

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.160 of 2017

Bindeshwari Yadav Son of Late Kusum Lal Yadav, R/o Garhiya, P.S.-
Krityanand Nagar, Distt.- Purnea.

... .. Petitioner/s

Versus

- 1.2. Naresh Yadav, son of Smt. Rookmani Devi deceased, resident of Village-Garhiya, P.O. Garhiya Baluwa P.S. Krityanand Nagar, Distt. Purnea, PIN No. 854304.
- 1.3. Dinesh Yadav son of Smt. Rookmani Devi deceased, resident of Village-Garhiya, P.O. Garhiya Baluwa P.S. Krityanand Nagar, Distt. Purnea, PIN No. 854304.
- 1.4. Akhilesh Yadav, son of Smt. Rookmani Devi deceased, resident of Village-Garhiya, P.O. Garhiya Baluwa P.S. Krityanand Nagar, Distt. Purnea, PIN No. 854304.
- 1.5. Meena Devi, Wife of Bhola Yadav, daughter of Smt. Rookamni Devi deceased, resident of Village-Prasadpur, P.S. Champa Nagar, P.O. Banaily, Distt. Purnea.
- 1.6. Uma Devi, Wife of Manoj Yadav, daughter of Smt. Rookmani Devi, resident of Village-Garhiya, P.O. Garhiya Baluwa P.S. Krityanand Nagar, Distt. Purnea, PIN No. 854304.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Raghib Ahsan, Sr. Advocate Mr. Bipin Kumar, Advocate
For the Opposite Party/s :		Mr. Arbind Kumar Singh, Advocate

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

30 25-06-2024 This Civil Revision application is directed against the order dated 31.03.2008 passed by the learned Munsif, Sadar Purnea in Miscellaneous Case No. 86 of 1987, whereby the learned Court below rejected the petition dated 15th July, 1987 filed by Basudeo Prasad Yadav and Bindeshwari Prasad Yadav (petitioners) under Order 23 Rule 3 of the Code of Civil Procedure read with Section 151 of the Code of Civil Procedure



for setting aside the decree dated 06.09.1974 passed on the basis of compromise in Title Suit No. 322 of 1974 by the learned Munsif Sadar, Purnea, whereby a compromise was entered into and decree was drawn after accepting the compromise under Order 23 Rule 3 of the Code of Civil Procedure.

2. During the pendency of aforesaid Miscellaneous Case No. 86 of 1987, petitioner no.1, namely, Basudeo Prasad Yadav died on 02.10.2002 leaving behind his heirs and legal representatives, who were substituted vide order dated 30.08.2004 passed by the learned Munsif Sadar Purnea. Accordingly, Miscellaneous Case No. 86 of 1987 was amended and heirs of Basudeo Prasad Yadav were substituted as O.P. Nos. 2 to 6 in the said miscellaneous application, but the petitioner has not made party the heirs of said Basudeo Prasad Yadav, who was alleged to be vendor of the petitioner.

3. The plaintiff / opposite party, namely, Smt. Rookmani Devi filed Title Suit No. 322 of 1974 against the defendant/petitioner and one Basudeo Prasad Yadav for declaration of title over the suit land and that the defendants have no manner of right title and interest thereon.

4. The plaintiff's case, in short, is that Basudeo Prasad Yadav had transferred the suit land to the plaintiff in August,



1959 on payment of valuable consideration and put her in possession of the suit land. Since the date of purchase, the plaintiff is coming in khas cultivating possession of the suit land with her own ploughs and bullocks and has been enjoying usufructs thereof exclusively without any hindrance. Suddenly the defendant no. 2 started threatening the plaintiff/opposite party for forceful dispossession, hence necessitated institution of the suit. The said suit bearing Title Suit No. 322 of 1974 was filed by original plaintiff/opposite party on 29.06.1974.

5. The defendant/petitioner appeared through *Vakalatnama* and engaged Mr. Vimlendu Chaudhary, advocate as his counsel and a joint compromise petition dated 02.08.1974 was filed. The said suit was decreed on 06.09.1974 in terms of compromise petition dated 02.08.1974.

6. The case of the petitioner, in short, is that the original petitioner no. 1 (in Miscellaneous Case No. 86 of 1987) was the owner of the land of Khata No. 576, plot nos. 2573 and 4733 and khata no. 62, plot no. 2574 of Mauza Gardhiya, P.S.- K. Nagar, District Purnea. He, by virtue of registered sale deed dated 27.06.1970, sold 26 decimal land of plot nos. 2573 and 2733 and 10 decimal of plot no. 2574 to the petitioner (petitioner no. 2 in Miscellaneous Case No. 86 of 1987), who is



in possession of the same since the date of purchase.

7. During the consolidation operation, opposite party claimed the aforesaid land on the basis of decree. The original petitioners of Miscellaneous Case No. 86 of 1987 came to the court and consulted their lawyer and on 20.05.1987, filed an information slip on 21.05.1987. It was reported by the office that the Title Suit No. 322 of 1974 was decreed on 06.09.1974 on the basis of a compromise petition. Thereafter, the petitioners as well as Basudeo Prasad Yadav got the record of Title Suit inspected on 04.07.1987. It transpired that the said suit was filed on 29.06.1974 and no Talbana for summons was filed by the plaintiff/opposite party of that suit. On 02.08.1974 a compromise petition was filed and the suit was decreed on 06.09.1974. The petitioner and Basudeo Prasad Yadav filed an application purported to be under Order XXIII Rule 3 read with Section 151 of the Code of Civil Procedure for setting aside the compromise decree bearing Miscellaneous Case No. 86 of 1987.

