

(2011) 11 PAT CK 0031
In the Patna High Court
Case No : C.R. No. 769 of 2010

Satyendra Kumar @ Rajeev Ranjan and Others	APPELLANT
Vs	
Most. Shakuntala Kumari Verma and Others	RESPONDENT

Date of Decision : 30-11-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3, Order 23 Rule 3A, 151

Citation : (2012) 1 PLJR 437

Hon'ble Judges : V. Nath, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

V. Nath, J.—The maintainability of a petition by a third party assailing an order recording compromise between the parties to the suit on the ground of fraud and further the jurisdiction of the Court to recall the said order on the basis of the finding of fraud are the core questions arising for determination in this revision application. The learned counsel appearing on behalf of both the parties have been heard at length. Indisputably, the T.P.S. No. 112/ 1986 was filed by the Petitioner No.1 of this revision application as sole plaintiff seeking the relief for partition of his 1/5th share in the suit properties. He impleaded his father mother and two brothers as defendants and asserted that they were the members of a Hindu joint family governed by-the Mitakshra law and the suit properties comprising movable and immovable properties were their ancestral joint family properties in which he had got 1/5th share. In this suit a compromise petition was filed by the parties and by order dated 22.5.1987 the learned court below accepted the compromise petition and the suit was decreed in the terms of the said compromise. Thereafter by order dated 15.1.1988 the final decree was also passed.

2. Subsequently a petition u/s 151 and Order 23 Rule 3 C.P.C, was filed by the opposite parties in the suit praying to recall the order dated 22.5.1987 and 15.1.1988 by which the preliminary decree and final decree had been passed on

the basis of compromise alleging the said compromise to be unlawful and fraudulent and further praying to restore the suit to its original file and number. The Misc. Case No. 4/06 was registered on the basis of this petition and by the impugned order dated 29.6.2010 the learned court below after considering the cases of the parties and the rival evidence has found and held the compromise decree to be vitiated by fraud perpetrated by the parties to the suit, set aside the orders dated 2.5.1987 and 15.1.1988 by which the preliminary and final decree respectively were passed and restored the said T.P.S. No. 112/1986 to its original file and number.

3. The relevant case of the Applicants of the Misc. Case No. 4/06 (the opposite parties in this, revision application) is that the defendant no. 1 Chandeshwar Prasad Singh of T.P.S. No. 112/1986 had four sons namely Surendra Kumar @ Satyapal Verma, Ashok Kumar, Satyendra Kumar @ Rajeev Ranjan and Ashwini Kumar out of whom Surendra Kumar @ Satyapal Verma died in the year 2004 leaving behind the Applicants who are his widow, two sons and one daughter as his heirs and legal representatives to the estate left by him. It has been further stated that Chandeshwar Prasad Singh also died on 21.8.2006-leaving behind the Applicants also as his heirs and legal representatives besides others and during the Shradh ceremony of Chandeshwar Prasad Singh the Applicants came to know for the first time that the entire joint family properties had already been partitioned during the lifetime of Chandeshwar Prasad Singh by the Court in a suit of the year 1986 itself and the Applicants had now no share in the joint family properties. On enquiry thereafter the Applicants on 13.10.2006 could get the knowledge of the T.P.S. No. 112/1986 and the compromise decree passed therein from the Court of Sub-Judge-II, Patna. It is the case of the Applicants that on inspection of the records of the suit, which was made available to them on 23.10.2006, they came to know that the said suit was filed without impleading Surendra Kumar @ Satyapal Verma and his two sons who were coparceners in the suit properties and a decree on the basis of compromise by the parties to the suit had been obtained. The Applicants claimed that they had definite share in the suit properties mentioned in the schedules of the plaint of T.P.S. No. 112/1986 but the parties to the suit by misrepresenting, concealing and suppressing the material fact regarding existence of Surendra Kumar @ Satyapal Verma and his two sons as coparceners obtained the order by the court accepting the compromise petition on the basis of above said collusive and fraudulent statements.

