

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.382 of 2018

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Dina Nath Prasad, Son of Late Rama Prasad, Resident of Village-Bodheya, P.O. Badheya Via Hathua, P.S.-Mirganj, District-Gopalganj.

... ... Petitioner/s

Versus

1. Jay Prakash Singh, Son of Late Yogendra Singh, Resident of Village- Badheya, P.O. Badheya Via. Hathua, P.S. Mirganj, District-Gopalganj.
2. Munna Patel, Son of Late Rama Prasad, Resident of Village-Badheya, P.O. Badheya Via. Hathua, P.S. Mirganj, District-Gopalganj.
3. Prakash Singh, Son of Gyanendra Singh, Resident of Village-Badheya, P.O. Badheya Via. Hathua, P.S. Mirganj, District-Gopalganj. at Present 17/0 Sector 29, Noida-201301.
4. Most. Kiran Singh, Wife of Ashok Singh, Resident of Village-Badheya, P.O. Badheya Via. Hathua, P.S. Mirganj, District-Gopalganj. at Present Central Park, 1H 304, Sector 42, Gurgaon-122099.
- 5.1. Ajit Singh son of Late Nagendra Prasad Singh, resident of Village-Badheya, P.S. Mirganj, District-Gopalganj, at present Mayur Bhawan, Road No. 6, Rajendra Nagar, P.S.-Kadamkuan, District-Patna.
- 5.2. Shekhar Singh son of Late Nagendra Prasad Singh, resident of Village- Badheya, P.S. Mirganj, District-Gopalganj, at present Mayur Bhawan, Road No. 6, Rajendra Nagar, P.S.-Kadamkuan, District-Patna.
- 5.3. Sudhir Singh, son of Late Nagendra Prasad Singh, resident of Village- Badheya, P.S. Mirganj, District-Gopalganj, at present Mayur Bhawan, Road No. 6, Rajendra Nagar, P.S.-Kadamkuan, District-Patna.

... ... Respondent/s

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with

CIVIL MISCELLANEOUS JURISDICTION No. 1825 of 2017

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... Respondent/s

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Constitution of India--Article 227---Code of Civil Procedure, 1908---section 152, 151---Non Joinder of necessary party---petition to challenge order passed by learned trial court whereby and whereunder compromise decree dated 24.02.1951 in a Title Partition Suit was allowed to be amended after about 65 years---plea that the impugned order was passed in complete violation of principles of natural justice and without issuing notice to the petitioner or all the parties to the suit---further argument that amendment made in the compromise decree of Title Suit will be highly prejudicial to the cause of the petitioner resulting in irreparable loss/injuries---Held: Bare perusal of order sheet shows there has been no notice to the parties to the suit and the order has been passed merely on petition filed on behalf of original defendant no. 9 after hearing his counsel--- petitioner was a necessary party since he was the person who was going to be directly affected by the act of the learned trial court, being the purchaser of the property in question, the learned trial court should have paused and considered for a moment that valuable rights which have accrued in favour of the petitioner are going to be trampled by the hasty act of the learned trial court---impugned order set aside--matter remanded to the learned trial court for consideration afresh. (Para 9-11)

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2. Munna Patel, Son of Late Rama Prasad, Resident of Village- Badheya, P.O. Badheya, Via Hathua, P.S. Mirganj, District Gopalganj.
3. Pakash Singh, Son of Gyanendra Singh, Resident of Village- Badheya, P.O. Badheya, Via Hathua, P.S. Mirganj, District Gopalganj. At present 1710 Sector- 29, Noida- 201301.



- 4. Most. Kiran Singh, Wife of Ashok Singh, Resident of Village- Badheya, P.O. Badheya, Via Hathua, P.S. Mirganj, District Gopalganj. At present Central Park 1H, 304 Sector- 42, Gurgaon- 122099.
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Appearance :

(In CIVIL MISCELLANEOUS JURISDICTION No. 382 of 2018)

For the Petitioner/s : Mr. Raghib Ahasan, Sr. Advocate
Mr. Ramadhar Shekhar, Advocate
Mr. Vinay Kumar Singh, Advocate

