

(2013) 07 PAT CK 0025
In the Patna High Court
Case No : Second Appeal No. 250 of 2012

Om Prakash Sahu and Others

APPELLANT

Vs

Sarju Pd.

RESPONDENT

Date of Decision : 15-07-2013

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10, Order 22 Rule 10, Order 23 Rule 3, Order 23 Rule 3A
Transfer of Property Act, 1882 — Section 54

Citation : (2014) 1 PLJR 178

Hon'ble Judges : V. Nath, J

Bench : Single Bench

Advocate : Jitendra Kishore Verma, Naresh Chandra Verma, Natraj Verma and Ram Kumar Singh, for the Appellant; Harish Kumar, for the Respondent

Judgement

V. Nath, J.—Heard Mr. J.K. Verma, the learned counsel for the appellants, Mr. Harish Kumar, the learned counsel for the sole respondent and Mr. Naresh Chandra Verma, the learned counsel for the applicants, who have prayed to be added as intervenor-respondents in this appeal. This appeal has been filed by the defendant-appellants against the judgment and decree of reversal by the appellate court below whereby the appeal has been allowed setting aside the dismissal of the suit. The suit has been filed by the plaintiff-respondent for the reliefs seeking partition the half share in the suit property and also for declaration of the gift deeds dated 5.4.1991 executed by the plaintiff in favour of the defendant nos. 2 to 4 for the suit land as nullity, forged, fabricated, inoperative and not binding upon the plaintiff.

2. A compromise petition (I.A. No. 666 of 2013) has been filed by the parties to the appeal stating therein that they have amicably resolved their dispute and have agreed for disposal of appeal in terms of the compromise enumerated in the compromise petition. In the compromise petition, the plaintiff-respondent has admitted the fact of previous partition of the family property by metes and bounds and has unconditionally withdrawn his assail to the deeds of gift dated

5.4.1991 and recognized donee-defendant nos. 2 to 4 as owners in possession of the gifted properties.

3. Thereafter, the interlocutory application (I.A. No. 873 of 2013) has been filed under Order 1 Rule 10 C.P.C. on behalf of Kumari Bhushan Sharma praying for her addition as respondent no. 2 in the present appeal on the ground that during the pendency of the suit the plaintiff-respondent sold 5 decimals of land of old plot no. 2344 by executing a registered sale deed dated 2.7.2004 in her favour. It has been further stated in the interlocutory application that the purchased 5 decimals of land of old plot no. 2344 is also the suit land and name of the intervener-purchaser has been mutated in the Anchal Office and she has been paying rent and getting rent receipts. It has been also averred that the plaintiff-respondent has collusively made the compromise with the appellants and therefore her addition as party of this appeal is desirable to protect her interest.

4. Another interlocutory application (I.A. No. 1223 of 2013) has been filed by the three applicants named therein who have claimed that the plaintiff-respondent has sold 5 decimals of land of old plot no. 2344 which is part of the suit land, during the pendency of the suit in favour of their mother (now deceased) and after purchase, the name of their mother has also been mutated in the Anchal Office and they are paying rent and getting rent receipts. It has been alleged that the plaintiff-respondent has gone in collusion with the appellants and has filed the collusive compromise petition and therefore their addition as party respondent in this appeal is desirable to protect their interest in the suit property.

5. Another two interlocutory applications (I.A. No. 1221 of 2013 and I.A. No. 1222 of 2013) have been filed by the applicants named therein stating that the plaintiff-respondent has entered into the agreements with them for sale of the parts of the suit property, during the pendency of the appeal in the court below after the dismissal of the suit. The applicant in I.A. No. 1222 of 2013 has further claimed to have paid Rs. 20,50,000/- as advance money to the plaintiff-respondent in pursuance to the agreement for sale. However, no such statement regarding payment of advance money to the plaintiff-respondent has been made by the applicants in I.A. No. 1221 of 2013.

6. The learned counsel for the appellants and the respondent as well as the learned counsel for the proposed intervener-applicants have been heard at length on the aforesaid interlocutory application for compromise and the interlocutory applications for addition as party-respondents. The factual matrix of the case would unveil that the plaintiff and the defendant no. 1 are the full brothers and the defendant nos. 2 to 4 are the sons of the defendant no. 1. The plaintiff has come out with the case that the suit properties are the joint family properties in which the plaintiff and the defendant no. 1 have got half share each. It has been further case of the plaintiff that the gift deeds dated 5.4.1991, said to have been executed by him in favour of the defendant nos. 2 to 4 are not legal and valid documents and have never been executed by the plaintiff. The defendants on the other hand, have asserted that there had already been

partition of the family property between the plaintiff and defendant no. 1 and the suit property is not the joint family property and further that the deeds of gifts in question have been validly executed by the plaintiff conferring title and possession to the defendant nos. 2 to 4 over the suit property.

