

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.93 of 2017

Dr. Shanker Prasad, Son of late Bhagwan Das, Resident of Bakerganj
Baripath, P.S. Pirbahore, District- Patna.

... .. Petitioner/s

Versus

1. Smt. Lakshmi Devi, Wife of Ghanshyam Gupta, Resident of Mohalla- Gola Bazar, P.S. Buxar, District- Buxer.
2. Sri Chandra Shekhar Azad, Son of late Bhagwan Das, Resident of Bakerganj Baripath, P.S. Pirbahore, District- Patna.
3. Smt. Raj Kumari, Wife of Sri Vidya Sagar Gupta, Resident of Bankipur Gorakh , P.S. Fatuha, District- Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr. Abinash Kumar, Advocate
Mr. Kumar Satyakirti, Advocate
For the Respondent/s : Mr. J.S. Arora, Sr. Advocate
Mr. Manoj Kumar, Advocate
Mr. Ravi Bhatia, Advocate

CORAM: HONOURABLE MR. JUSTICE SUNIL DUTTA MISHRA
CAV JUDGMENT

Date : 26-09-2023

Heard Sri Ganpati Trivedi, learned senior counsel
for the petitioner and Sri J.S. Arora, learned senior counsel for
the opposite party no. 1.

2. This Civil Revision application has been filed
against order dated 25.01.2017 passed by learned Sub Judge-
VI, Patna in Title Partition Suit No. 434 of 2013 whereby the
learned court below has rejected the petition of the petitioner
filed under Order VII Rule 11 and Section 11 of the Code of
Civil Procedure (in short "CPC").

3. The brief facts of the case are that



plaintiff/opposite party no. 1 filed Title Partition Suit No. 434 of 2013. In the said suit plaintiff no. 1 Most. Kamla Devi (died on 09.01.2014) is mother and plaintiff no. 2 Smt. Laxmi Devi is sister of defendants. The defendant no. 1 Dr. Shankar Prasad had filed a suit for partition in regard to joint family properties vide T.S. No. 62 of 1992. It is claimed that defendant nos. 1 and 2 persuaded their mother, plaintiff no. 1 not to take due share since they will maintain her whole life with due respect and regard and also persuaded plaintiff no. 2 and defendant no. 3 (sisters) not to take any share by reiterating the same assurance which was given to the mother. A compromise petition was prepared and the property was mainly allowed to be partitioned between defendant nos. 1 and 2 and a decree of partition in terms of compromise was passed therein on 29.04.1995. The plaintiff no. 1 of this suit was given 1634 sq. ft. of land at Kumhrar and also right to realize rent from a shop at Baripath, Patna.

4. It is alleged that plaintiff no. 1 herein has never been maintained by her sons i.e. defendant nos. 1 and 2 nor she was allowed to ever collect rent from the shop at Baripath, Patna and plaintiff no. 2 alone had taken care of her including her medical expenses. Mother was forced to file Maintenance Case



No. 96 (M) of 2010 against defendant nos. 1 and 2. She had to take loan for her survival and to repay the loan she had to sell the said 1634 sq. ft. of land.

5. The present suit has been filed by plaintiffs since the previous decree is a nullity and void on the ground that the decree of partition was obtained by defendant nos. 1 and 2 illegally, unlawfully, fraudulently by practicing fraud upon plaintiffs and also upon the court. The said compromise decree is based on unlawful agreement is a nullity and void in the eye of law. It is also stated that plaintiffs are also filing a separate Misc. Case under Section 151 CPC to revoke, recall and cancel the said decree passed in T.S. No. 62 of 1992. The said Misc. Case No. 01 of 2013 (04 (A)/14) had been filed in the Court concerned for setting aside the Judgment and decree dated 29.04.1995 passed in T.S. No. 62 of 1992 on the basis of fraud committed upon them as defendant nos. 1 and 2 did not act accordingly to the terms of the compromise. It appears that the said Misc. Case was dismissed by detailed order dated 15.07.2017.