8. The case of the defendant/petitioner was that they had no knowledge or information about the filing of the Title Suit No. 322 of 1974 and they neither appeared in the suit nor appointed any lawyer. The compromise decree was obtained by the plaintiff / opposite party on the basis of forged compromise



petition, which is liable to be set aside. The court below after hearing the parties allowed the petition and set aside the compromise decree on 23.08.1997 passed by learned Munsif, Sadar Purnea.

9. Being aggrieved by the aforesaid order, plaintiff/ opposite party filed Civil Revision No 1846 of 1997 before this Court for challenging the said order. After notice, order dated 23.08.1997 passed in Miscellaneous Case No. 86 of 1987 by learned Munsif, Sadar Purnea, was set aside and this Court remitted the matter to the court below for passing afresh order after recording specific finding with regard to the genuineness of the compromise petition on the basis of evidence already adduced by the parties. The court below shall, after appreciating the evidence adduced by both the parties, record a finding as to whether the compromise petition was, in fact, signed and filed by the defendants. The parties shall not be allowed to lead further evidence.

10. In the light of the observations of this Court, the learned court below heard the matter and framed the point whether the compromise petition was, in fact, signed and filed by the petitioners and whether the compromise petition is genuine. Petitioner Bindeshwari Prasad adduced his evidence as



AW-1 and stated that he had not appeared in Title Suit No. 322 of 1974 and he had no knowledge about the suit. He did not file *Vakalatnama* nor appointed any advocate. He did not file any compromise petition. He denied his signature on the compromise petition and the *Vakalatnama*. In his cross-examination and on his admission, his signature on the verification of miscellaneous petition and on the *Vakalatnama* of miscellaneous petition, were marked as Exhibit-A and A1. He did not know the advocate Vimlendu Chaudhary. It is further discussed by the learned lower court that AW-5 namely, Basudeo Prasad Yadav has not denied the genuineness of compromise rather he said that during chakbandi, he learnt that Kadam Lal (husband of the plaintiff) obtained a decree with regard to the disputed land, then he filed this miscellaneous case. He denied to have filed any compromise petition. No other evidence was led on behalf of the petitioner on this point. There is no evidence adduced on behalf of the petitioner to prove that forgery was committed by the plaintiff/opposite party upon the court and upon the opposite party/petitioner. Mere denial of signing on *Vakalatnama* and compromise petition is not sufficient. The burden of proof is upon the petitioner to prove that forgery has been committed upon the court. From perusal of



evidence of AW-1, Bindeshwari Yadav, it is crystal clear that signature of petitioner has been examined by the handwriting expert and the same was reported to be signed by this petitioner. The learned court below further held that this is the reason for non-examination of handwriting expert. OPW No. 6 stated that he knew the petitioner at that time and they signed the *Vakalatnama* before him then he accepted *Vakalatnama* (Exhibit-F). Basudeo Prasad Yadav and Bindeshwari Prasad Yadav put their signature on the compromise petition before him. The compromise petition was drafted at *Vakalatkhana*. He had seen the plaint. Under the said circumstances, the learned lower court accepted the evidence of OPW-6. OPW-6 stated in his evidence that compromise petition in Title Suit No. 322 of 1974 was prepared in Purnea Court. Vimlendu Chaudhary was the advocate of Basudeo Prasad Yadav and Bindeshwari Yadav. Both the advocates jointly prepared the compromise petition. At that time both the advocates, Basudeo, Bindeshwari, he and his wife and Tej Narayan Roy were present. Rookmani Devi, Basudeo and Bindeshwari after being aware of the recital, put their LTIs and signature over it. Thereafter, both the petitioners put their signatures (Exhibit-D) on the petition. The signatures of the Basudeo and Bindeshwari was sent to expert. The report



of the expert is on record which shows that the expert has given report that signatures on compromise petition are the signatures of Basudeo and Bindeshwari.

11. Considering the aforesaid evidence and material on record, the learned trial court further held that they have signed the compromise petition and that the compromise petition is genuine one and the judgment and decree passed in Title Suit No. 322 of 1974 was rightly recorded in terms of compromise.

12. Learned counsel for the petitioner submitted that the impugned order has been passed without following the direction of this Court, rather the learned Munsif has dismissed the Miscellaneous Case of the petitioner without application of mind. Learned counsel for the petitioner further submitted that in Title Suit No. 322 of 1974 without serving the notice in a fraudulent manner, a compromise petition was filed without the knowledge and consent of the petitioner on 02.08.1974 and the suit was decreed on 06.09.1974.

13. On the other hand, learned counsel for the opposite party vehemently submitted that Civil Revision Application is not maintainable in the absence of Basudeo Prasad Yadav, who is the vendor of the both the parties,



although, during the pendency of Miscellaneous Case No. 86 of 1987, the heirs of Basudeo Prasad Yadav, original defendant no. 1 (petitioner no. 1 in miscellaneous case) were substituted on 30.08.2004. It is submitted that there is specific direction by this Court in Civil Revision No. 1846 of 1987 to decide the matter afresh after recording specific finding with regard to the genuineness of the compromise petition on the basis of evidence already adduced by the parties. The said direction has elaborately dealt with by the lower court and held that both the parties have signed the compromise petition and the compromise petition is genuine one and the judgment and decree passed in Title Suit No. 322 of 1974 was rightly recorded in terms of compromise.

14. Having considered the lower court records and submissions of the parties as well as the impugned order, I am of the view that in absence of Basudeo Prasad Yadav, original defendant no. 1 (petitioner no. 1 in Miscellaneous Case No. 86 of 1987), who was vendor of both the parties as stated above, the present Civil Revision Application is not maintainable for non-joinder of parties. Moreover, the direction of this Court has rightly been followed by the lower court and held that signature of the petitioner on the compromise petition is genuine.



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

16. Accordingly, This Civil Revision Application is dismissed.

(Khatim Reza, J)

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