
(2004) 03 PAT CK 0091
In the Patna High Court
Case No : C.R. No. 497 of 2003

Rajeshwar Singh APPELLANT
Vs
Maresh Yadav and Others RESPONDENT

Date of Decision : 04-03-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13
Evidence Act, 1872 — Section 44

Citation : (2004) 3 PLJR 384

Hon'ble Judges : Ravi S. Dhavan, C.J

Bench : Single Bench

Advocate : Lala Sachindra Kr, for the Appellant; Amar Nath Singh, for Opp.
Parties 1 and 2, for the Respondent

Judgement

Ravi S. Dhavan, C.J.—The Court is intimated that the suit had been filed in a representative capacity by the Secretary of Magadh Raj Jarasandh Akhara, Rajgir. This was a testamentary suit No. 67 of 1990 for declaration of title and possession in respect to the properties mentioned in Schedule 1 of the plaint.

2. The contention of the Petitioner is that the suit was decreed in part on the basis of a compromise and in part on contest against Defendants 1 and 6.

3. Now the ether Defendants have appeared and desired to submit their case. If a joint written statement had been filed which represented the case of Defendants 1 and 6 also then there is no occasion for the executing court to set aside the decree may be part was on contest and part was on the basis of a compromise.

4. If the contention of the Defendants 1 and 6 is to the effect that the decree was obtained by fraud and collusion, then, this matter need be pleaded by facts and circumstances so as to take a declaration u/s 44 of the Evidence Act, 1872. This step was not taken. Suffice it to say that if there be a fraud it is a criminal act and there is no limitation if such action is to be taken by a party to the Suit.

5. Thus, at present the order dated 20th February, 2003 in Miscellaneous Case No. 19 of 1998 Mahesh Yadav and Ors. v. Rajeshwar Singh and Ors. permitting setting aside an ex-parte decree under Order 9 Rule 13 of the CPC is set aside.

6. The revision succeeds.