7. By filing the compromise petition (I.A. No. 666 of 2013) the plaintiff has admitted the validity of the gift deeds for the suit properties in favour of the defendant nos. 2 to 4 and has accepted and recognized their title and possession over the suit properties. The plaintiff has also accepted that there had been earlier partition in the family by metes and bounds.

8. The applicants in the interlocutory applications (I.A. No. 873 of 2013 and I.A. No. 1223 of 2013) have accepted that they have purchased the part of the suit property from the plaintiff during the pendency of the suit. There is no statement by the applicants therein that they were not aware of the pendency of the suit filed by their vendor at the time of their purchase and it is also not their case that their vendor had made any misrepresentation or suppression of fact before selling the part of the suit property in their favour during the pendency of the suit. There is also no statement by the applicants that they have been put in possession over their purchased land by their vendor and although the applicants in I.A. No. 1223 of 2013 have made the statement that they are in possession over the purchased land but no such statement has been made by the applicant of I.A. No. 873 of 2013. From the perusal of the recitals in the sale deeds (annexed with the interlocutory applications) of the applicants, it transpires that the statement has been made therein that the property subject matter of the sale was allotted in the specific share of the vendor in partition in the family.

9. The learned counsel for the applicants has submitted that as the applicants are pendente lite purchasers, it is necessary that their prayer for impleading them as intervenor-respondent in this appeal be allowed. It has been further submitted that the prayer of the parties to the appeal for disposing of this appeal in terms of the compromise should not be accepted in view of the fact that the disposal of the appeal in terms of the compromise will prejudice the interest of the applicants in the suit property. It has been further urged that the compromise petition in this appeal has been filed collusively by the plaintiff and the defendants in order to defeat the interest acquired by these applicants in the suit property and therefore these applicants are necessary parties to this appeal. The reliance has been placed on the decisions reported in the case of *Baijanti Bai Vs. Prago and Others*, and in the case of *Alluri Venkata Narasimha Raju and Another Vs. Katteboyina Yellamanda and Others*, .

10. The learned counsel for the defendant-appellants as well the plaintiff-respondent has urged that the parties to this appeal have settled their dispute and have filed the compromise petition (I.A. No. 666 of 2013) which is lawful and therefore must be accepted by the court. It has been urged that the validity of the compromise cannot be adjudicated at the instance of a stranger to the suit by allowing such stranger to become a party in the first instance and thereafter

to challenge the compromise on the ground that his interest in the suit property acquired during the pendency of the suit would be affected. It has been canvassed that in view of the explicit provision of Order 23 Rule 3 if the compromise entered into between the parties to the suit is "lawful", and not "void" or Voidable" under the Indian Contract Act, the same has to be accepted. It has also been urged that the applicants are purchasers of only a very small portion of the suit property i.e. the land purchased by thorn together comes to 10 decimals of plot no. 2344 and they cannot resist the acceptance of the interest of the defendants in the remaining portion of the suit property by the plaintiff. The reliance has been placed by the learned counsel for the appellants on the decision in the case of Laraiti Vs. Ch. Shiam Sunder Lal and Another and in the case of B. Raja Rajeswara Muthuramalinga Sethupathi Avergal, Rajah of Ramnad Vs. The Secretary of State for India in Council and Another,

11. With regard to the interlocutory applications (I.A. No. 1221 of 2013 and I.A. No. 1222 of 2013) the learned counsel for the applicants has submitted that the plaintiff-respondent has entered into agreement for sale in favour of the applicants for the portions of the suit property and therefore they are necessary parties to this appeal as the agreement for sale have been executed during the pendency of the suit. It has also been submitted that the disposal of this appeal after acceptance of compromise between the plaintiff and the defendants will jeopardize the rights of the applicants acquired through agreements for sale. On the other hand, the learned counsel for the appellants has submitted that the applicants of these two interlocutory applications have not stated that they have been put in possession by the vendor over the land which they have agreed to purchase from the plaintiff-respondent and therefore no right in the land has been created by the agreement for sale and they are not necessary parties. In support of these principles, the learned counsel has relied on the decision of Privy Council in the case of Basant Singh vs. Mahabir Prasad, ILR 1935 All. 273 (P.C.).