6. Learned senior counsel Mr. Ganpati Trivedi, appearing for the petitioner submits that the Trial Court failed to appreciate that admittedly the property involved in this suit had



already been partitioned under the previous compromise final decree passed in Title Suit No. 62 of 1992 between the same parties under Order XXIII Rule 3 of CPC and as per law under Order XXIII Rule 3 A of the CPC, the fresh suit on the ground of fraud shall not lie to set aside compromise decree in garb of fresh partition suit.

7. Learned senior counsel for the petitioner further submits that the plaintiff by clever drafting wants to get her suit maintainable questioning the Compromise Decree, which otherwise would not be maintainable. He further submits that it is not in dispute that the plaintiff has already moved miscellaneous case before the Court concerned for setting aside the compromise decree, however, the same was dismissed by the Court concerned. In substance, in the present suit has been filed for setting aside the compromise decree although it is stated as Title Partition Suit.

8. It is further submitted on behalf of petitioner that as per the compromise final decree, passed in previous suit no. 62 of 1992, the petitioner had got constructed/ developed his allotted properties and since the date of final decree, the petitioner including his sons have been coming in separate possession over his allotted area of property. The final



compromise decree dated 26.05.1995 has attained finality. The mother Kamla Devi had already sold her allotted property and thus partition took place by metes and bounds and is binding against the plaintiffs and defendants. The defendant no. 1/ petitioner herein accordingly filed petition under Order VII Rule 11 read with Section 11 of CPC on 27.11.2015 which has been wrongly dismissed by the impugned order observing that the portion for determination is related to *res-judicata* which is mixed question of law and fact which will be decided after recording the evidence of the party ignoring that it is not only the case of *res-judicata* but the suit is itself not maintainable in view of the bar of suit under Rule 3-A of Order XXIII of CPC.

9. On the other hand, Mr. J.S. Arora learned senior counsel appearing for plaintiff/ opposite party no. 1 has submitted that the learned Trial Court has rightly rejected the petition of the petitioner filed under Order VII Rule 11 CPC which requires no interference by this Court. He has submitted that the plaintiff has not challenged the compromise decree passed in the earlier suit which was decreed on compromise in which the plaintiff had relinquished her share on false promise. Since the immovable property having value more than Rs. 100/- which was said to have been relinquished by the said



compromise decree, the decree was compulsorily required to be registered in view of the Section 17 of the Registration Act. Accordingly, the said compromise decree passed in the earlier suit has nullity in the eye of law and no right accrued to any party from the said decree. The said decree is outcome of the fraud committed on the plaintiff and upon the Court, passed on unlawful agreement and the present suit is accordingly maintainable.

10. Learned counsel for the opposite party no. 1 has further submitted by referring the Judgment of Hon'ble Supreme Court in **(2019) 7 SCC 158 (Madhav Prasad Aggarwal and Another Vs. Axis Bank Limited and Another)** that if the plaint survives against certain defendant (s) and or properties, Order 7 Rule 11 (d) CPC will have no application at all, and the suit must then proceed to trial.

11. He has further submitted that the consequences of non-registration of a document needing compulsory registration are indicated in Section 49 of the Registration Act, which provides to the effect that it shall not affect any immovable property comprised therein, be received as evidence of any transaction affecting any such property or conferring such powers. Thus, the compromise decree did not convey right,



title and interest in the property.

12. Learned senior counsel for petitioner on the point of requirement of registration of a compromise decree has submitted that the exception engrafted in clause (vi) of Sub-section (2) of Section 17 of Limitation Act is meant to cover that decree or order expressed to be made on a compromise, which declares the per-existing right and does not create new right, title or interest in *praesenti* immovable property of Rs. 100 or upwards. Compromise decree, if bonafide, in the sense that the compromise is not a device to obviate payment of stamp duty and frustrate the law relating to registration, would not require registration.

