

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.47 of 2023

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1. Seema Jaiswal Wife of Sri Mukesh Jaiswal, resident of Mohalla - Motijheel, Sanjay Optical, P.S. Muzaffarpur Town, Distt. - Muzaffarpur.
 2. Raju Jaiswal, Son of Late Vishwanath Prasad Choudhary, resident of Mohalla - Motijheel, Sanjay Optical, P.S. Muzaffarpur Town, Distt. - Muzaffarpur.

... .. Petitioner/s

Versus

- 1.1. Sudha Devi @ Sudha Verma, Wife of Late Diwakar Prasad Verma resident of Mohalla-Tilak Maidan Road, in front of Town Police Station, P.S.- Muzaffarpur Town, District-Muzaffarpur.
2. Dipesh Verma, son of Sri Diwakar Prasad Verma, Resident of Mohalla- Tilak Maidan Road, in front of Town Police Station, P.S. - Muzaffarpur Town, District - Muzaffarpur.

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Vaidehi Raman Prasad Singh, Adv. Mr. Arvind Kumar, Adv.
For the Opposite Party/s	:	Mr. R.K.P. Singh, Adv. Mr. Bal Bhushan Choudhary, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV ORDER

18 21-08-2025 This Civil Revision application is directed against order dated 24.01.2023 passed by the Execution Munsif, Muzaffarpur in Execution Case No. 22 of 2019 by which execution case filed by the petitioners/decreed holders for getting possession of the shop in newly constructed building in terms of compromise decree dated 23.09.2016 passed in Title Suit No. 40 of 2016 was dismissed on the ground of its non-executability.

2. Brief facts of the case is that the petitioners were tenants of the opposite parties in a shop measuring 600



sq. ft. bearing Plot No. 179/539 under Khata No. 174 situated in Mohalla-Tilak Maidan Road, Muzaffarpur having the boundaries as follows:-

North- Gali (Lane)

South- Apsara Traders

East- Tilak Maidan

West-House of the opposite parties
(defendants/judgment debtors)

2. The petitioners filed Title Suit No. 40 of 2016 in the Court of learned Munsif, Muzaffarpur (East) against the opposite parties/defendants. The aforesaid suit was filed for permanently restraining the defendants from taking illegal forceful possession over the suit premises in occupation of the plaintiffs/petitioners. The details of the shop is mentioned in Schedule-I of the plaint and for restraining the defendants from demolishing the portion standing over the roof of the showroom and from causing any damage to the showroom of the plaintiffs. It is further contended that the parties to the suit namely the plaintiffs/petitioners and the defendants/opposite parties entered into the compromise and they filed a joint compromise petition on 26.08.2016 in



the suit praying therein to dispose of the suit in terms of compromise and to make compromise as a part of the decree in the suit. The terms as stated in compromise petition is that the plaintiffs would vacate the suit premises for its reconstruction and the defendants after construction of commercial building on the disputed land and other land shall handover the newly constructed shop facing east measuring 544 sq. ft. on the ground floor (16 ft wide north to south X 34 ft long east to west) east to Tilak Maidan Road and west to Smirti Plaza (Nij to defendant) in lieu of original tenanted shop of the plaintiffs. The details of the proposed newly built shop to be given to the plaintiffs was mentioned in Schedule-II of the compromise petition. It is further submitted that in paragraph no. 5 of the compromise petition it is contended that the rent of the shop would be Rs. 22, 000/- (Twenty Two Thousand) per month subject to increase of 15% in rental at every three years and the rent would be payable from the date of getting possession of the shop.

3. It is further case of the petitioners that the compromise petition states that the defendants would



handover newly constructed shop over Schedule-II land to the plaintiffs before 30.12.2017 and if the defendants make excuses in handing over the Schedule-II shop to the plaintiffs, the plaintiffs would have right to take possession of the same through execution of decree passed on the basis of compromise.

4. Learned Trial Court accepted the compromise petition and disposed of the suit in terms of compromise on 23.09.2016 and ordered to make the compromise petition part of the decree.

