

IN THE HIGH COURT AT CALCUTTA
CIVIL REVISIONAL JURISDICTION
APPELLATE SIDE

C.O.1148 of 2022
Jagadish Chandra Mishra
VS.
Smt. Bishnupriya Mishra & Ors.

For the petitioner :Mr. Tanmoy Mukherjee, Adv.
Mr. Kallol Kumar Maity, Adv.

Last Heard On :13.03.2025

Judgement On :21.03.2025

Bibhas Ranjan De, J. :

1. Challenge of this revision application is the judgement and order dated 29.08.2019 passed by Ld. Additional District Judge, 1st Court, Paschim Midnapore in connection with Misc. Appeal no. 09 of 2017 whereby Ld. Appellate Court set aside the order no. 106 dated 12.01.2017 passed by Ld. Civil Judge, Senior Division, 1st Court, Paschim Midnapore in Judicial Misc. Case (for short J. Misc.) no. 04 of 2005, wherein Ld. Trial Judge set aside the final

decree of partition dated 31.01.2003 on compromise in Title Suit no. 167 of 2002.

2. To cut a long story short, original owner of the suit property in respect of Title suit no. 167 of 2002, was one Kailash Mishra. After demise of said Kailsh Mishra his four sons namely Kartick Bhupati, Rajendra and Surendra affected one partition on 22nd Sraban, 1339 BS by executing a memo of partition. Surendra, one of the brothers, died intestate in the year 1936 leaving behind his aforesaid three (3) brothers. Thereafter, Kartick died in the year 1941 living behind his two wives, namely Rukmini Bala & Charu Bala and a son Sitanath. After demise of Sitanath and two wives of Kartick, the entire share of Kartick revolved upon Sitanath's wife, three sons and a daughter/opposite party herein. Subsequently, Bhupati died in the year 1981 leaving his four sons namely Bomkesha and Rishikesh from first wife, Jagadish and Parameshwar from second wife. Rajendra died in the year 1984 leaving his son Aditya and two daughters namely Mahamaya and Chhabirani. Further case is that, after demise of Surendra another partition was effected in the year 1953 wherein Sitanath obtained 'ka' schedule properties, Bhupati obtained 'Kh' schedule properties and Rajendra obtained 'Ga' schedule

properties. Thereafter, Sitanath transferred properties from his share to third party admitting the partition effected in the year 1953. Bhupati also transferred all his share in favour of opposite party herein and to his three daughters. After demise of Bhupati, his two sons Jagadish/ petitioner herein and Parameshwar filed a Partition Suit no. 142 of 1985 which got dismissed for default. After demise of Sitanath his legal heirs/opposite parties herein brought a Partition Suit no. 167 of 2002 against the petitioners. That partition suit ended in compromise with the assurance of the plaintiff that self-acquired property would not be included in Solenama Petition. Suit was decreed in terms of Solenama. Subsequently, defendants of the suit found that the schedule of Solenama petition included their personal properties.

- 3.** It is specific case of the defendants/petitioners herein that in the compromise decree more properties were allotted to some of the co-sharers in excess of their entitled share and property of 3rd party was also allotted to the parties to the suit.
- 4.** The present petitioners filed one judicial Misc. Case no. 4 of 2005 under Order 22 Rule 3 read with Section 151 of the Code of Civil Procedure inter alia seeking cancellation of such compromise decree. On the grounds mentioned in paragraph 3.

- 5.** Prior to embarking on merit, it would be prudent to revisit the Trial Court's ultimate findings and juxtapose them with the appellate courts conclusion, thereby providing a comprehensive framework for analysis.
- 6.** Ld. Trial Judge, sitting in J. Misc. case no. 4 of 2005, considered all evidence adduced by the parties to the case and also after taking the rival contentions of the parties into consideration, recorded the conclusion which runs as follows:-

"... From the above discussion it appears that the original title suit for partition was filed and compromised suppressing material facts. Secondly, as the suit property was previously partitioned between the parties and accordingly RSROR was also prepared in their names and number of deeds were executed on that basis on suit for further partition of self same property between the same parties is maintainable. Finally, there is third party interest in the suit properties which is subject matter of the compromise and that third party is not aware of the fact that his owned property has been distributed between the persons who has no right title interest therein. If partition decree on this part of property is executed the interest of third party will be hampered. On these grounds the final decree passed in T.S. 167/02 stands unlawful, not executable and the compromise appears to be not valid..."

- 7.** Whereas, Ld. Appellate Court, sitting in Misc. Appeal No. 09 of 2017, held a different view in paragraph no. 20 & 21 of her judgement, which stands as follows:-

"20. The documentary evidence unfolds that the petitioners have failed to bring forth any deed vide which land from the plot nos. 646 or 722/2359 were transferred. Even they couldn't introduce any convincing evidence to establish any

earlier partition. That apart, there is no material at all to smell the practice of deception on them. On the contrary, it is proved that they were well aware about the terms of the solenama and with full knowledge and consent put signatures on it.