13. Section 17(1) of the Registration Act, 1908 enumerates the various kinds of documents which need compulsory registration. Sub-section (1) of Section 17 mandates that the instrument enumerated in clause (a) to (e) shall be registered compulsorily if the property to which they relate is immovable property value of which is Rs. 100 or upwards. Where the document purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest therein, whether vested or contingent, it has to be registered compulsorily. Sub-section (2) of Section 17



of the Act engrafts exceptions to the instruments cover only clauses (b) and (c) of Sub-section (1). Clause (vi) of Sub-section (2) relates to 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. If the compromise memo extinguishes the rights of one and seeks to confer right, title or interest in favour of other, relating to immovable property of value of Rs. 100 and upwards, the document or record or compromise memo shall be compulsorily registered. The **Hon'ble Supreme Court in Bhoop Singh Vs Ram Singh Major** considered the question as to under what circumstances an agreement made in writing and incorporated in a decree of a Court needs compulsory registration).

14. The Hon'ble Supreme Court vide judgment dated 06.07.2021 **Ripudaman Singh Vs Tikka Maheshwar Chand (Civil Appeal No. 2336 of 2021)** referred the judgment reported in **Kale and others Vs Deputy Director of consolidation and others (1976) 3 SCC, Ravinder Kaur Grewal and Others Vs Manjit Kaur and Others (2020)9 SCC 706, Bhoop Singh Vs. Ram Singh Major and Others (1995) 5 SCC 709. K. Raghunandan and Others Vs. Ali**



Hussain Sabir and Others (2008) 13 SCC 102 and larger Bench judgment in Phool Patti and another Vs. Ram Singh (Dead) through Lrs and Another (2015) 6 SCC 465 and observed in paragraph 15 and 16 as under:

*“15. The judgments of this Court in **Bhoop Singh and K. Raghunandan** was found to be inconsistent in an order reported in **Phool Patti and Another Vs. Ram Singh (Dead) Through Lrs. And Another (2009) 13 SCC 22** and the matter was thus referred to a larger Bench. The larger Bench in the judgment reported as **Phool Patti and Another Vs. Ram Singh (Dead) Through Lrs. and Another (2015) 3 SCC 465** did not find inconsistencies between the two judgments.*

*16. **Bhoop Singh** was a case dealing with both the situations, decree between the parties where the decree holder does not have any pre-existing right in the property and also the situation where decree holder has a per-existing right. It was the second situation where the decree holder has a pre-existing right in the property, it was found that decree does not require registration. In **K. Raghunandan** case, the dispute was not amongst the family members but between neighbours regarding right over passage. Obviously, none of them had any pre-existing right over the immovable property in question.”*

15. Rule 3 A of Order XXIII CPC bars the suit to set aside the decree on the ground that the compromise on which decree was passed was not lawful. In **Banwari Lal Vs. Chando Devi (1993) 1 SCC 581** the Hon’ble Supreme Court considered Rule 3 as well as Rule 3 A of Order 23 and held that



the object of the Amendment Act, 1976 is to compel the party challenging the compromise to question the Court which has recorded the compromise. Having introduced the proviso along with explanation in Rule 3 in order to avoid multiplicity of suit and prolonged litigation, a specific bar was prescribed by Rule 3-A in respect of institution of a separate suit for setting aside a decree on the basis of a compromise.

16. In **Pushpa Devi Bhagat Vs. Rajinder Singh, (2006) 5 SCC 566** observed that no independent suit can be filed for setting aside a compromise decree on the ground that compromise was not lawful in view of the bar contained in Rule 3 A. It was further observed that a consent decree operates as an estoppel and is valid and binding unless it is set aside by the court which passed the consent decree, by an order on an application under the proviso to Rule 3 Order 23.

17. In **R. Rajanna Vs. S.R. Venkataswamy (2014) 15 SCC 471** and **Trilokinath Singh Vs. Anirudh Singh (2020) 6 SCC 629** also considered the provisions of Order 23 Rule 3 and 3-A reiterated the same proposition that the only remedy available to a party to a consent decree to avoid such consent decree is to approach the Court which recorded the compromise and separate suit is not maintainable.