5. It is further case of the plaintiffs/petitioners that the defendants/judgment debtors/opposite parties did not handover the possession of the newly constructed shop of Schedule-II of the compromise decree to the plaintiffs decree holders/petitioners even after the expiry of stipulated period mentioned in the decree. The plaintiffs decree/holder were constrained to send notice dated 16.03.2018 and 20.08.2019 to the defendants/judgment debtors through their counsel requesting the possession of the shop constructed over Schedule-II of the decree and on failure on the part of the defendants/judgment debtors to deliver



possession of the same to the plaintiffs/decreed holders, they filed Title Execution Case No. 22 of 2019 in the Court of Special Execution Munsif, Muzaffarpur (East) for the execution of the decree dated 23.09.2016 passed in Title Suit No. 40 of 2016.

6. On notice, judgment debtors/opposite parties appeared in execution case and filed objection with regard to executability and maintainability of the execution case *inter alia* that the compromise decree created new interest in the property and ought to have been registered and that the compromise was an agreement and it can be enforced only through a suit for specific performance of contract.

7. After hearing the parties, the Executing Court dismissed the execution case holding that the parties involved in this case have made certain agreements and decreed holders have discharged their part of the agreement but the judgment debtors have failed to discharge their part. It appears to be a case of specific performance of contract for which remedy lies in damages and paragraph no. 10 of the compromise petition has also emboldened such terms. The previous tenancy of the decreed holders have been



terminated, the moment the decree holders vacated the shop and a new interest has been created in respect of the new shop and hence, non registration of the compromise decree, in question, arise to its executability and further the compromise decree preferred in the said execution case cannot be made executable. Hence, the present Civil Revision application has been filed against the impugned order by the decree holders/petitioners.

8. Learned counsel for the petitioners vehemently submitted that the execution court has failed to consider that the compromise decree did not create a new tenancy, rather, it was in continuation of pre-existing tenancy and as such it did not require registration. It is further submitted that the Title Suit No. 40 of 2016 was filed by the petitioners for restraining the defendants (landlord) from demolishing the portion standing over the roof of the showroom and from causing any damage to the showroom of the plaintiffs/petitioners.

9. After summons opposite parties (landlord) appeared and entered into a compromise and they filed a joint compromise petition and promised incorporating the



terms as stated in compromise petition that the plaintiffs would vacate the suit premises for its reconstruction after demolition of the shop and handover the possession of the same to the plaintiffs/petitioners. The defendants after construction of commercial building on the disputed land and other land would hand over the shop facing east measuring 544 sq. ft. on the ground floor (16 ft wide north to south X 34 ft long east to west) east to Tilak Maidan Road, west-Smriti Plaza (Nij) to the defendant in lieu of tenanted shop of the plaintiffs. The details of the said shop was given in Schedule-II of the compromise petition. Further, as per the terms of compromise in paragraph no. 5, the rent of the shop was to be Rs. 22,000/-(Twenty Two Thousand) per month subject to increase of 15% in rent at every three years and the rent would be payable from the date of getting possession of the shop. As per the terms in the compromise decree, the defendants would handover the newly constructed shop to the plaintiffs/petitioners before 30.12.2017 and if the defendants makes excuses in handing over the said shop to the plaintiffs, the plaintiffs would have right to take possession of the same through execution of



decree passed in terms of compromise. The Trial Court accepted the terms of compromise and disposed of the suit in terms of compromise on 23.09.2016 and ordered to make the compromise petition part of the decree. The decree holders (petitioners) have discharged their part of promise in incorporating the terms of compromise and vacated the shop but the defendants/judgment debtors/opposite parties did not handover the possession of the newly constructed shop of Schedule-II of the compromise petition even after expiry of period stipulated in the compromise petition.