For the Respondent no. 5: Mr. J.S. Arora, Sr. Advocate
Mr. Raghwanand, Advocate
Mr. Rajnish Shandilya, Advocate
Mr. Pratik Kumar, Advocate

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Mr. Vinay Kumar Singh, Advocate

For the Respondent no. 5: Mr. J.S. Arora, Sr. Advocate
Mr. Raghwanand, Advocate
Mr. Rajnish Shandilya, Advocate
Mr. Pratik Kumar, Advocate

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CORAM: HONOURABLE MR. JUSTICE ARUN KUMAR JHA
ORAL JUDGMENT

Date : 06-05-2024

In C.Misc. Jurisdiction No. 382 of 2018

Heard learned senior counsels for the petitioner as well as substituted respondent no. 5 set. Though other respondents have also appeared in the case, but there is no representation today on their behalf. However, considering the



long pendency of the matter it has been taken up for disposal along with Civil Misc. No. 1825 of 2017.

2. The present petition has been filed under Article 227 of the Constitution of India against the order dated 05.04.2016 passed by learned Sub Judge-I, Gopalganj in Title Suit No. 32 of 1946, whereby and whereunder the learned Sub Judge allowed the petition dated 03.03.2016 filed by defendant no. 9 under Section 152 read with section 151 of the Code of Civil Procedure, 1908 (hereinafter referred to as 'the Code')

3. Briefly stated, the facts of the case are that Title Suit No. 32 of 1946 was disposed of in terms of compromise vide order dated 24.02.1951 and a compromise decree was prepared. The compromise petition of the parties was made part of a decree, which was sealed and signed on 24.02.1951. It appears that on the basis of the compromise decree, parties to the suit came into respective possession of their land as allotted to them. However, Khata No. 78, Plot No. 632, Area 2 Katha 10 dhurs was allotted to the defendant no. 11, namely, Kaushal Kishore Narayan, who died unmarried and the said property along with other properties came in share of his two brothers, namely Prakash Prasad Singh, (defendant no. 12) and Ashok Prasad Singh, (defendant no. 14). But the respondent nos. 3 & 4



who are brother and sister-in-law of Kaushal Kishore Narayan executed a registered sale deed dated 16.03.2009 in favour of the petitioner and handed over the possession to the petitioner. Cousin of Plaintiff No. 2 of Title Suit No. 32 of 1946 filed Title Suit No. 169 of 1913 against the aforementioned sale deed on the ground that the vendors of the petitioner have no right to execute the sale deed. He claimed that he got the land by way of gift deed. While Title Suit No. 169 of 2013 was pending, original respondent no. 5/original defendant no. 9 filed a petition dated 03.03.2016, under section 152 read with section 151 of the Code praying therein to amend the compromise decree passed in Title Suit No. 32 of 1946 and strike out plot no. 632 from Schedule 5(E).The said petition was allowed vide order dated 05.04.2016 which is under challenge before this Court.

4. Mr. Raghib Ahasan, the learned senior counsel appearing on behalf of the petitioner submits that the order of the learned trial court is patently illegal and passed without following the established norms of law. The learned trial court has not even bothered to take note of the fact that the petition dated 03.03.2016, was neither verified nor affidavited. Even no *vakalatnama* has been filed by the parties. In complete violation



of principles of natural justice, without issuing notice to the petitioner or all the parties to the suit, the order impugned was passed. The learned trial court did not take into account accrual of interest in favour of the petitioner, who was not put to any notice. Admittedly the vendors of the petitioner have sold entire land of Plot No. 632 which was allotted to them in compromise decree and as such this petitioner has stepped into the shoes of his vendors and he has every right to defend his case in accordance with law.

5. The petitioner came to know about the impugned order only when the plaintiff of title suit no. 169 of 2013 filed a petition for amendment on 02.06.2017 on the basis of order dated 05.04.2016 and the said petition was allowed by the learned trial court vide order dated 01.08.2017. The petitioner was not given any opportunity to contest the petition filed for correction in the compromise decree and allowing the amendment in Title Suit No. 169 of 2013 on the basis of amendment made in the compromise decree of Title Suit No. 32 of 1946 will be highly prejudicial to the cause of the petitioner resulting in irreparable loss/injuries. Thus, the learned senior counsel submits that the impugned order is not sustainable and needs to be set aside.