21. Therefore, considering the respective contentions and on an overall assessment of the facts and circumstances of the case in a cumulative fashion and also in the light of qualitative and quantitative discussions mentioned supra, this Court is of the considered view that the compromise decree passed in the Title Suit no. 167 of 2002 is valid and binding on both the parties. There is no ounce of material at all to hold that the respondents were deceived. The parties have been fighting since long and this Court, upon considering all the matters in controversy, is of the opinion that there should be an end to their discord over properties-in-dispute. The respondents ought not to have been given any indulgence to prolong the dispute by filing a frivolous litigation. The J. Misc Case had no merit to be allowed. The Court below has failed to appreciate the matter-in-dispute and evaluate the evidence on record in the correct perspective and eventually came to an erroneous finding. So, the impugned judgement, being devoid of merit, deserves to be set aside.”

Analysis:-

- 8.** The entire dispute of this revision application revolves around the order of setting aside of a final decree dated 31.01.2003 on compromise, in a J. Misc. Case no. 04 of 2005.
- 9.** Ld. Trial Judge, as it appears, recorded evidence of both the parties to the J. Misc. Case no. 04 of 2005 and during evidence record of rights, several sale deeds were admitted in evidence. Ld.

Trial Judge relying on the evidence of OPW-1, Bijan Kumar Mishra, along with sale deeds found there was a partition among the predecessor-in-interest of the parties in respect of subject properties. Ld. Trial Judge also considered exhibit 4 (original sale deed) wherefrom it transpired that there was partition according to 'Panchayatnama' before 1995.

10. Ld. Trial Judge particularly relied on admission of OPW-1 and recorded his finding that both the parties to the suit suppressed the previous partition and further obtained a decree for partition on a compromise. Relying on the evidence of OPW-1, Ld. Trial Judge also recorded his finding in support of third party interest in the subject property and held those properties were distributed among the parties having no right, title & interest therein.

11. On careful perusal of the judgment impugned in this revision application, I find that Ld. Appellate Court only kept an eye on the execution of solenama petition which was not denied by any of the parties save and except plea of signature on a blank paper. Nowhere from the case, it appears that parties to solenama were uneducated having no knowledge of consequence of putting signature on the solenama before a Court of law. From that point

of view, I am fully in agreement with the Ld. Appellate Court that such a plea of putting signature on blank paper did not make any difference to the merit of the J. Misc. Case no. 04 of 2005 registered under Order 23 Rule 3 of the Civil Procedure Code.

12. But, the Ld. Appellate Court, in my humble opinion, ignored the admission by the OPW-1, Bijan Kumar Mishra with respect to earlier partition and that apart Ld. Appellate Court also ignored the original sale deed (exhibit - 4) which was filed in support of earlier partition in the year 1954 among the predecessor-in-interest of the parties to the solenama.

13. Considering the order dated 12.01.2017 passed in connection with J. Misc. Case no. 04 of 2005 as well as the judgment and order dated 29.08.2019 passed in Misc. Appeal No. 09 of 2019, it appears that more than the entitled shares were allotted to the parties in the solenama which was made part of the decree passed on compromise in the suit (i.e.T.S 167 of 2002).

14. Ld. Counsel appearing on behalf of the petitioner has relied on a case of ***Bhoop Singh vs. Ram Singh Major and others, (1995) 5 Supreme Court Cases 709***, and submits that in case of transfer of share which is more than the entitled share is liable

to be registered under Section 17 (2) of the Registration Act which runs as follows:-

“17. Documents of which registration is compulsory.

(1)The following documents shall be registered, if the property to which they relate is situate in a district in which, and if they have been executed on or after the date on which, Act XVI of 1864, or the Indian Registration Act, 1866, or the Indian Registration Act, 1871, or the Indian Registration Act, 1877, or this Act came or comes into force, namely,

(a)instruments of gift of immovable property;

(b)other non-testamentary instruments which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property;

(c)non-testamentary instruments which acknowledge the receipt or payment of any consideration on account of the creation, declaration, assignment, limitation or extinction of any such right, title or interest; and

(d)leases of immovable property from year to year, or for any term exceeding one year, or reserving a yearly rent;

(e)[non-testamentary instruments transferring or assigning any decree or order of a Court or any award when such decree or order or award purports or operates to create, declare, assign,

limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent, of the value of one hundred rupees and upwards, to or in immovable property:] [Inserted by Act 21 of 1929, Section 10.] Provided that the [State Government] [Substituted by A.O.1950, for "Provincial Government" .] may, by order published in the [Official Gazette] [Substituted by A.O.1937, for "Local Official Gazette" .], exempt from the operation of this sub-section any leases executed in any district, or part of a district, the terms granted by which do not exceed five years and the annual rents reserved by which do not exceed fifty rupees. [(1-A) The documents containing contracts to transfer for consideration, any immovable property for the purpose of section 53-A of the Transfer of Property Act, 1882, shall be registered if they have been executed on or after the commencement of the Registration and Other Related Laws (Amendment) Act, 2001, and if such documents are not registered on or after such commencement then, they shall have no effect for the purposes of the said section 53-A.] [Inserted by Act 48 of 2001, Section 3 (w.e.f. 24.9.2001).]

