj, Distt.- Rohtas
2. Manoj Kumar S/o Late Bengali Prasad R/O Mauza- Rajpur, P.S.- Nasriganj, Distt.- Rohtas.
3. Saroj Kumar @ Bhim S/o Late Bengali Prasad R/O Mauza- Rajpur, P.S.- Nasriganj, Distt.- Rohtas
4. Shobha Devi, W/O Ram Babu Sah, R/O Village- Paradiya, Post- Godari, Thana, Karakat Goradi, District- Rohtas, Bihar.
5. Asha Devi, W/O Kanhaiya Prasad, Village, Lakahnipur, P.S.- Mughal Sarai, Uttar Pradesh
6. Mamta Devi, W/O Narayan Prasad, Mauja, Garochhiya, Thana- Nasariganj, Rohtas, Jharkhand.
7. Pooja Devi, W/O Jitendra Prasad, Mauja- Bhawri, Thana- Chadwa, District- Gadhwa, Jharkhand.
8. Kalawati Devi, D/O Late Ram Awtar Sah, R/O Mauza- Rajpur, P.S.- Nasriganj, P.O.- Rajpur, Distt.- Rohtas.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Parth Gaurav, Advocate
For the Opposite Party nos. 1 to 7	:	Mr. Devendra Kumar Sinha, Sr. Advocate
		Mr. Akhouri Vipin Bihari
		Shrivastava, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
ORAL ORDER

8 23-09-2024 Heard Mr. Parth Gaurav, learned counsel for the petitioner and Mr. Akhouri Vipin Bihari Shrivastava, learned counsel for the opposite party no. 1 to 7.

2. This civil revision application is directed against the order dated 21.11.2023 passed by the learned Subordinate



Judge-2, Bikramganj, Rohtas in Miscellaneous Case No. 1 'A' of 2004 filed by opposite party nos. 1 to 7 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 petition, whereby the compromise decree dated 27.03.1992 passed in Title Suit No. 37 of 1989 has been set aside.

3. The brief facts of the case is that the plaintiff, namely, Gauri Shankar Prasad filed Title (Partition) Suit No. 37 of 1989 against his father, namely, Ramautar Sah and his brother, namely, Bengali Prasad and minor sons of Bengali Prasad (opposite parties) for partition of 1/3 share in Schedule-ka of the plaint which was admitted on 28.03.1989. It is apparent from the record that on 10.04.1991 a compromise petition was ordered to be placed in absence of the defendants. From the records, it appears that on 11.07.1991, 15.09.1991, 14.10.1991, 16.11.1991, 15.02.1992 and 03.03.1992, there was no *pairvi* on behalf of the parties and the said compromise petition in the absence of defendant on 27.03.1992, was accepted by the court. It is also apparent from the record that there was no representation on behalf of the minors or any order passed by the learned trial court invoking Order 32 Rule 7 of the



CPC with regard to the appointment of *guardian ad litem* to enter into compromise on behalf of the minors.

4. After getting knowledge of the said compromise decree, the heirs of Bengali Prasad who were minors at the time of compromise decree, filed a Miscellaneous Case No. 1 'A' of 2004 in the court of learned Sub-Judge -2, Sasaram, Rohtas for setting aside compromise decree dated 27.03.1992 passed in Title (Partition) Suit No. 37 of 1989. Further case of the opposite parties is that neither the petitioner nor Bengali Prasad appeared in the said Title (Partition) Suit. They never appointed any lawyer nor any order for appointment of guardian ad litem was passed by the learned trial court in the compromise decree. The decree was passed in the absence of Bengali Prasad and the original defendant nos. 3 to 5. It is contended that Ramautar Sah, who was defendant no. 1 in the suit, was very poor and was suffering from old age ailment, as a result of which, he was medically unfit. Original defendant no. 2, namely, Bengali Prasad used to remain inebriated all the time and was also rustic and illiterate because of which he did not possess the basic sense of understanding.

5. On summon, only widow of original plaintiff and widow of original defendant no. 1 appeared and filed their



rejoinder to Miscellaneous Case No. 1‘A’ of 2004. The case of the petitioner is that the defendant/opposite party 1st set appeared in the suit and minor defendants also appeared through their father as guardian. During the pendency of the suit, good sense prevailed between the parties, upon which the suit was compromised by filing compromise petition which was signed by all the parties to the suit and the minors were duly represented through their father as their guardian. Further case of the petitioner is that minor children of Bengali Prasad became major soon after the suit was compromised and the present miscellaneous case has been filed after two decades of the said compromise decree. Moreover, they also filed an application before the Circle Officer for mutation of their names on the basis of compromise decree passed in the aforesaid Title (Partition) Suit, which proved that the compromise was acted upon. Further case of the petitioner is that the miscellaneous case is barred by limitation as opposite party 1st set had due knowledge about the compromise decree as they had acted upon by getting their share of the land mutated on their application itself.

6. Learned counsel for the petitioner submits that the learned lower court without considering the evidence adduced



by the petitioner and even without framing any issue, the miscellaneous case has been allowed by setting aside the compromise decree dated 27.03.1992 passed in Title (Partition) Suit No. 37 of 1989. Learned counsel for the petitioner submits that the learned lower court without considering the fact that the miscellaneous case for setting aside the compromise decree has been filed after 18 years of attainment of majority of the alleged minors.

7. Per contra, learned counsel for the opposite party-1st set submits that the compromise petition does not bear affidavit. Hence, the compromise petition without an affidavit is illegal in the eye of law. Learned counsel further submits that it is admitted fact that at the time of filing of alleged compromise petition, the original defendant nos. 3, 4 & 5 were minor. It is also apparent from the record of the case that the learned trial court did not grant leave to guardian ad litem to enter into the compromise on behalf of the minors. Learned court below rightly allowed the miscellaneous case and set aside the compromise decree dated 27.03.1992.

8. Before going into 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 satisfied the plaintiff in respect to 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 suggest 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 alone who can examine and



determine that question.

10. The judgment in the case of *Banwari Lal V. Smt. Chando Devi (through Lrs.) & Ors.* 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, a specific was prescribed by Rule 3A in respect of institution of a separate suit for setting aside a decree on the basis of a compromise. The aforesaid observation was made in the case of ***Banwari Lal (supra)***. The Hon'ble Apex Court has further held that 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. From perusal of the impugned order, it is apparent



that the learned lower court below after scrutinizing the evidence adduced by the parties in Miscellaneous Case No. 1 'A' of 2004 has held that the petitioner and his witnesses have accepted that at the time of filing the compromise petition, original defendant nos. 3, 4 & 5 were minors and no order was passed by the learned lower court under order 32 Rule 7 of the CPC for appointment with regard to grant leave for appointment of *guardian ad litem* to enter into compromise on behalf of minors, and also held that no compliance of order 22 Rule 7 of the CPC was followed. In view of the said fact and circumstances, the compromise decree dated 27.03.1992 is not lawful.

13. Having considered the submissions and on perusal of the impugned order, it is manifest that the compromise decree dated 27.03.1992 is a mischief of Order 23 Rule 3 of the CPC and 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 of provision of the Rule has affected the authority of the order



of the learned trial court dated 27.03.1992 and decree passed on the basis of that order in view of admitted fact that defendant nos. 3, 4 and 5 were minors and the learned court below who passed the compromise decree, did not grant leave for appointment of the *guardian ad litem* to enter into the compromise on behalf of the minors.

14. In the aforesaid background, this Court, therefore, does not find that the learned court below has committed any error of jurisdiction and illegality in passing the impugned order.

15. The revision application is, accordingly, dismissed.

(Khatim Reza, J)

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