4. The Petitioners of this revision application who were opposite parties in the Misc. Case No. 4/2006 appeared and in their reply accepted the fact that Surendra Kumar @ Satyapal Verma was the elder son of Chandeshwar Prasad Singh and further admitted the genealogy of the family given by the Applicants but asserted that Surendra Kumar (c) Satyapal Verma had full knowledge of the T.P.S. No. 112/1986 and the decree passed therein but he did not raise objection because by mutual family arrangement he had already relinquished his share in the joint family properties which were the subject matter of the suit in lieu of the

properties he got from " Nanihal" by gift deed dated 23.5.1982 which was executed in his favour by the maternal grandmother Mehta Devi Kuer with the consent of his father and brothers. It had also been averred the Applicants had the knowledge of T.P.S. No. 112/1986 and its judgment and decree passed from the very beginning and the ground of getting knowledge of the same subsequently had been invented for the purpose of instituting the case after a long period.

5. From the facts appearing through the pleading of the parties it is clear that the property subject matter of T.P.S. No. 112/1986 is the joint family property in which all the four, sons of Chandeshwar Prasad (now deceased) including Surendra Kumar @ Satyapal Verma had got share as being coparceners therein. The Applicant Nos. 2 and 3 namely, Sumit Kumar Verma and Amit Kumar Verma are admittedly sons of Surendra Kumar @ Satyapal Verma and they are also coparceners in the same, it is not the case of Petitioners of this revision application (opposite parties in the miscellaneous case) that the Applicants had no share in the joint family properties but they have sought to deny it on the basis of relinquishment made by their predecessor Surendra Kumar @ Satyapal Verma who is said to have relinquished his share in the joint family property after getting some "Nanihali" property by gift.

6. In the plaint of T.P.S. No.112/ 1986 there is no averment to the effect that Chandeshwar Prasad Singh had one more son who was also a coparcener having share in the joint family properties but he had not been impleaded as a party in the suit in view of his relinquishing the share in the joint family properties (suit properties) after getting some "Nanihali" property by gift through a mutual family arrangement. In the miscellaneous case, however, the petitioners as opposite parties therein have pleaded the facts regarding mutual family arrangement and relinquishment of his share by Surendra Kumar @ Satyapal Verma. But from the impugned order, it appears that no evidence has been adduced by them to prove and establish the said fact

7. The Applicants of the miscellaneous case, thus, are the persons whose right, title and interest in the joint family property have been directly affected by the compromise decree with regard to the said property in T.P.S. No. 112/1986. However, it has been contended by the Petitioner of this revision application that the opposite parties being strangers to the compromise decree could not have maintained a petition for setting aside the said decree and the court had no jurisdiction to entertain such a petition by them and set aside the compromise decree. It has been urged that the only remedy open to the opposite parties, if at all aggrieved by the compromise decree, was to challenge the same by way of a regular suit before the competent court and in any case the court which had accepted the compromise and passed a compromise decree cannot have the jurisdiction u/s 151 or under any provision of the CPC to recall its order recording the compromise thereby setting aside a compromise decree.

8. The scope of Section 151 CP.C. has been examined in plethora of decisions

some of which will usefully be referred later on. By amendment of 1976 in the C.P.C. the scope of Order 23 Rule 3 has been widened by adding a proviso and explanation to the same and incorporating a new provision by way of Order 23 Rule 3A. Now the court which passes a compromise decree, in appropriate cases, is enjoined to determine the validity of the compromise. The observation of the Apex Court in *Banwari Lal Vs. Smt. Chando Devi (through L.R.)* and another, explaining the purpose of the amendment and the jurisdiction of the court under the amended Order 23 Rule 3 may here be aptly noticed:-

6. The experience of the courts has been that on many occasions parties having filed petition for compromise on basis of which decree is prepared, later for one reason or other challenge the validity of such compromise. For setting aside such decree suits used to be filed which are dragged for years including appeals to different courts, keeping in view the predicament of the courts and the public, several amendments have been introduced in Order 23 of the Code of Civil Procedure. Rule 3 of Order 23, which contained the procedure regarding compromise of the suit was also amended to curtail vexatious and tiring litigation while challenging a compromise decree...

7. By adding the proviso alongwith an explanation the purpose and object of the amending Act appears to be to compel the party challenging the compromise to question the same before the court which had recorded the compromise in question. That court was enjoined to decide the controversy whether the parties have arrived at an adjustment in a lawful manner...

