

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Jurisdiction Case No.1631 of 2023

In
SECOND APPEAL No.453 of 2017

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Gokhul Bhagat Son of Late Jhapsi Bhagat, resident of Village - Manjhaulia,
P.S. - Manjhaulia, District - West Champaran.

... .. Petitioner/s

Versus

- 1.1. Chandradeo Bhagat husband of Smt. Lalmati Devi, R/o Village and P.O. and P.S.-Manjhoulia, District-West Champaran.
- 1.2. Manoj Bhagat, S/o Chandradeo Bhagat, R/o Village and P.O. and P.S.-Manjhoulia, District-West Champaran.
2. Mahanth Bhagat, Son of Late Mathura Bhagat, Resident of Village - Manjhaulia, P.S. and P.O.- Manjhaulia, District - West Champaran.
3. Smt. Bachcha Devi, daughter of Late Mathura Bhagat, Resident of Village - Mushari, P.O. - Champapur, P.S. - Ramgarhwa, District- West Champaran.
4. Smt. Munni Devi, daughter of Late Mathura Bhagat, resident of Village - Nimunia, P.O. - Nawalpur, P.S. - Yogapatti, District - West Champaran.
5. Rita Devi, Daughter of Late Mathura Bhagat, resident of Village - Motitola, P.O. - Nawalpur, P.S. - Yogapatti, District - West Champaran.

... .. Opposite Party/s

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Appearance :

For the Petitioner/s : Mr. Shyam Sunder Pandey, Adv.
For the Opposite Party/s : Mr. Sanjeev Kumar Shrivastava, Adv.

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CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

17 09-08-2024 Heard learned counsel for the petitioner as well as

learned counsel for the opposite parties.

2. This restoration application has been filed for restoring the Second Appeal No. 453 of 2017 to its original number and file which was withdrawn by the Advocate on record for the appellant on the instruction of the appellant.

3. The said Second Appeal was listed under the heading “To Be Mentioned” at the instance of the appellant.



Learned counsel for the petitioner was permitted to withdraw the said Second Appeal on 07.04.2023.

4. The submission of the learned counsel for the petitioner is that the Second Appeal No. 453 of 2017 was dismissed as withdrawn by the Advocate on record on the instruction of the appellant. It is submitted that both the parties started talk of compromise between them in order to maintain good relationship in the family. The petitioner, who was of advanced age, was convinced by the opposite parties to compromise this Second Appeal which was pending before this Court. The terms of compromise were settled outside the court on the basis of oral compromise. The petitioner and his family members took the compromise in honest way to maintain peace in the family and thereafter Second Appeal was withdrawn.

5. It is further submitted that petitioner suffered paralytic attack on 15.04.2023 and was admitted to hospital at Bettiah for his treatment. In the meanwhile, opposite parties have changed their mind and incorporated some new unacceptable terms of compromise before the petitioner. They wanted to grab the dwelling house of the petitioner which was not acceptable to the sons and daughters of the petitioner but the talk of compromise continued. On 12.05.2023, the opposite



parties filed a petition in the Court of Munsif, Bettiah, West Champaran for attachment of the petitioner's land (not being subject matter of the suit) for the success of their case which surprised the petitioner and then the talk of compromise failed. The petitioner in the aforesaid circumstances was constrained to file the instant restoration petition.

6. On the other hand learned counsel for the opposite parties submits that one Mathura Bhagat filed Title Suit No. 117 of 1996 for declaration that the registered sale deed dated 04.09.1980 allegedly executed by Mathura Bhagat in favour of Gokul Bhagat (petitioner) is void and inoperative which was ultimately decreed in appeal *vide* judgment and decree dated 14.06.2017 passed in Title Appeal No. 81 of 2009 which was under challenge in Second Appeal No. 453 of 2017. The said Second Appeal was dismissed as withdrawn on the instruction of the appellant on 07.04.2023 without any liberty. Thereafter, the present M.J.C. for restoration of aforesaid Second Appeal has been filed. Learned counsel for the opposite party nos. 2 to 5 filed counter affidavit stating therein that it is incorrect to say that the petitioner was fully assured by the opposite parties to compromise the *lis* outside the court and also wrong to say that the terms of compromise was settled outside the court. It is also



wrong to say that in view of the aforesaid developments, the appeal was withdrawn.

7. Learned counsel for the opposite parties further submits that the parties are contesting the matter all along and the suit travelled up to Second Appeal at appellate stage before this court. There is no good relation between the parties rather the present application shows that appellant is dragging the matter on the pretext of talk of compromise after withdrawal of the Second Appeal. It is submitted that the simple withdrawal of Second Appeal without any liberty cannot be restored. There was no talk of compromise of the litigation with regard to the suit premises by any of the opposite parties either with the petitioner or sons and daughters of the petitioner of the instant application at any point of time before withdrawal of the appeal. If the terms of compromise were settled between the parties then the question of unconditional withdrawal of the Second Appeal is unacceptable. The parties could have filed the compromise petition and could have obtained a compromise decree in Second Appeal. The property in suit is an agriculture land. It has been falsely stated that the opposite parties wanted to grab the residential building of the petitioner standing over the aforesaid land. There is no residential building over the aforesaid land and



as such the statement of the petitioner is totally false which could be verified by appointing a Pleader Commissioner.

8. Having heard the learned counsel for the parties and on perusal of the materials on record, it appears that the issue is as to whether after withdrawal of an appeal, the party can back out from withdrawal and pray for restoration of appeal to its original number and file.

9. From the plain reading of the order dated 07.04.2023 passed in Second Appeal No. 453 of 2017, it is evident that this Court has not recorded about any compromise between the parties. As a matter of fact, no compromise was made in the court either in written or verbal. This court only recorded the submissions of the learned counsel for the petitioner who prayed for withdrawal of the appeal.

10. In my considered opinion, this cannot be termed or construed that if an order recording compromise in terms of Order XXIII Rule 3 of the C.P.C.. It is a simple order under Order XXIII Rule 1 of the C.P.C. where a party seeks to withdraw suit or abandon claim unconditionally and does not reserve any right or even seeking liberty to approach the court against it. It also doesn't fall within the purview of Sub Rule 3 of Rule 1 of Order XXIII. Therefore, the contention of learned



counsel for the petitioner for recall of the order on the ground that agreement entered between the parties outside the court was betrayed by the opposite parties would not involve jurisdiction of this court in terms of Order XXIII Rule 1 and Sub Rule 3 of the C.P.C. read with Section 151 of the C.P.C. is also not sustainable.

11. In view of preceding analysis and facts of the case, this Court is not inclined to restore the Second Appeal which was dismissed as withdrawn.

12. Accordingly, this restoration application is dismissed.

(Khatim Reza, J)

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