

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.68 of 2022

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Rakesh Bihari Sinha @ Rakesh Mangal Sinha @ Rakesh Sinha, son of Late Mangal Bihari Sinha @ Late Dr. Mangal Bihari Saran Sinha, Resident of Village-Shahpur, P.O.-Shahpur, P.S.-Shahpur, District-Bhojpur (Bihar).

... .. Petitioner/s

Versus

1. Smt. Poonam Sinha, wife of Late Binod Bihari Sinha @ Mukuljee, resident of Village-Shahpur, P.O. and P.S.-Shahpur, District-Bhojpur (Bihar).
2. Harsh @ Badrish, son of Binod Bihari Sinha @ Mukuljee, resident of Village-Shahpur, P.O. and P.S.-Shahpur, District-Bhojpur (Bihar).
3. Atul, son of Late Anand Bihari Sinha, resident of Village-Shahpur, P.O. and P.S.-Shahpur, District-Bhojpur (Bihar).
4. Alok, son of Late Anand Bihari Sinha, resident of Village-Shahpur, P.O. and P.S.-Shahpur, District-Bhojpur (Bihar).
5. Asit, son of Late Anand Bihari Sinha, resident of Village-Shahpur, P.O. and P.S.-Shahpur, District-Bhojpur (Bihar).
6. Smt. Vidya Srivastava, Wife of Late P.P. Srivastava, resident of Village-Shahpur, P.O. and P.S.-Shahpur, District-Bhojpur (Bihar).
7. Smt. Indu Sinha, Wife of Late S.P. Sinha, resident of Village-Shahpur, P.O. and P.S.-Shahpur, District-Bhojpur (Bihar).
8. Smt. Kanak Kumar, Wife of Sri Harish, resident of Village-Shahpur, P.O. and P.S.-Shahpur, District-Bhojpur (Bihar).
9. Anita Devi, Wife of Ramesh Kumar Rai, resident of Village-Shahpur, P.O. and P.S.-Shahpur, District-Bhojpur (Bihar).
10. Rashmi Praksh, Wife of Ajay Prakash, Resident C/o Late D.P. Verma, Resident of Mohallah-West Patel Nagar, Near Dr. B. Bhattacharaya, P.O. and P.S.-Shastri Nagar, District-Patna (Bihar) at present residing at Flat No. 202, Chunni Sukan Heigh, Samasawalli Road, Barodara, Gujarat, Pin Code-390024.

... .. Respondent/s

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Appearance :

For the Petitioner/s	:	Mr. K. N. Chaubey, Sr. Advocate Mr. O.P. Upadhiya, Advocate Mr. Abhay Kumar Pandey, Advocate
For the Res No.10	:	Mr. Atul Kumar Pandey, Advocate



CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 14-11-2024

Heard the learned senior counsel appearing on behalf of the petitioner and the learned counsel for the respondent no. 10.

02. The petitioner is aggrieved by the order dated 25.01.2022 passed by the In-charge court of learned Sub Judge-II, Jagdishpur in Title Suit No. 75 of 2005, whereby and whereunder the learned Sub Judge passed an order under Section 151 of the Code of Civil Procedure, 1908 (for short 'the Code') modifying its earlier order dated 04.10.2021 and directed the learned Additional Collector, Bhojpur at Ara to proceed with the mutation proceedings pending before it during pendency of Title Suit No. 75 of 2005.

03. Learned senior counsel, Mr. K. N. Chaubey, appearing on behalf of the petitioner submits that the impugned order shows that the learned Sub Judge exceeded his jurisdiction and passed the order under Section 151 of the Code which the court was not competent to pass. Mr. Chaubey further submits that when a title suit is pending with regard to suit property, mutation proceeding cannot be allowed in terms of Section 6(12) of the Bihar Land Mutation Act, 2011 (for short 'the Act').



On the basis of this fact, the petitioner by moving a petition under Section 151 of the Code prayed for staying the proceedings of Mutation Case Nos. 21, 22, 23, 24, 25, 26 and 27 of 2021-22 and vide order dated 04.10.2021, the learned Sub Judge stayed the hearing in the aforesaid mutation revision cases. Thereafter, without considering the fact that there could be no use of inherent power under Section 151 of the Code, learned Sub Judge recalled its earlier order and directed for continuation of the mutation revision proceedings before the learned Additional Collector. When there is specific provision to challenge the order passed on 04.10.2021, the learned trial court should not have proceeded in the matter under Section 151 of the Code for recalling its order. Such orders could not be allowed to stand as the same shows an ominous trend. Mr. Chaubey further submits that when a procedure has been prescribed, the courts are bound to follow the same and cannot move at their whims and discretion. This Court has been bestowed with the powers under Article 227 of the Constitution of India to keep the subordinate courts within their bound so that such type of orders are not passed. Thus, the learned senior counsel submits that there is two fold challenge to the impugned order that it has been passed in contravention of Section 6(12)



of the Act and on the second ground that the said court was not competent to recall or modify its earlier order under Section 151 of the Code when alternative remedy is available against the order which has been modified/recalled. Mr. Chaubey, thus, submits that on these two short points the impugned order is not sustainable and the same needs to be set aside.

