

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.655 of 2023

1. Amit Kumar Singh, S/o Late Braj Bhushan Prasad Singh, Resident of Village and P.O. Karai, P.S. Naubatpur, District - Patna - 801109.
2. Ajay Kumar, S/o Late Bijaya Nandan Prasad Singh, Permanent resident of Village and P.O. Karai, P.S. Naubatpur, District -Patna. At present Flat No.C-1, Sai Nilayam Apartment, Police Colony, Anisabad, Patna - 800002.
3. Ravishankar Prasad Singh, S/o Late Ramchandra Prasad Singh, Resident of Village and P.O. Karai, P.S. Naubatpur, District -Patna. At present Shila Sadan F-17, Vijay Nagar, Hanuman Nagar, P.S. Patrakar Nagar, District - Patna- 800026.
4. Krishna Kumar Singh, S/o Late Kedar Nath Singh, Resident of Village and P.O. Karai, P.S. Naubatpur, District-Patna.
5. Ayodhya Prasad Singh, S/o Late Tipan Singh, Resident of Village and P.O. Karai, P.S. Naubatpur, District -Patna

... .. Petitioner/s

Versus

1. Shushil Kumar, Son of Late Ram Narayan Singh, Resident of Village- Karai, P.S.-Naubatpur, District- Patna.
2. Suraj Kumar Minor, son of Shushil Kumar under the guardianship of his father and well wisher and next friend Shushil Kumar, residents of Village- Karai, P.S.Nautatpur, District-Patna.
3. Amit Kumar, S/o Late Ram Kewal Singh, Resident of Village- Karai, P.S.- Naubatpur, District- Patna.
4. Bishal Kumar, Minor son of Amit Kumar respondent No. 3 under the guardianship of his father well wisher and next friend respondent no. 3, residents of Village - Karai, P.S. Naubatpur, District - Patna.
5. Smt. Anju Devi, D/o Late Jagat Narayan Singh and wife of Sri Santosh Kumar original resident of Village - Karai, P.S. Naubatpur, District - Patna at present resident of Village - Faridpura, P.S. Naubatpur, District - Patna.
6. Smt. Sandhya Devi, D/o Late Jagat Narain Singh and wife of Sri Dhananjay Kumar, resident of Village - Zafra Bhagwanpur, P.S.- Naubatpur, District - Patna.
7. Smt. Puja Devi, D/o Late Jagat Narain Singh and wife of Suman Kumar, resident of Village Chechaul, P.S. Naubatpur, District -Patna.
8. Smt. Rakhi Devi, D/o Late Jagat Narain Singh and wife of Sri Manjit Kumar, resident of Village Raunia, P.S.- Naubatpur, District - Patna.
9. Sri Dinesh Kumar, S/o Late Tapan Singh, Resident of Village- Karai, P.S.- Naubatpur, District- Patna.
10. Sri Ujwal Kumar, S/o Sri Dinesh Singh, Resident of Village- Karai, P.S.- Naubatpur, District- Patna.
11. Sri Rabi Kumar, S/o Dinesh Singh, Resident of Village- Karai, P.S.- Naubatpur, District- Patna.



... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. P.N. Shahi, Sr. Advocate
Mr. Jitendra Kishore Verma, Advocate
Mr. Anjani Kumar, Advocate
Mr. Ravi Raj, Advocate
Mr. Abhay Nath, Advocate
For the Respondent/s : Mr. Prabhas Ranjan, Advocate
Mr. Suman Kumar Mishra, Advocate
Mr. Ram Chandra Prasad, Advocate
Mr. S.N. Sharma, Advocate

**CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT**

Date : 09-02-2024

Learned senior counsel for the petitioners and learned counsels for the respondents have been heard on previous date. Further heard the learned counsels for the respective parties on the point of admission and I intend to dispose of the instant petition at the stage of admission itself.