10. Learned counsel for the petitioners submits that terms of compromise did not create any right or title in favour of the parties on its own face but it operated to recognize pre-existing right. The question of requiring compulsory registration for the said compromise decree has been settled by the Apex Court in case of ***Phool Patti & Anr. Vs. Ram Singh (Dead) Through Lrs. & Anr.*** reported in ***(2015) 3 SCC 164***. In the said case, two inconsistent view of the Hon'ble Apex Court in ***Bhoop Singh Vs. Ram Singh Major*** reported in ***(1995) 5 SCC 709*** and ***K. Raghunandan & Ors. vs. Ali Hussain Sabir & Ors.***



reported in *(2008) 13 SCC 102* with regard to interpretation to the exception in Clause (vi) of Section 17(2) of the Registration Act has been dealt with. It has been held that it is well settled principle of interpretation that the court cannot add words to the statute or change its language, particularly when on a plain reading the meaning seems to be clear. Since there is no mention of any pre-existing right in exception in Clause (vi) we have found it difficult to accept the views in Bhoop Singh case. It seems that there is inconsistency in the decisions of this court in *Bhoop Singh case* and *K. Raghunandan case*. Accordingly, the matter was referred to larger Bench. The matter was placed before a Bench of three learned Judges of the Apex Court wherein it was held, in the following words, that there was no inconsistency between two decisions. Therefore, decision of *Bhoop Singh's case* in paragraph 16, wherein, it has been held that we would think that exception engrafted is meant to cover that decree or order of a Court, including a decree or order expressed to be made on a compromise, which declares the pre-existing right and does not by itself create new right, title or interest in *praesenti* in immovable



property of the value of Rs. 100/- or upwards. It is admitted case of the parties that the petitioners are the tenants of the landlord/opposite parties. The compromise decree declares the pre-existing right of the petitioners. Therefore, the decree is not required for compulsory registration. The learned counsel for the petitioners also relied upon decision of Apex Court in the case of ***Ripudaman Singh vs. Tikka Maheshwar Chand*** reported in ***(2021) 7 SCC 446*** which affirms the principle laid down in *Bhoop Singh's case* (Supra). Learned counsel for the petitioners further submits that the execution court had wrongly held that compromise decree is against the public policy which makes it unenforceable as execution of such compromise decree would tantamount to disturbance of cordial atmosphere and equilibrium prevailing in the society. There was no reason to hold that the compromise petition is against the public policy. It is further submitted that the learned execution court held that the present case is a case of specific performance of contract for which remedy lies in the damages and has illegally dismissed the execution case. The execution court assumed that the previous tenancy was



terminated, the moment the decree holders vacated the shop and a new interest was created with respect to the new shop and hence non-registration of compromise decree strikes to its executability.

11. Learned counsel for the petitioners submits that the judgment debtors/opposite parties accepted the terms mentioned in compromise petition. On the basis of terms of compromise, the petitioners vacated the shop but judgment debtors/opposite parties did not handover possession of newly constructed shop in terms of compromise decree and raised an objection with regard to executability and maintainability of the execution case. In this regard, reliance has been place in the case of ***R.N. Gosain vs. Yashpal Dhir*** reported in ***AIR 1993 SC 352***, the Apex Court has held that “*law doesn't permit a person to both approbate and reprobate. This principle is based on doctrine of election which postulates that no party can accept and reject the same instrument and that is valid and thereby obtain some advantage, to which he could only be entitled on the footing that it is valid, and then turn round and say it is void for the purpose of securing some other*



advantage.” After taking an advantage under an order, a party may be precluded from saying that it is invalid and asking to set it aside.

12. Per contra, learned counsel for the judgment debtors/opposite parties submits that as per the terms of compromise, the petitioners were suppose to vacate the tenanted shop within two months which expired on 16.10.2016 but they failed to vacate the same. Similarly, the judgment debtors/opposite parties were suppose to complete the construction of new market complex and to deliver possession of one shop proposed to construct as per specification mentioned in Schedule-II of the compromise petition and deliver possession to the plaintiffs (decree holders)/petitioners up to 30.12.2017 but he also failed to do so. It is submitted that both the parties committed breach of promises and obligations and thereby they rescinded the contract by their conduct impliedly which cannot be an enforceable agreement. Therefore, the compromise decree which is not judicial verdict is also not enforceable and compromise decree is merely an agreement between both the parties and as such the execution is rightly dismissed by



the execution court. So far pre-existing right is concerned, learned counsel for the opposite parties submits that the pre-existing tenancy right of the decree holders is to be rescinded, terminated and extinguished and in terms of new agreement, a personal right was created by the landlord in favour of decree holders. This right may be enforced in court of law by seeking relief of specific performance of contract which has also become time barred by not filing a proper suit.