(2) Nothing in clauses (b) and (c) of sub-section (1) applies to

(i) any composition deed; or

(ii) any instrument relating to shares in a joint stock company, notwithstanding that the assets of such company consist in whole or in part of immovable property; or

[\(iii\)](#)any debenture issued by any such company and not creating, declaring, assigning, limiting or extinguishing any right, title or interest, to or in immovable property except insofar as it entitles the holder to the security afforded by a registered instrument whereby the company has mortgaged, conveyed or otherwise transferred the whole or part of its immovable property or any interest therein to trustees upon trust for the benefit of the holders of such debentures; or

[\(iv\)](#)any endorsement upon or transfer of any debenture issued by any such company; or

[\(v\)](#)[any document other than the documents specified in sub-section (1-A)] [Substituted by Act 48 of 2001, Section 3, for "any document" (w.e.f. 24.9.2001).] not itself creating, declaring, assigning, limiting or extinguishing any right, title or interest of the value of one hundred rupees and upwards to or in immovable property, but merely creating a right to obtain another document which will, when executed, create, declare, assign, limit or extinguish any such right, title or interest; or

[\(vi\)](#)any decree or order of a Court [except a decree or order expressed to be made on a compromise and comprising immovable property other than that which is the subject-matter of the suit or proceeding] [Substituted by A.O.1937, for "and any award" .]; or

[\(vii\)](#)any grant of immovable property by the [Government] [Substituted by A.O.1950, for "Crown" .]; or

[\(viii\)](#)any instrument of partition made by a Revenue Officer; or

(ix)any order granting a loan or instrument of collateral security granted under the Land Improvement Act, 1871, or the Land Improvement Loans Act, 1883; or

(x)any order granting a loan under the Agriculturists Loans Act, 1884, or instrument for securing the repayment of a loan made under that Act; or~~[(x-a) any order made under the Charitable Endowments Act, 1890, vesting any property in a Treasurer of Charitable Endowments or divesting any such Treasurer of any property; or]~~ [Inserted by Act 39 of 1948, Section 2 (w.e.f. 3.9.1948).]

(xi)any endorsement on a mortgage-deed acknowledging the payment of the whole or any part of the mortgage-money, and any other receipt for payment of money due under a mortgage when the receipt does not purport to extinguish the mortgage; or

(xii)any certificate of sale granted to the purchaser of any property sold by public auction by a Civil or Revenue Officer.[Explanation [Inserted by Act 2 of 1927, Section 2.].a document purporting or operating to effect a contract for the sale of immovable property shall not be deemed to require or ever to have required registration by reason only of the fact that such document contains a recital of the payment of any earnest money or of the whole or any part of the purchase money.]

(3)Authorities to adopt a son, executed after the first day of January, 1872, and not conferred by a will, shall also be registered.”

15. Therefore, according to the provision of Section 17(2)(vi) a compromise decree transferring more than entitled share requires registration. In this regard, we can rely on the principle handed down by the Hon'ble Apex Court in **Bhoop Singh** (supra) in paragraph 16 which runs as follows:-

“ 16. We have to view the reach of clause (vi), which is an exception to sub-section (1), bearing all the aforesaid in mind. We would think that the exception engrafted is meant to cover that decree or order of a Court, 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. Any other view would find the mischief of avoidance of registration, which requires payment of stamp duty, embedded in the decree or order.”

16. Admittedly, the partition decree on compromise involved in the J. Misc. Case no. 4 of 2005, has not been registered in terms of provision of Section 17 (2) (vi) of the Registration Act. To eschew the prolixity, I refrain myself to move further into the issue of maintainability of the application under Order 23 Rule 3 of the Code of Civil Procedure seeking prayer for setting aside the compromise decree, which was rightly decided by the Ld. Trial Judge as well as Ld. Appellate Court. It is settled proposition of law that if the compromise agreement entered between the parties was not adhered to then there is no bar in

filing a recall application seeking restoration of the proceedings under Order 23 rule 3 of the Code of Civil Procedure 1908. The Court emphasised that validity and legality of the compromised agreement can be challenged even after a decree is passed.

- 17.** In the aforesaid view of the matter, no other option is left to this Court but to allow the instant revision application with a prayer for setting aside of the order passed in Misc. Appeal no. 09 of 2017.
- 18.** Accordingly, the revision application being no. CO 1148 of 2022 stands allowed.
- 19.** As a sequel, the judgment and order dated 29.08.2019 passed in Misc. Appeal no. 09 of 2017 stands set aside.
- 20.** Interim Order, if there be any, stands vacated.
- 21.** Connected applications, if there be, also stand disposed of accordingly.
- 22.** Parties to act on the server copy of this order duly downloaded from the official website of this Court.

- 23.** Urgent photostat certified copy of this judgment, if applied for, be supplied to the parties subject to compliance with all requisite formalities.

[BIBHAS RANJAN DE, J.]