

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Jurisdiction Case No.3325 of 2016

In

FIRST APPEAL No.119 of 1993

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1. Most. Nunu Devi, W/o Late Ramtanuk Singh, R/o village - Ratanpur Municipal Area, P.S. and District-Begusarai
 2. Arvind Singh
 3. Madho Singh @ Kumar Madhwan
 4. Shambhu Singh @ Shambhu Kumar
 5. Ranjeet Singh, All sons of Late Ramtanuk Singh, R/o village - Ratanpur Municipal Area, P.S. and District-Begusarai

... .. Petitioner/s

Versus

1. Rabindra Kumar Singh, S/o Late Kari Singh both residents of village - Ratanpur, Ward No. 9, within Municipal Area - Begusarai, District - Begusarai

... .. Opposite Party/s

Appearance :

For the Petitioner/s	:	Mr. Binod Kumar Singh, Adv. Ms. Vagisha Pragya Vacaknavi, Adv. Ms. Saatvika Singh, Adv.
For the Opposite Party/s	:	Mr. Pramod Kr. Sinha, Adv. Mr. Arvind Kr. Sharma, Adv. Mr. Chetan Kumar Adv. Mr. Ankit Kumar, Adv.

CORAM: HONOURABLE MR. JUSTICE KHATIM REZA
CAV JUDGMENT

Date : 11-12-2025

Heard Mr. Binod Kumar Singh, learned counsel for the petitioners and Mr. Pramod Kumar Sinha, learned counsel for the opposite parties.

2. This application has been filed for recalling the judgment dated 24.06.2015 passed in First Appeal No. 119 of 1993 by a Bench of this Court and also judgment and decree dated 30.01.1993 passed by the learned Sub-Judge-Ist, Begusarai in Title



Suit No. 96 of 1985 as both the judgments and decree were obtained by playing fraud upon this Court. The fraud has been played upon the Trial Court and the petitioners as well by making false statements/deliberately suppressing the material facts that the families of the parties to the suit are joint although the families of the parties to the suit were separated by partitioning the joint family property by metes and bounds, which has been admitted by opposite party no. 2 in the recitals of the sale deeds executed after passing of the judgment dated 24.06.2015 passed in F.A. No. 119 of 1993.

3. The defendants/respondents are petitioners in the present application and the plaintiffs/appellants are opposite parties in the present case.

4. The partition suit was filed by the plaintiffs/opposite parties for partition with respect to their half share in the joint family property mentioned in Schedule-I and that a separate *takhta* be carved out through survey knowing Commissioner as well as to declare the alleged deed of gift dated 08.11.1984 purported to have been executed by Ram Sagar Singh (defendant no. 1) in favour of defendant nos. 2 to 6 as null and void, which confers no title and possession of the alleged donee and further claim for a decree for



accounting the income of the joint family property directing defendant no. 1 to furnish account as well as the cost of the suit.

5. The First Appeal was preferred against the judgment and preliminary decree dated 30.01.1993 passed by the learned Sub-Judge-Ist, Begusarai in Title Suit No. 96 of 1985, whereby, the suit filed by the plaintiffs was partly decreed declaring one-third share of the plaintiffs described in Schedule-I of the plaint and the gift deed executed by Ram Sagar Singh (defendant no. 1) in favour of defendant nos. 2 to 6 was declared valid.

6. After hearing the parties, the learned Trial Court partly decreed the suit granting one-third share in the immovable properties described in Schedule-I of the plaint. It was held that there was no partition by metes and bounds between the parties for immovable properties described in Schedule-I of the plaint and also held that gift deed dated 08.11.1984 is valid.

7. Feeling aggrieved, the plaintiffs/opposite parties preferred aforesaid first appeal before this Court which was partly allowed holding that the deed of gift (Ext.-A) is a void document executed by a coparcener Ram Sagar Singh (defendant no. 1) in favour of defendant nos. 2 to 6 as Ram Sagar Singh had no authority to transfer by gift as gifted share in the coparcener property and accordingly set aside the finding of the Trial Court



with regard to gift deed Ext.-A and also held that there was no partition by metes and bounds between the parties for immovable properties described in Schedule-I of the plaint. The defendants/respondents/petitioners did not file any cross appeal and as such, the same finding of fact has attained finality and further held that the plaintiffs are entitled to half share in the Schedule-I properties and so far finding of the Trial Court with regard to immovable properties are concerned, the learned Single Judge has affirmed the finding of the Trial Court.

8. Being aggrieved by the judgment and decree dated 24.06.2015 passed in First Appeal No. 119 of 1993, the defendants/respondents/petitioners preferred SLP(C) No. 28408 of 2015 before the Hon'ble Supreme Court which was dismissed on 11.12.2015. Thereafter, the petitioners filed Review Petition bearing RP(C) No. 2437 of 2016 for reviewing the order dated 11.12.2015 passed in SLP(C) No. 28408 of 2015. The said Review Petition was also dismissed by the Hon'ble Apex Court on 21.07.2016.