6. Mr. J.S. Arora, learned senior counsel appearing on behalf of the respondent no. 5 vehemently contends that there is no infirmity in the impugned order. Learned senior counsel submits that there was no need to issue notice to the petitioner or to hear him since the petitioner has got no *locus standi* and he was not a party in the original suit, i.e., Partition Suit No. 32 of 1946. Leaned senior counsel further submits that it is incorrect to say that other parties were not put to notice and not heard in the matter. The counter affidavit has been filed on behalf of original respondent no. 5 wherein it has been submitted that the respondent nos. 3 & 4 along with respondent no. 5 had jointly filed a petition under section 152 read with section 151 of the Code on 24.08.2013 which was numbered as miscellaneous case no. 38 of 2013 with the *vakalatnama* of same lawyer who appeared in the present case. On legal advice, the miscellaneous case was withdrawn and a simple petition was filed in partition suit no. 32 of 1946 whereupon the orders impugned were passed. So respondent nos. 3 & 4 never objected to the prayer. The learned senior counsel further submitted that the learned trial court has correctly allowed the petition filed by the original respondent no. 5 and this modification was needed to avoid the ambiguity whereby a decree came into existence with regard to



non-existent land. On the point of powers of the concerned court for correction of decree, learned senior counsel relies on paragraph-19 of the decision in the case of ***Niyamat Ali Molla Vs. Sonargon Hsg. Co-op. Society Ltd. & Ors.*** reported in ***AIR 2008 SC 225*** which is quoted as under:

“19. Code of Civil Procedure recognises the inherent power of the Court. It is not only confined to the amendment of the judgment or decree as envisaged under Section 152 of the Code but also inherent power in general. The Courts also have duty to see that the records are true and present the correct state of affair. There cannot, however, be any doubt whatsoever that the Court cannot exercise the said jurisdiction so as to review its judgment. It cannot also exercise its jurisdiction when no mistake or slip occurred in the decree or order. This provision, in our opinion, should, however, not be construed in a pedantic manner. A decree may, therefore, be corrected by the Court both in exercise of its power under Section 152 as also under Section 151 of the Code of Civil Procedure. Such a power of the Court is well recognized.”

7. Learned senior counsel also relies on a decision of this Court in the case ***Shri Santosh Kumar Singh Vs. State of Bihar & Ors.*** reported in ***2012 (3) PLJR 120*** to stress the point that the power under Section 152 of the Code could extend to



correction of clerical error in compromise petition even at the instance of one party, if identity or suit property is not in dispute and does not at all substitute the subject matter of the dispute rather facilitate in sorting out the real issue.

8. Thus the learned senior counsel submits that there is no error in the impugned order and the same needs to be sustained.

9. I have given my anxious consideration to the rival submission and having gone through the record, the glaring aspect of the matter is that the parties concerned were never put to notice. The compromise decree in Title Partition Suit No. 32 of 1946 has been passed on 24.02.1951 and about 65 years later, correction in decree has been prayed for and allowed. Bare perusal of order sheet shows there has been no notice to the parties to the suit and the order has been passed merely on petition filed on behalf of original defendant no. 9 after hearing his counsel. It has nowhere been mentioned that other parties were either present or were represented. It is immaterial that respondent nos. 3 & 4 joined respondent no. 5 in filing some miscellaneous case and whatever has been status of parties in the said miscellaneous case, the same could not have any bearing on the disposal of the petition filed by defendant no. 9



in Title Suit No. 32 of 1946. There cannot be assumption and presumption on this point. Thereafter, when the petitioner has come into picture and was a necessary party since he was the person who was going to be directly affected by the act of the learned trial court, being the purchaser of the property in question, the learned trial court should have paused and considered for a moment that valuable rights which have accrued in favour of the petitioner are going to be trampled by the hasty act of the learned trial court. Another glaring facet of the case is that the petition for seeking amendment is neither verified nor affidavited. Even the learned trial court proceeded in the matter on assumption that whatever has been stated in the petition is true and no affidavit was required.