18. In the judgment dated 09.02.2022, **M/s. Sree Surya Developers and Promoters Vs. N. Sailesh Prasad and Ors. (Civil Appeal No. 439 of 2022)** the Hon'ble Supreme Court in para 10.1 held as under:

“As held by this Court in a catena of decisions right from 1977 that a mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise would not be maintainable and/ or barred by law. It has been consistently held by this Court that if clever drafting of the plaint has created the illusion of a cause of action, the Court will nip it in the bud at the earliest so that bogus litigation will end at the earlier stage.”

19. This Court in **Bhuneshwar Chaubey @ Duldul Chaubey vs. Kalawati Devi and Others**, vide order dated 09.11.2022 in Civil Revision No. 27 of 2020 observed as under:

*“ On plain reading of Order XXIII Rule 3-A of the Civil Procedure Code, it is apparent that no suit shall lie to set aside a decree on the ground that the compromise of which the decree is based was not lawful. Identical question was considered by the Hon'ble Apex Court in case of **R. Janakiammal Vs. S.K. Kumarasamy (2021) 9 SCC 114**. It was observed and held by the Hon'ble Court that Rule 3-A of Order XXIII bars the issue to set aside the decree on the ground that the compromise on which decree was not lawful. It is further observed and held that an agreement or compromise which is clearly void or voidable shall not be deemed to be lawful and the bar under Rule 3-A shall be attracted if compromise on the basis which the Hon'ble Apex Court had occasion to consider in detail Order XXIII of Rule 3 as well as Rule 3-A.”*



20. It is further observed in the said order that there is catena of decision on this point as referred in *Banwari Lal Vs. Chando Devi (1993) 1 SCC 581, Pushpa Devi Bhagat Vs. Rajinder Singh & Ors. (2006) 5 SCC 566, Horil Vs. Keshav, (2012) 5 SCC 525 and R. Ranjana Vs. S.R. Venkataswamy & Ors. (2014) 15 SCC 471.*

21. It was held therein that “Now, considering the decisions of the Hon’ble Apex Court, it stands quite clear that a separate suit for challenging compromise decree is barred under Order XXIII, Rule 3A of the Civil Procedure Code. It is held that such a challenge can only be examined by the Court, who has allowed the compromise decree and not by any other court. In order to look into justifiability of the case brought by the aggrieved party.”

22. This Court in **Maharpato Devi Vs. Phulwaso Devi reported in 2023 (3) PLJR 690** in paragraph 9 observed as under :-

“9. *The Hon’ble Supreme Court in Sree Surya Developers and Promoters vs. Sailesh Prasad and others reported in (2022) 5 SCC 736 dealt with the earlier decisions in R. Janakiammal vs. S. K. Kumaraswamy (D) Thr. Lrs. (2021) 9 SCC 114, R. Ranjanna vs. S. R. Venkataswamy (2014)15 SCC 478, Triloki Nath Singh Vs. Anirudh Singh (2020) 6 SCC 629 and other judgments of Hon’ble Supreme*



Court and observed that a party to a consent decree based on a compromise to challenge the compromise decree on ground that the decree was not lawful i.e. it was either void or voidable has to approach the same Court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.”