13. Learned counsel for the opposite parties further submits that decree under execution doesn't contain the description of non-existing shop proposed to be constructed and let out to the decree holders as per the terms of compromise and hence, the decree under execution cannot be executed in respect of newly constructed shop by the defendants/opposite parties. On the contrary, the decree under execution contain description of shop which was vacated and demolished and as such the same is also now not in existence upon which the delivery of possession by any legal advice is possible. It is further contended that the executing court cannot go beyond decree, wherein, the



disputed shop has been described but the same doesn't exist as shop and there is no question of execution of such decree which contains non-existing shop. It is further submitted that originally Trial Court only accepted the compromise petition dated 26.08.2016 and the suit was decreed in terms of compromise directing the compromise petition to be part of the decree. The learned Trial Court did not apply its judicial mind to the terms and conditions incorporated in the compromise petition nor incorporated such terms in the order dated 23.09.2016 by which the compromise was accepted by passing a direction to the judgment debtors to deliver possession of any particular shop within certain time frame and hence, in absence of such direction in the compromise decree, it remained merely as an agreement to lease and not an executable decree.

14. Learned counsel further submitted that original defendant no. 1 (judgment debtor no. 1) was exclusive owner of this plot and building standing thereon inclusive of the tenanted shop which was in use and occupation of plaintiffs (decree holders/petitioners). During the pendency



of execution case, original defendant no. 1, namely, Diwakar Prasad Verma died leaving behind a widow namely, Sudha Verma (judgment debtor no. 1.1/ opposite party no. 1) and a son, namely, Deepiash Kumar (judgment debtor no. 2), who inherited the suit of the deceased inclusive of the said land and building and came in possession of the same as co-owners having equal shares. It is submitted that the management of newly constructed market complex belonged to and in possession of widow and son of the deceased, Diwakar Prasad Verma. They by oral *khang*i partition, partitioned the market complex along with other properties. A portion of market on rent to different tenants fell to the share of Kumar Deepaish, whereas, one vacant complex shop towards north on the ground floor along with one room on mezzanine floor and the residential space on the 4th floor were allotted to opposite party no. 1, who is, in fact, not a judgment debtor and as such the compromise decree is not binding on her. It is also submitted that she was neither party to the said suit nor to the said compromise. Hence, the execution case, in question, cannot proceed against her even though, she has



been substituted in place of her deceased husband.

15. Learned counsel for the opposite parties (judgment debtors) submitted that the learned Execution Munsif has rightly dismissed the execution case in view of the fact that the trial court did not record the terms of agreement relating to future lease in the order nor specified any party for the same rather decreed the suit in terms of compromise. In the view of the aforesaid, there is no executable decree. Moreover, in a compromise petition two schedules were mentioned, out of which Schedule-1 relates to the disputed property (original tenanted shop which was in occupation of petitioners) standing over plot no. 179/539 appertaining to Khata no. 174 whereas the property described in Schedule-II of the compromise petition is a non-existing proposed to be constructed shop having dimension of 16x34 north to south and 34 ft. east to west corresponding to 544 sq ft. of the said plot with different boundaries was made subject matter in terms of compromise petition. The whole compromise is in respect of non-existing properties which would be enforceable on happening of an event as per the terms of compromise but



has not happened till date. Thus, the entire compromise is unenforceable being incontinent and non-fulfillment of the obligation by the parties to the compromise. One of the defendants (owner of the property) had already died on 27.08.2020.

