
(2006) 08 PAT CK 0066
In the Patna High Court
Case No : C.R. No. 34 of 2006

Ishwar Chand @ Kishore Prasad

APPELLANT

Vs

Dena Nath Sah and Others

RESPONDENT

Date of Decision : 09-08-2006

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3

Citation : (2006) 4 PLJR 96

Hon'ble Judges : Navaniti Pd. Singh, J

Bench : Single Bench

Advocate : Ranjeet Kumar and Dharma Veer Raghav, for the Appellant; Sudhir Ranjan for Opp. Party No. 1, for the Respondent

Final Decision : Allowed

Judgement

Navaniti Pd. Singh, J.—Petitioner, the plaintiff had filed a Partition Suit. On contest, the suit was allowed. An appeal was preferred by the opposite parties. While the appeal was pending, the parties to the appeal entered into a compromise agreeing to divide their residential house in mutually agreeable proportion. An agreement to that effect was drawn up. It was signed by both the parties. It was filed under the signature of the lawyers for both the parties. Application was filed in terms of Order 23 Rule 3 of CPC for passing a decree in terms of the said compromise. At this stage, the defendants-opposite parties objected. Their stand was that they did not deny the said compromise but took a stand that after the compromise with regard to division of the house took place and parties came in possession of their respective share, the plaintiff has sold his share to outsiders. This he could not do because of a verbal/ oral understanding as between the parties. As the plaintiff had violated the oral/verbal understanding, the compromise, though lawfully entered, was not acceptable any more. This found favour with the appellate Court who refused to act upon the compromise and directed the parties to proceed for hearing the appeal on merit. This is the order impugned. Opposite parties are duly represented. Parties are

heard.

2. In support of the application, the learned counsel appearing on behalf of the plaintiff-petitioner has placed reliance on the case of K. Venkata Seshiah Vs. Kanduru Ramasubbamma (Dead) by Lrs., . In the said decision, the Apex Court has held that once a compromise has been filed in the Court, the Court, accordingly, has to examine whether it has been duly executed by the parties and it is for lawful consideration and it is genuine. Once these three conditions are fulfilled, the compromise has to be duly recorded and decree passed in terms of the compromise. There is no discretion left in the Court for not accepting the compromise. Similar is the view in cases of Bhaja Govinda Maikap and Another Vs. Janaki Dei and Others, and in Jai Gobind Singh and Another Vs. Bagal Lal Singh, .

3. Having regard to the aforesaid judgments and the facts of the present case, I have no option but to follow the said law. In the present case, the opposite parties do not deny the compromise. The compromise is lawful. It has been executed by all the parties and it is genuine. The objection as to its acceptability by one of the parties is on a ground which is foreign to the compromise. A party having entered into an agreement and that agreement having been acted upon cannot now resile much less on a ground which is wholly extraneous to the agreement. He is estopped. The Seamed counsel for the opposite parties relies on the case of Chand Kaur Vs. Raj Kaur (died) and others, . Even in that case, it has been noticed that the Court has to record its satisfaction with regard to the above principles. Here, in the facts of the present case, there is no dispute with regard to the satisfaction of the ground required to be recorded. Here, the party is now unwilling to go with the compromise because of something that has happened after the compromise was entered into and acted upon. This fact cannot be looked into by the Court so long as the signing of compromise, its lawfulness is accepted by the Court. In view of the aforesaid facts, I am left with no option but to set aside the order impugned and direct the learned appellate Court to accept the compromise as filed and pass orders in accordance therewith. This application is, accordingly, allowed.