2. The instant petition has been filed by the petitioners seeking the following reliefs :

(i) Setting aside/dismissing the entire Execution Case No.2/2022 pending before learned Sub Judge 5th, Danapur, Patna as not maintainable in view of plaintiffs' own statements of having already got separate and exclusive possession of their allotted share of properties in view of term 1 at page 4 of the compromise petition itself which was accepted and the compromise decree based thereon was passed which is inexecutable and consequentially restitution, if



any, be ordered in favour of the petitioners.

(ii) Setting aside/declaring the Judgement and Decree dated 22.02.2021/25.05.2022 in Title Partition Suit No.86/2019 by learned Sub Judge 5th, Danapur, Patna as null and void having been obtained by strangers to the property without impleading the real owners by grant of leave to the petitioners to pursue this case in this regard as the decree has been obtained by playing fraud upon the petitioners and court by suppressing and misrepresenting real facts which is apparent from government records and undisputed materials and/pr alternatively for directing the learned court below to expedite the Misc. Case No.28 of 2023 pending before learned Sub Judge 5th, Danapur, Patna preferably within a period of six months after immediately considering the prayer for interim relief.

(iii) Call for and examine the records itself for setting aside the compromise decree dated 22.02.2021/25.05.2022 in Title Partition Suit No.86/2019 by learned Sub Judge 5th, Danapur, Patna.

(iv) Grant of any other relief (s) to which the petitioners are found entitled to”.

3. The learned senior counsel appearing on behalf of the petitioners submits that the respondents were parties in Title



Partition Suit No. 86/2019 as plaintiffs and defendants whereby the parties divided the suit property amongst themselves by entering into the compromise. A large chunk of the suit property belongs to the petitioners of this case, who were not made party before the learned trial court. However, the parties of Title Partition Suit No.86/2019 entered into a fraudulent compromise and a compromise decree was passed which was completely based on fraud and strangers were allowed to have title over properties of the petitioners on the basis of fraudulent compromise decree. The learned senior counsel further submits that the Execution Case No.02 of 2022, which was filed before the court of learned Sub-Judge, 5th, Danapur, Patna for execution of compromise decree by the respondents 1st Set, was not maintainable as it has been admission of the plaintiffs and defendants in their compromise petition that after the property was partitioned and shares were allotted, the parties came into possession of their respective shares of the property, so there was no requirement of filing any execution case. It has also been submitted on behalf of the petitioners that if it is a case of compromise based on inter se settlement of parties, there was no requirement of the respondents seeking help of the court and the police as well as the Magistrate for getting possession since it



was never the case of the respondents that the petitioners were in possession. The learned senior counsel further submits that against the compromise decree of Title Partition Suit No.86/2019, a miscellaneous case being Case No. 28 of 2023 has been filed with prayer to set aside the compromise decree on the ground of fraud. The learned senior counsel further submits that in the light of the specific averments made about the respondents coming into possession of their respective shares, the Execution Case No.02 of 2022 is not maintainable. The learned counsel further submits that in the Execution Case No.02 of 2022, the petitioners have filed an objection petition on 27.06.2023 and in anticipation, another petition under Section 47 CPC on 18.08.2023. Thus, it has been submitted on behalf of the petitioners that the entire proceeding of Execution Case No.02 of 2022 is liable to be set aside. In alternative, it has been prayed that the learned trial court may be directed to expedite the Misc. Case No.28 of 2023 and dispose of the same within six months and in the meantime, the execution proceedings be stayed.

4. The learned counsels appearing on behalf of the respondents vehemently contend that there is no merit in the submission of the learned counsel for the petitioners. The



respondents have never stated that they were in possession and for this reason need arose for taking help of the court for getting the shares of the parties demarcated and allotted to different co-sharers. The learned counsel for the respondents submits that the petitioners are strangers to the suit property and they have no right to challenge the compromise. Further, from the prayer portion of their petition for compromise, it is apparent that appointment of Survey Knowing Advocate Commissioner was sought for delivering the separate possession of the shares allotted to each of the shareholders. The learned counsel further submits that the report of *Nazir* dated 18.05.2023 shows that the respondents were given delivery of possession but the said report is yet to be accepted by the learned executing court. The learned counsel further submits that the petitioners have already filed their objection and the learned executing court will decide the same in due course and hence, the petition filed here is premature.