9. After dismissal of SLP(C) as well as Review Petition, the petitioners filed instant application on 15.09.2016 for recalling the judgment and decree dated 24.06.2015 passed in F.A. No. 119 of 1993 alleging that the judgments and decree has been obtained



by the plaintiffs/opposite parties by playing fraud and making false statement/deliberate suppression of the material facts that the families of the parties to the suit are joint.

10. Learned counsel for the petitioners submits that opposite party no. 2, namely, Ravindra Kumar Singh filed an application before *Janta Darbar* of S.D.M., Begusarai on 30.12.2015 which was registered as Land Dispute Case No. 13 of 2015-16 and in paragraph no. 7 of the said application, opposite party no. 2 clearly and unambiguously stated that the land appertaining to Khata No. 323, Plot No. 369, Area 18 Katha 15 Dhurs was allotted in '*Bakhudha Batwara*' which took place among the ancestors of which he has title and possession. This statement has proved earlier partition between the ancestors of the parties while he had clearly averred in his plaint that there was no partition of the joint family properties between the parties. It is also vehemently submitted that opposite party no. 2 Ravindra Kumar Singh sold 15 dhurs homestead vacant land appertaining to Khata No. 179, Plot No. 693, Tauzi No. 876 in favour of Sharda Kumari through registered sale deed dated 07.12.2015 which was executed on 04.12.2015. It is further submitted that in the recitals of the aforesaid registered sale deeds, it has been admitted that the aforesaid property is ancestral property and he is in possession on



the basis of *bakhudha* partition among the co-sharer (*farikain*) from the life time of his father. This statement is made on 04.12.2015 in the said registered sale deed by opposite party no. 2 which proves that the case is pleaded and proved by the plaintiffs by suppressing the truth that there was previous partition by metes and bounds among the sons of Natho Singh. They came in exclusive possession over their allotted share having one-third each as one of the sons of Natho Singh, namely, Sukhdeo Singh had died unmarried prior to partition in the year 1985. The plaintiffs/opposite parties has wrongly pleaded in his plaint that there was no partition of the joint family properties between the parties. Opposite party no. 2 has made false statement before the Trial Court as well as this Court regarding jointness of the parties with respect to the title and possession over the suit property described in Schedule-I and II of the plaint of Title Suit No. 96 of 1985. The conduct of the plaintiffs/opposite parties amounts to fraud both upon this Court, Trial Court as well as upon the petitioners as opposite party no. 2 deliberately suppressed the material facts. In such circumstances, the judgment and decree obtained by opposite party no. 2 are vitiated in law as such judgments and decree are void having been obtained by playing fraud upon this Court. Therefore, such judgments and decree may



be recalled by this Court in exercise of its inherent power as they are nullity and *non est* in the eye of law.

11. Learned counsel for the petitioners has relied upon the decision of the Hon'ble Supreme Court in the case of ***Indian Bank Vs. Satyam Fibres (India) Pvt. Ltd.*** reported in (1996) 5 SCC 550 wherein the Apex Court has held that "*The judiciary in India also possess inherent power, especially under Section 151 C.P.C., to recall its judgment or order if it is obtained by fraud on court.*"

12. Reliance has also been placed in the case of ***Meghmala & Ors. Vs. G.Narasimha Reddy & Ors.*** reported in (2010) 8 SCC 383. The Hon'ble Apex Court in the aforesaid case has held that "*In judicial proceedings, once a fraud is proved, all advantages gained by playing fraud can be taken away. Every court has an inherent power to recall its own order obtained by fraud as order so obtained is non est.*"

13. Reliance has also been placed in the case of ***Deepa Gourang Murdeshwar Katre Vs. Principal, V.A.V. College of Arts & Ors.*** reported in (2007) 14 SCC 108, wherein, it has been held that "*If a case of fraud or mis-representation of such a dimension is discovered that the very basis of order passed by a court of law is affected, the court can recall its order.*"



14. Reliance has also been placed in the case of ***Harjas Rai Makhija (Dead) through Lrs. Vs. Pushparani Jain & Anr.*** reported in ***(2017) 2 SCC 797***. The Hon'ble Apex Court has held that *"when there is an allegation of fraud by non-disclosure of necessary or relevant facts or concealment of material facts, it must be inquired into. It is only after evidence is led coupled with intent to deceive that a conclusion of fraud could be arrived at. A mere concealment or non-disclosure without intent to deceive or a bald allegation of fraud without proof and intention to deceive would not render a decree obtained by a party as fraudulent."*

15. Learned counsel for the petitioners submitted that the judgments and decree obtained by fraud has to be treated as nullity.