16. Having regard to the facts and circumstances of the case, this court finds that the execution case filed by the petitioners was dismissed on the ground of its non executability of the decree. The learned Execution Munsif observed that the property mentioned in Schedule-II in the compromise petition which has to be delivered to the decree holders only mentions about Khata no., Khesra no., area and boundary. It does not mention the specifics of the new market complex in question situated over the plot and the specific name and number of shop to be delivered to the decree holders by the judgment debtors. In the absence of building plan of new building and in absence of specific number of shop given to the decree holders makes the compromise petition quite vague and uncertain. The view taken by the learned Execution Munsif is that the compromise decree is against the public policy which



makes it unenforceable as execution of said compromise decree would tantamount to disturbance of cordial atmosphere and equilibrium prevailing in the society and held that compromise decree is against public policy. The order accepting the compromise petition is also mechanical in nature as it is breft of the satisfaction of the concerned court without recording its pious satisfaction. It is, further, held that the terms of compromise is an agreement and the decree holders have discharged their part of the agreement but the judgment debtors have failed to discharge their duties and held that it is a case of specific performance of contract for which remedy lies in damages and for that paragraph 10 of the compromise petition has also mentioned such terms. Previous tenancy has terminated the moment the decree holders vacated the shop and a new interest has been created in respect of alleged new shop therefore, non registration of the compromise decree in question also strike on its executability.

17. On a careful consideration of the facts and circumstances, this court finds that it is admitted fact that decree holders were the tenants of Schedule-I property of



the compromise decree which was the suit property in Title Suit No. 40 of 2016 with a definite boundary and area bearing plot no. 179/539 and khata no. 174. The same khata and khesra has also been mentioned in the Schedule-II of the compromise petition which is subject matter of the execution case. The property in respect of compromise decree is not outside the property mentioned in the suit. The petitioners' right is pre-existing right and it did not require compulsory registration, whereas, decree in respect of property other than suit property mentioned in compromise decree required registration since it is created for first time, right, title interest therein or value greater than Rs. 100/- in favour of the plaintiffs. This view has been approved in the decision of ***Bhoop Singh Vs. Ram Singh Major and Others*** reported in ***AIR 1996 SC 196***.

18. Recently the case of ***Ripudaman Singh (supra)***, the Hon'ble Apex Court has dealt with both the situations i.e., decree between the parties where the decree holders do not have any pre-existing right in the property and also the situation where decree holders have a pre-existing right. It was the second situation where the decree



holders have pre-existing right in the property, it was found that decree does not require registration. The principle settled in *Bhoop Singh case* (supra) was also upheld by the Apex Court in the case of ***Phool Patti (supra)***. In view of the aforesaid judgment, where pre-existing right existed, the view of learned Execution Munsif that the decree requires compulsory registration is erroneous in law. So far accepting compromise petition, it is mechanical in nature without recording pious satisfaction as observed by the Execution Munsif. However, a compromise petition duly signed by the parties was filed in Title Suit No. 40 of 2016 which was accepted on 23.09.2016 after recording satisfaction of the Court, which is as follows:-

“It has been submitted on behalf of both sides that the suit has been compromised between the parties on the terms mentioned in the compromise petition and now there is no dispute between the parties and both the parties made their signature on the compromise



petition after full satisfaction and without any pressure and prayed to dispose of the suit on the terms of compromise.

Both sides were already heard on last date. Perused the record as well as compromise petition and evidence deposed on behalf of both sides.

It appears that as per report of Siristedar compromise petition is in order.

Plaintiffs and both the defendants admitted in their evidence that they have compromised the suit on the terms as per compromise petition and they have no objection if the suit may be disposed of on the terms of compromise.

Hence, considering above



facts and in the interest of justice the compromise petition dated 26.08.2016 is accepted and accordingly the suit is decreed as per the terms of compromise. The compromise petition shall be part of the decree. To prepare decree accordingly.”

19. The aforesaid order of the learned trial court is not recognized by the Executing Court which is apparently misplaced. The satisfaction was recorded by the Trial Court. The learned Execution Munsif failed to exercise its jurisdiction and dismissed the execution case on the ground discussed above which has been settled in favour of petitioners.

20. For the above reason, I am unable to sustain the order under challenge. Accordingly, the order of the learned Execution Munsif, Muzaffarpur passed in Execution Case No. 22 of 2019 dated 24.01.2023 is set aside.

21. The Revision application is accordingly allowed.



22. The Executing Court is directed to execute the decree dated 23.09.2016 passed in Title Suit No. 40 of 2016 as early as possible, preferably, within a period of three months from the date of receipt/production of a copy of this order.

(Khatim Reza, J)

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