5. Perusal of record shows the petitioners as well as respondents are claiming part of the suit property on the basis of different genealogy and certain documents and the same do not require consideration by this Court at this stage. It is a matter of fact that the petitioners were not parties in the Title Partition



Suit No.86/2019.

However, this Court would not like to enter into the merits of the case and would like to confine itself only to the extent that the compromise decree of the respondents is under challenge before the learned Sub Judge-V, Danapur, Patna where a Misc. Case No.28 of 2023 is pending for setting aside the compromise decree. If that miscellaneous case is disposed of, the grievance of the petitioners about their right, title and interest would automatically get redressed.

6. So far as the objection against execution proceeding before the learned Sub-Judge-V, Danapur, on the ground that the respondents have already claimed possession over the suit property, is concerned, I think ambiguity in the language could not be the basis for assailing whole of the execution proceeding. The terms of compromise as mentioned in the compromise petition read as under :

“1. That by this compromise out of the suit properties of Schedule-II, the properties described in Schedule- A of this compromise have been allotted to the share of the plaintiffs which are of the 1/4th value out of suit properties of Schedule-2 of the plaint and these plaintiffs have been given separate and exclusive possession over Schedule-A



properties of their share in this compromise and the plaintiffs be given separate possession over the same through the process of this court by process of court and Schedule-B properties have been allotted to deft. Nos. 1 and 2 and under C-1, C-2, C-3 and C-4 have been allotted to defendant Nos. 3, 4, 5 and 6 and Schedule-d properties have been allotted to defendant Nos. 7, 8 and 9.

2. That the contents of this compromise have been read over and explained to the plaintiffs and the defendants who have accepted this compromise willfully and the allotment map of share of all the parties are also filed with this compromise which are the part of this compromise petition.

Thereafter, prayer portion of the compromise petition reads as under :-

“ It is, therefore, prayed that your honour may be pleased to accept this compromise and pass decree in terms of compromise and on appointment of a Survey Knowing Advocate Commissioner the parties be delivered and put in separate possession of their shares allotted to each of them in their Taktha of the share in this compromise separately and this compromise allotment with commissioner report may be made part of the final decree in



this suit in the ends of justice with maps with this compromise petition and final decree be prepared in the suit”.

7. From the conjoint reading of the aforesaid paragraphs and with outgoing into further details, *prima facie*, I am of the view that it could not be said with certainty that the parties came into possession of their respective shares. So, at this stage, it could not be said that the matter in execution has become in-executable. At the same time, considering the pendency of miscellaneous case challenging the compromise decree, it would be in-fitness of things if the learned trial court is directed to expedite the Misc. Case No.28 of 2023 and dispose of the same within a stipulated period.

8. Considering the totality of the facts and circumstances, the instant petition is disposed of with a direction to the learned Sub-Judge-5th, Danapur, Patna to dispose of Misc. Case No.28 of 2023 within a period of six months from the date of receipt/production of a copy of this judgment.

9. However, it is made clear that till the disposal of the aforesaid Misc. Case No.28 of 2023, further proceeding in Execution Case No.02/2022 before the learned trial court will remain stayed. The parties will maintain *status quo* and will not



create any third party interest with regard to the suit property during the pendency of aforesaid Misc. Case No.02/2022.

10. It is further made clear that this Court has not expressed any opinion on the merits of the case and whatever has been discussed is only for the purpose of disposal of the present petition. All the issues between the parties are left open including the objection petition filed by the petitioners before the learned Sub Judge-5th, Danapur in Execution Case No. 2 of 2022.

11. Pending applications, if any, stands disposed of.

(Arun Kumar Jha, J)

V.K.Pandey/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2024
Transmission Date	NA