16. On the other hand, learned counsel for the plaintiffs/opposite parties vehemently denied any kind of fraud played by them in obtaining the judgment passed in F.A. No. 119 of 1993, which was heard at length in presence of learned counsel appearing for the petitioners, who were respondents in the first appeal, which was allowed by this Court and partly set aside the judgment and decree dated 30.01.1993 passed by the learned Sub-Judge-Ist, Begusarai in Title Suit No. 96 of 1985. In fact, the petitioners lost the battle upto the Hon'ble Apex Court not only by



filing SLP(C) No. 28408 of 2015, which was dismissed on 11.12.2015 but also by filing a civil review registered as RP(C) No. 2437 of 2016, which was dismissed on 20.07.2016. The sale deed said to be executed by opposite party no. 2 on 04.12.2015 and registered on 07.12.2015, the basis on which the plea of fraud is being alleged against opposite party no. 2, is much prior to the order dated 11.12.2015 passed in SLP(C) No. 28408 of 2015 and order dated 21.07.2016 passed in Review Petition RP(C) No. 2437 of 2016 filed by the petitioners. The said document has been executed on 04.12.2015 by opposite party no. 2 much after the judgment dated 24.06.2015 passed in F.A. No. 119 of 1993. Therefore, the contention of the petitioners against the opposite parties that the opposite parties obtained the decree of this Court by playing fraud has no legs to stand and hence the petition is devoid of merit and fit to be dismissed.

17. Learned counsel for the opposite parties submitted that the petitioners have not come before this Court with clean hand. Opposite parties have come to know that the petitioners through their petition dated 26.11.2015 filed in the said SLP(C) No. 28408 of 2015 prayed for additional evidence for the purpose of bringing on record certain documents contained in Annexures P5, P6, P6/A, P7, P7/A, P8, P8/A and P9 (sale deed dated



30.07.2015 executed by opposite party no. 2). The Apex Court did not accept the same and not only dismissed the SLP(C) but also dismissed the Review Petition filed by the petitioners.

18. The plea of fraud has already been agitated before the Apex Court which was rejected by the Apex Court. The sale deed executed on 04.12.2015 by opposite party no. 2 remotely constitute ingredients of fraud as has been alleged by the petitioners. This fact has not been accepted by the Hon'ble Apex Court.

19. In the aforesaid background, the petitioners cannot be allowed to re-agitate the matter again after being concluded and finally settled by this Court, which was affirmed upto the Hon'ble Apex Court.

20. It is admitted fact that against the judgment under review, the petitioners have preferred SLP(C) No. 28408 of 2015 before the Hon'ble Apex Court assailing the judgment and decree passed in F.A. No. 119 of 1993 by this Court. Thereafter, an interlocutory application was filed on 26.11.2025 seeking permission to place on record additional documents which have come into existence after passing of the judgment and decree. The said SLP(C) No. 28408 of 2015 was dismissed on 11.12.2015. Thereafter, the petitioners filed Review Petition *vide* RP(C) No.



2437 of 2016 in SLP(C) No. 28408 of 2015. The Hon'ble Apex Court dismissed the Review Petition also in following terms: "*We have perused the Review Petition and record of the SLP(C) and are convinced that the order of which review has been sought doesn't suffer from any error apparent warranting its reconsideration.*

The Review Petition is accordingly dismissed."

21. It is apparent from the record that the document on which the petitioners have relied upon which discloses the earlier partition by opposite party no. 2 was executed or obtained much before passing of the order dated 11.12.2015 passed in SLP(C) No. 28408 of 2015 and order dated 21.07.2016 passed in RP(C) No. 2437 of 2016. More so, the petition filed for additional evidence by the petitioners before the Apex Court was not accepted by the Apex Court. The findings of the learned Trial Court is that there was no partition by metes and bounds between the parties for immovable properties described in Schedule-I of the plaint. Against the said finding, the respondents (petitioners) have chosen not to file any cross appeal or a regular appeal against the said judgment and decree of Trial Court. The plea of earlier partition as claimed by the petitioners has been rejected and upheld upto the Hon'ble Supreme Court. The documents relied by the petitioners



were available at the time of pendency of SLP(C) as well as Civil Review Petition. The plea of fraud has not been made out in the present case. The petitioners had opportunity to prove the allegation of fraud when they filed an application under Order 41 Rule 27 C.P.C. before the Hon’ble Apex Court. However, they missed the opportunity even upto the Supreme Court. They took a second attempt by alleging fraud and filing a recall application. The alleged fraud not having been proved but merely alleged does not make a ground to recall the impugned judgment and decree.

22. Hence, I do not find any reason to recall the judgment dated 24.06.2015 passed in F.A. No. 119 of 1993 by this Court.

23. Accordingly, this Review Application is hereby dismissed having no merit in it.

24. Pending interlocutory application(s), if any, shall stand disposed of.

(Khatim Reza, J)

prabhat/-

AFR/NAFR	NAFR
CAV DATE	21.08.2025
Uploading Date	13.12.2025
Transmission Date	N/A