12. After considering the facts and circumstances of the case as well as the submissions made by the learned counsel for the parties, it is clear that the applicants have claimed their interest in the portions of the suit property on the basis of the sale deeds executed by the plaintiff during the pendency of the suit or on the basis of agreements for sale executed by the plaintiff during the pendency of the appeal in the court below after the dismissal of the suit. It is not the case of the applicants that they have purchased or agreed to purchase the portions of the suit property without having knowledge of the pendency of the suit or appeal. To the contrary, it has been argued by the learned counsel for the applicants that the applicants had faith in the plaintiff for protection of their interest acquired during the pendency of the suit or appeal in the court below and therefore they did not venture to become a party in the suit or appeal earlier.

13. It is thus plain and patent that the applicants were aware of the fact that the plaintiff-respondent had no title in the suit property on the date of execution of

the sale deeds or the deeds of agreement for sale for the suit property in their favour and that the said transferable title would accrue to the plaintiff-respondent only after the final decision of the suit in his favour. Manifestly therefore, the purchaser-applicants have not acquired any substantial interest in the suit property by their purchase from the plaintiff and no enforceable legal right in the suit property has thereby accrued to them. At the utmost, they have knowingly purchased only a chance to acquire the title in the suit property. Similarly the applicants who have entered into agreement, for purchase of the portions of the suit property, with the plaintiff have not acquired even an interest in the suit property in view of Section 54 of the Transfer of Property Act and thus cannot claim to be added as party. The applicants admittedly also did not seek to be added as a party in the proceeding at any earlier stage of the litigation even after having knowledge of the same. The conclusion is obvious that the purchaser applicants having acquired only a peripheral interest in the suit property and that too from a plaintiff during the pendency of the suit, with the knowledge of the pending suit, can have no equity in their favour much less a right to be impleaded as a party when the litigation has reached to the second appellate stage. The enunciation in the celebrated judgment, which has become venerable by passage of time, by the Apex Court in the case of Razia Begum Vs. Sahebzadi Anwar Begum and Others, , that a person can be impleaded in a suit only if he/she has a direct interest in contradistinction to a commercial interest, is staring at the face of the applicants.

14. Examining this issue from another angle also, it is transparent that the plaintiff-respondent by entering into compromise with the defendant-appellants has now recognized/accepted the title and possession of the defendant-appellants in the suit property and sequentially has given up his assail to the decree dismissing his suit. The applicants, being purchasers from the plaintiff-respondent of the portions of the suit property or having acquired a right to purchase the portions of the suit property during the pendency and having knowledge of the suit, are bound by the admission of the plaintiff-respondent. Even if there is collusion between the plaintiff-respondent and the defendant-appellants to defeat the interest, whatever it may be, of the applicants in the suit property, the said issue cannot be adjudicated in this suit and that too at the stage of the second appeal. The applicants, in any view of the matter, cannot represent the entire interest of the plaintiff in the suit property as they claim to have purchased only a small portion (10 decimals) of the suit property which, as the learned counsel for the parties have agreed, consists of much bigger area. It is thus evincible that the applicants, in the fact situation emerging after the admission by the plaintiff of the title and possession of the defendants over the suit property, would be the persons who would be seeking to enforce their right in the suit property, whatever it may be, both against the plaintiff and the defendants and such investigation is definitely beyond the scope of the present appeal. The remedy before the applicants is to initiate their own action in accordance with law.

15. One of the obvious grounds of the applicants for their addition as parties is to resist the compromise between the defendant-appellants and the plaintiff-respondent in this appeal. It will be apposite to take into notice the provision of Order 23 Rule 3 C.P.C. which is as follows:-

3. Compromise of suit--Where it is proved to the satisfaction of the Court that a suit has been adjusted wholly or in part by any lawful agreement or compromise [in writing and signed by the parties], or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, the Court shall order such agreement, compromise or satisfaction to be recorded, and shall pass a decree in accordance therewith [so far as it relates to the parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit]:

[Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but no adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.]

[Explanation.--An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule.]