04. Learned counsel appearing on behalf of respondent no. 10 vehemently contends that there is no infirmity in the impugned order and the same needs to be sustained. Learned counsel further submits that the petitioner and respondent no. 10 are siblings and the respondent no.10 executed sale deeds on 09.01.2021 and the petitioner executed sale deeds on 21.01.2021, respectively in favour of different persons. While the vendees of the petitioner got the mutation in their favour for the suit property during pendency of the suit, the mutation cases of the vendees of the respondent no. 10 were dismissed and the appeal was also dismissed and thereafter, the affected parties went into revision before the Additional Collector, Bhojpur at Ara. The petitioner concealing this fact about his vendees getting mutation in their names, got the order dated 04.10.2021 and the concealment of the said fact vitiated the whole order and for this reason, the learned trial court after



considering this fact of concealment by the petitioner, recalled its earlier order. Learned counsel referred to the decision of Hon'ble Supreme Court in the case of *Indian Bank vs. Satyam Fibres (India) Pvt. Ltd*, reported in (1996) 5 SCC 550 wherein the Hon'ble Supreme Court held that the judiciary in India also possesses inherent power, specially under Section 151 CPC, to recall its judgment if it is obtained by fraud on the court. The Hon'ble Supreme Court further held that since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of court, the courts have been held to have inherent power to set aside an order obtained by fraud practised upon that court. Similarly, where the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order. The learned trial court took note of the concealment by the petitioner and passed the order which it was fully competent to pass since the petitioner played fraud upon the court and concealed the fact about mutation by his vendees during the pendency of the Title Suit No. 75 of 2005. Thus, the learned counsel submits that the learned trial court passed the order dated 04.10.2021 due to concealment of facts by the petitioner and therefore, the court was within its right to recall



the said order. Thus, there is no infirmity in the impugned order and the same needs no interference.

05. I have given my thoughtful consideration to the rival submission of the parties and also to the facts and circumstances of the case.

06. No doubt “Fraud avoids all judicial acts, ecclesiastical or temporal” as has been observed by the Chief Justice Edward Coke of England about three centuries ago. If the petitioner did not disclose about the facts of mutation being granted in favour of his vendees during pendency of the title suit, the petitioner is guilty for such concealment and action should be taken against the petitioner. The petitioner was under the bounden duty to bring to the notice of the court concerned all the facts and the facts which were not disclosed, if it would have affected the decision of the court, would amount to active concealment and playing fraud. But the effect of the said disclosure on the decision of the learned trial court would be a matter of guess since the subsequent proceeding was also hit by bar created under Section 6(12) of the Act. Even if there was concealment on part of the petitioner, the same does not give power to a Court to pass any illegal order because two wrongs could not make a right. When the law is very much clear that a



mutation proceeding could not be allowed where a title suit with regard to that holding or a part thereof of the same property is pending in a competent court, such order staying the proceeding should not be recalled in casual manner only for the reason that the petitioner failed to disclose about fact of mutation during the pendency of the title suit. Similarly, the court cannot proceed under Section 151 of the Code only on the ground that the petitioner failed to disclose certain facts. The Court has to see whether the petitioner was bound to disclose these facts or not. If the petitioner was bound to disclose such facts, the court would be within its right to exercise its inherent power under Section 151 of the Code. But no such finding has come on record. Moreover, the court cannot proceed in this manner when other alternative remedy to challenge the order is available to the parties. If the effect of passing the order runs counter to the provision of law, in the present case, against the provisions of Section 6(12) of the Act, the court should have refrained itself from passing such orders. On this short point, I am of the considered opinion that the impugned order 25.01.2022 could not be sustained and hence, the same is set aside. However, the respondent no. 10 is at liberty to raise the issue of mutation taking place during pendency of the title suit by taking recourse



of appropriate law against such orders.

07. With the aforesaid observation, the present
petition stands allowed.

(Arun Kumar Jha, J)

Ashish/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	19-11-2024
Transmission Date	NA