10. In the light of aforesaid discussion, I am of the considered opinion that the impugned order could not be sustained. For this reason, I would not like to venture into merits of the case. For the same reason, there could be no applicability of the authorities cited by Mr. Arora in the present matter as power of the trial court under Section 152 read with Section 151 of the Code is not the matter in issue and moreover, facts are completely different as it appears in the light of discussion made hereinabove.



11. Accordingly, the impugned order dated 05.04.2016 passed in Title Suit No. 32 of 1946 is set aside and the matter is remanded to the learned trial court for consideration afresh. Learned trial court is directed to issue notice to the parties concerned and pass a reasoned order after hearing the parties.

12. Accordingly, the instant petition stands allowed.

In C. Misc. Jurisdiction No. 1825 of 2017

13. The present petition has been filed under Article 227 of the Constitution of India against the order dated 01.08.2017 passed by Sub Judge-IX, Gopalganj in Title Suit No. 169 of 2013 whereby and whereunder the learned Sub Judge-IX allowed the application dated 02.06.2017 filed by the plaintiff/respondent no. 1 under Order 6 Rule 17 of the Code.

14. Briefly stated, the facts of the case are that the plaintiff/respondent no. 1 filed Title Suit No. 169 of 2013 against defendants for declaration that plaintiff has title and defendant has no title over the suit land and the plaintiff further sought declaration that sale deed dated 16.03.2009 executed by defendant 2nd set in favour of defendant 1st set is void, ineffective, inoperative and not binding upon the plaintiff. The case of the plaintiff was that he acquired the suit land through a registered gift deed dated 11.04.2009 executed by original



respondent no. 5. Further the case of the plaintiff was that his donor acquired the said property mentioned in Schedule-I of the plaint besides other properties in Partition Suit No. 32 of 1946 which was disposed of on the basis of a compromise. In the said compromise, Schedule-5(B) of the compromise petition was allotted in the share of the original respondent no. 5, Schedule-5(E) was allotted to Kaushal Kumar Singh, Schedule-5(F) was allotted to defendant no. 3/respondent no. 3 and Schedule-5(G) was allotted to husband of defendant no. 4/ respondent no. 4. The defendant 1st set appeared and filed their written statement contesting the claim of the plaintiff. Another set of written statement was filed by defendant no. 5/original respondent no. 5 who admitted the averment as made in the plaint supporting the case of the plaintiff. Thereafter, a petition was filed under Section 152 read with Section 151 of the Code with prayer to strike off plot no. 632 from Schedule-5(E) of the compromise decree of 24.02.1951. The said petition was filed by original defendant no. 9 of the Partition Suit No. 32 of 1946, who was defendant no.5/respondent no. 5 in the present case. After the orders have been passed on 05.04.2016 in the Partition Suit No. 32 of 1946, the plaintiff/respondent no. 1 moved an application for bringing about certain amendments in his plaint on the



ground of order dated 05.04.2016 passed in Partition Suit No. 32 of 1946. The petitioner/defendant filed his rejoinder and after hearing the parties, the learned trial court allowed the amendment petition vide its order dated 02.06.2017.

15. It is very much apparent that since the amendments have been allowed on the basis of correction made in the compromise decree vide order dated 05.04.2016 passed in Title Suit No. 32 of 1946, which has been challenged before this court in Civil Misc. No. 382 of 2018 and the said order dated 05.04.2016 has been set aside, the substratum of the impugned order goes. If there is no correction in the compromise decree dated 10.01.1951, there is no material for seeking amendment on part of the plaintiff/respondent no. 1 and no occasion for the learned trial court to base its orders on the corrected compromise decree as the perusal of the impugned order shows the reasoning adopted by the learned trial court is entirely based on the factum of correction in the compromise decree of 24.02.1951.

16. For this reason, without further going into the merits of the case, the impugned order dated 01.08.2017 is set aside in the light of the fact that there exists no order dated 05.04.2016 in Title Suit No. 32 of 1946.



17. Accordingly, the present petition stands allowed.

18. However, disposal of the present petition would not be a hurdle for the parties in moving appropriate application including application for amendment in future to address their concern.

(Arun Kumar Jha, J)

anuradha/-

AFR/NAFR	AFR
CAV DATE	NA
Uploading Date	09.05.2024
Transmission Date	NA