16. From the bare reading of the aforesaid provision, it is clear like crystal that the jurisdiction of the court in not accepting the compromise in the suit or appeal is limited to the case where the compromise has been assailed to be "unlawful" by one of the parties. Further, whether a compromise is lawful or not is clearly not to be judged from the standpoint of a pendente lite purchaser who has purchased the part of the suit property having full knowledge of the pendency of the suit. In other words, a court has to accept the compromise which is accepted by the parties to suit to be lawful. The court has no jurisdiction to adjudge such compromise as unlawful if it affects the rights or interest of a stranger to the suit. Such stranger is not remediless as he can very well maintain a regular suit for obtaining appropriate relief to establish his right and can also assail the validity of the compromise. The decision by a Division Bench in the case of Laraiti Vs. Ch. Shiam Sunder Lal and Another is applicable in the facts and circumstances of the case with all force wherein Their Lordships have laid down as follows:--

...From the wording of the section it appears that as long as a Court is satisfied that the suit has been adjusted between the parties wholly or in part and that the compromise is a lawful compromise, a decree must be passed in accordance with the compromise. It has been argued before us that this compromise was not a lawful compromise because it was entered into in fraud of Shiam Sunder, the purchaser of the plaintiff's rights. Now, when this compromise was filed there was nothing to indicate that Shiam Sunder claimed to be the purchaser of the

plaintiff's right and he himself had abstained from being made a party in the suit. It appears to us to be most improper to hold a compromise to be unlawful because it is alleged by some third person that his rights are infringed by the compromise...the word "lawful" in Rule 3, Order 23 refers to agreements which in their very terms or nature were not "unlawful" and might therefore include agreements which were voidable at the option of one of the parties on the ground of undue influence, coercion or fraud. A fortiori a compromise will be lawful if the only charge brought against it is that it is voidable at the instance of a third party on the ground of fraud...

(emphasis supplied)

17. In the recent decision of this Court in the case of Niranjan Prasad and Another Vs. Dina Nath Prasad Raut and Others, a distinction has been drawn between the rights of a stranger to a compromise and the right of a party to the compromise to question a compromise decree and it has been laid down as follows:--

...Whereas a stranger to a compromise has various forums to take recourse to, for questioning a compromise decree, a party to a compromise does not have such play field rather his right is circumscribed within the parameters of the previous suit proceeding. Such a contestant who was a party to a compromise can only question the compromise on twin grounds i.e. the compromise having been effected by practicing fraud upon the Court or the party concerned...

18. The decision, relied by the learned counsel for the applicants, in the case of Baijanti Bai (supra) is clearly distinguishable inasmuch as in that case, the intervener had purchased the entire interest of the plaintiff as invoked the jurisdiction of the court under Order 22, Rule 10 C.P.C. to continue the appeal. Moreover, the said decision has also proceeded on the basis of the consideration of the bar of a suit as provided under Order 23 Rule 3(A) applicable even to a stranger to the compromise decree. In view of the decision of this Court in the case of Niranjan Prasad (supra) the bar envisaged under Order 23, Rule 3(A) C.P.C. is clearly not attracted in case of a stranger to the compromise. Similarly, the decision in the case of V. Narasimha Raju (supra) is also distinguishable as in that case the petitioner was found to be in possession of the suit property in pursuance to the agreement of sale. On the other hand, the principle laid down in the case of B. Raja Rajeswara Muthuramalinga Sethupathi Avergal, Rajah of Ramnad Vs. The Secretary of State for India in Council and Another, is clearly attracted in the facts of this case where it has been laid down as follows:--

...It seems to me to be clear that if this compromise between the Union Board and the plaintiff was a lawful and valid one, the District Munsif had no power to add any party but he had only power to pass a decree in terms of the compromise...The fact that the petitioner claims a right or interest in the matter cannot, if the suit was terminated lawfully by the original parties thereto, allow third parties to agitate their rights in the suit. If third persons have any interest

in the matter, their remedy is to file a separate suit...

19. After considering the present factual matrix on the anvil of the aforesaid decisions and discussions, it is clear that the applicants have no right to be added as party in this appeal and to question the validity of the compromise entered into between the appellants and the plaintiff-respondent. The applicants shall be at liberty to establish their right which they claim to have acquired in the suit property through the plaintiff, during the pendency of the proceeding, by taking recourse to independent suit in accordance with law with appropriate reliefs. The interlocutory applications (I.A. No. 873 of 2013, I.A. No. 1221 of 2013, I.A. No. 1222 of 2013 and I.A. No. 1223 of 2013) are accordingly dismissed.

20. The learned counsel for the appellants and the learned counsel for the plaintiff-respondent have supported the fact of compromise between them on the terms enumerated in I.A. No. 666 of 2013 and have prayed to dispose of this appeal in terms of the compromise. In view of the aforesaid submissions, the joint prayer of the appellants and the respondent is allowed and this second appeal is disposed of in terms of the compromise enumerated in I.A. No. 666 of 2013 which shall form part of the decree.