23. The Hon'ble Supreme Court in **Madanuri Sri**

Rama Chandra Murthy Vs. Syed Jalal 2017 (3) PLJR (SC)

59, held as under :

“The plaint can be rejected under Order VII Rule 11 if conditions enumerated in the said provision are fulfilled. It is needless to observe that the power under Order VII Rule 11, CPC can be exercised by the Court at any stage of the suit. The relevant facts which need to be looked into for deciding the application are the averments of the plaint only. If on an entire and meaningful reading of the plaint, it is found that the suit is manifestly vexatious and meritless in the sense of not disclosing any right to sue, the court should exercise power under Order VII Rule 11, CPC. Since the power conferred on the Court to terminate civil action at the threshold is drastic, the conditions enumerated under Order VII Rule 11 of CPC to the exercise of power of rejection of plaint have to be strictly adhered to. The averments of the plaint have to be read as a whole to find out whether the averments disclose a cause of action or whether the suit is barred by any law. It is needless to observe that the question as to whether the suit is barred by any law, would always depend upon the facts and circumstances of each case. The averments in the written statement as well as the contentions of the defendant are wholly immaterial while considering the prayer of the defendant for rejection of the plaint. Even when, the allegations made in the



plaint are taken to be correct as a whole on their face value, if they show that the suit is barred by any law, or do not disclose cause of action, the application for rejection of plaint can be entertained and the power under Order VII Rule 11 of CPC can be exercised. If clever drafting of the plaint has created the illusion of a cause of action, the court will nip it in the bud at the earliest so that bogus litigation will end en at the earlier stage.”

24. On the point of clever drafting and exercise of power under Order 7 Rule 11 CPC the Hon'ble Supreme Court in **T. Arivandanam Vs. T.V. Satyapal & Another (1977) 4 SCC 467** it was observed that if on a meaningful- not formal-reading of the plaint it is manifestly vexatious and meritless in the sense of not disclosing clear right to sue, the Court should exercise his power under Order 7 Rule 11 CPC taking care to see that the ground mentioned therein is fulfilled. And, if clever drafting has created the illusion of a cause of action, nip it in the bud at the first hearing by examining the party searching under Order 10 CPC and it was further observed and held that when the suit is barred by any law, the plaintiff cannot be allowed to circumvent that provision by means of clever drafting so as to avoid mention of those circumstances, by which the suit is barred by law of Limitation.

25. This Court in this proceeding is not required to enter into the merits of the validity of the compromise



decree on the ground that the same has been obtained by fraud or is required to be compulsory registration and the only issue which is required to be considered by this Court is whether the fresh suit is maintainable or not.

26. It is not in dispute that as such the plaintiff has already moved an application before the Court concerned under Order XXIII Rule 3 A CPC which passed the said decree for setting aside compromise decree and thus, plaintiff has already availed the proper remedy available in the law. The remedy which is not directly available cannot be availed indirectly by clever drafting. The filing of fresh suit which is substantially based on declaring compromise decree as null and void is an abuse of the process of law particularly when the proper remedy has already been availed.

27. So far as the submission on behalf of the plaintiff that in the suit the plaintiff has not specifically prayed for setting aside the compromise decree and what is prayed is to partition of the suit property but, mere perusal of the plaint it appears that the suit is based on the pleading that previous decree in suit for partition is nullity and void and no right accrues to any party from the said decree. As discussed above, a party to a consent decree based on a compromise to challenge the compromise decree on the ground that the decree was not



lawful i.e. it was void or voidable has to approach the same Court, which recorded the compromise and a separate suit challenging the consent decree has been held to be not maintainable.

28. The prayer of partition of suit property is basically challenging the previous compromise decree. A mere clever drafting would not permit the plaintiff to make the suit maintainable which otherwise is not maintainable. The plaintiff knowing the same, had already filed Misc. Case challenging the compromise decree before the concerned Court.

29. In view of the aforesaid facts and circumstances and considering the submissions on behalf of the parties and the legal position, it is held that the suit is liable to be rejected under Order 7 Rule 11 (d) as not maintainable. The impugned order is set aside. The stay granted by this Court in this case is vacated. The plaint in Title Suit No. 434 of 2013 pending before Sub-Judge VI, Patna/Successor Court stands rejected.

30. The Civil Revision is, accordingly, allowed.

31. Application (s), if any, stands disposed of.

(Sunil Dutta Mishra, J)

khushbu/-

AFR/NAFR	AFR
CAV DATE	21.09.2023
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