

(1918) 06 PAT CK 0005

In the Patna High Court

Mowar Raghubar Singh and Others

APPELLANT

Vs

Gouri Charan Singh and Others

RESPONDENT

Date of Decision : 06-06-1918

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : 46 Ind. Cas. 492

Hon'ble Judges : Thornhill, J;Mullick, J

Bench : Division Bench

Judgement

Mullick, J.—The plaintiffs, who are 26 in number, brought a suit for declaration of title and recovery of possession against the defendants. On the 6th March 1917, the case on the application of the plaintiffs was adjourned till the 10th March 1917. On that day a compromise petition was filed bearing the signature of the Vakil employed by the plaintiffs. In this compromise petition the thumb-marks of four of the plaintiffs, namely, Nos. 1, 13, 16 and 19, were affixed.

2. It is alleged that plaintiffs Nos. 3, 11, 14, 15, and 21 were not parties to the compromise petition and that the compromise was, so far as they were concerned, fraudulent and that the decree of the 14th March 1917 made by the Subordinate Judge dismissing the entire suit should be re-opened on the ground that the Court was misled.

3. Now an application to this effect was filed before the Subordinate Judge on the 4th April 1917. He after considering the matter rejected it on the ground that it was frivolous and not supported by an affidavit. Against that order of the 4th April 1917 the plaintiffs have filed Appeal No. 139 of 1917 and by way of precaution they have also filed an application for Revision No. 173 of 1917.

4. The only way in which an appeal can be said to lie is by treating the decree as one for default in reference to which an application has been made by the absentee plaintiffs under Order IX, Rule 9, and dismissed.

5. It is dear that the personal attendance of these plaintiffs was not necessary

inasmuch as they had instructed a Vakil to appear in their behalf for the purpose of conducting the suit and as the learned Vakil was present on the day that the decree of dismissal was made, it would not be subject to review in accordance with the procedure laid down in Order IX of the Civil Procedure Code. Therefore, upon the face of it the Subordinate Judge's order declining to restore the case cannot be treated as an order under Order IX, Rule 9 of the Civil Procedure Code, and, therefore, no appeal lies.

6. Next as to the application for revision, the learned Subordinate Judge upon the facts before him was apparently satisfied that the compromise was a proper one and that the parties were properly represented before him. For all we know the Vakil who represented the absent plaintiffs was authorised to consent to the compromise and it was not, upon the facts before the Subordinate Judge, necessary to enquire any further into his authority in the matter. In any event the Subordinate Judge was satisfied as to a certain state of facts and if under that view of the facts he has passed an order dismissing the suit, it cannot be said that he has acted without jurisdiction or that he has declined to exercise a jurisdiction which was vested in him. Therefore, the matter cannot be re-opened u/s 115 of the Civil Procedure Code. Hence revision does not lie.

7. Then the learned Vakil for the petitioners falls back upon the inherent powers of the Court and he relies upon the case of *Basangouda Hanmantgouda v. Churchigiri gouda Yegangouda* 5 Ind. Cas. 968 : 34 R. 408 : 12 Bom. L.R. 223, but in that case the second defendant had not engaged any Pleader at all and the compromise having been made upon instructions given by the first defendant, it was held that it was open to the second defendant to re-open the decree on the ground that the Court was misled. There are certain observations in the concluding portion of the judgment of their Lordships of the Bombay High Court in that case with regard to the position when Counsel in the case agrees to a compromise in excess of his authority, but those observations were, in my opinion, in the nature of obiter dicta and were not necessary for the decision of the immediate matter before their Lordships.

8. The learned Vakil also relies upon the case of *Peary Choudhury v. Sanoory* Dass 27 Ind. Cas. 628 : 19 C.W.N. 419, but in that case there was not only a total suppression of service, but also the filing of a false and fraudulent Vakalatnama upon the strength of which the Court was led to grant a compromise decree. That case does not apply here. In the present case upon the facts as stated above by me the Court was satisfied that the Vakil had authority to agree to the compromise, and the only ground that the learned Vakil before us to-day can urge for our interference is that the Vakil acted in excess of his powers and that if he has so acted, it is open to the Court in exercise of its inherent powers to re-open the matter. I, on my part, do not consider that equity, justice and good conscience require that I should exercise my inherent powers for the purpose of investigating the authority that was reposed by the plaintiffs in this case in their Vakil, The plaintiffs will have ample opportunity by

means of a separate suit to litigate that matter and if there was fraud on the part of the Vakil or on the part of any other person, they will be entitled to bring a suit for the purpose of setting aside the decree on that ground. It is not necessary that the inherent powers of the Court should be invoked for the purposes of this case.

9. The result is that the appeal and the application are dismissed with costs. Hearing fee one gold mohur for the latter.

Thornhill, J.

10. I agree.