If has been further laid down:-

14....It has been held by different High Courts that even after a compromise has been recorded the court concerned can entertain an application u/s 151 of the Code, questioning the legality or validity of the compromise. The court before which it is alleged by one of the parties to the alleged compromise that no such compromise has been entered between the parties that court has to decide whether the agreement or compromise in question was lawful and not void or voidable under the Indian Contract Act...

The Apex Court in a later decision, white reiterating the same view in *Dwarka Prasad Agarwal (D) by LR. and Another Vs. B.D. Agarwal and Others*, has held:-

36....Question as to whether a compromise is void or voidable under the Indian Contract Act or any other law for the time being in force, would have, thus, to be determined by court itself. Once it is held that the agreement or the compromise was fraudulent the same per se would be unlawful and the court is required to declare the same as such...

Thus, the court, accepting a compromise and passing a decree on the said basis has the necessary jurisdiction to entertain an objection to the validity of the compromise under the powers conferred upon it by Order 23 Rule 3 C.P.C. as well as under its inherent powers. Even otherwise also every court possesses

inherent power to pass necessary order for the ends of justice or to prevent abuse of its processes. The law, in this regard has been illumined by the Apex Court in Jaipur Mineral Development Syndicate, Jaipur Vs. The Commissioner of Income Tax, New Delhi, in the following words:-

...The courts have power, however, in the absence of any express or implied prohibition, to pass an order as may be necessary for the ends of justice or to prevent the abuse of the process of the Court. To hold otherwise would result in quite a number of cases in gross miscarriage of justice...

While considering the powers of a court in cases of fraud, the Hon"ble Supreme Court in Indian Bank Vs. M/s. Satyam Fibres (India) Pvt. Ltd., has held:-

The judiciary in India also possesses inherent power, specially u/s 151 C.P.C. to recall its judgment or order if it is obtained by fraud on court..."

"...Since fraud affects the solemnity, regularity and orderliness of the proceedings of the court and also amounts to an abuse of the process of Court, the courts have been held to have inherent power to set aside an order obtained by fraud practiced upon that Court. Similarly when the court is misled by a party or the court itself commits a mistake which prejudices a party, the court has the inherent power to recall its order..

9. Keeping in view, the above said well laid principles can it be said that a court, in view of the facts brought to its notice revealing prima facie commission of fraud and abuse of its process, refuse to hold enquiry in order to find out truth and pass corrective orders in appropriate cases? The answer is clearly in negative. This, however, leads to the issue of the locus standi of a person who is not a party to the proceeding before the court but prejudiced by the order obtained in the said proceeding by practising fraud, to file and maintain a petition for recall of the same before the said Court.

10. It is true that a person who is not a party to the suit in which the compromise decree has been passed can maintain a suit for seeking the declaration that the said compromise decree will not be binding upon him but after the widening of the power of the Court under Order 23 Rule 3 C.P.C. as noticed earlier it would now be difficult to hold that the court which has passed the compromise decree has no jurisdiction to entertain a petition by the said person seeking recall of the order recording the compromise allegedly obtained by fraud. It has not been disputed that by invoking the inherent jurisdiction of the Court or by filing a suit, in the present facts and circumstances, the same result would ensue. As such it would not be "a correct disposition to permit the expense and delay of separate suit," (See 36 I.A 197 Privy Council),

11. While considering the locus standi of the third party to invoke the inherent jurisdiction of the Court for recalling the order vitally affecting his rights, a learned Single Judge in Rash Behari Mazumdar Vs. Kasum Kumari Guha and Others, has held:-

The application being one u/s 151 of CPC invoking the inherent powers of the courts to make an Order necessary for the ends of justice, the question as to the locus standi of the Applicant can hardly arise. The Petitioner was, no doubt, not a party to a mortgage suit, but it cannot be urged for a moment that he is not vitally interested in the order which had been passed which he seeks to be vacated,

On the basis of the above discussions, it is held that a person, even though not a party to the suit, can invoke the inherent jurisdiction of the Court seeking recall of the order recording a compromise decree obtained by the parties to the suit collusively and fraudulently vitally affecting the rights of the said person. The jurisdiction of the Court under Order 23 Rule 3 C.P.C. has been purposefully expanded by amendment to avoid multiplicity of the proceeding and prolonging of litigation.

12. In the present case the fact of Surendra Kumar @ Satyapal Verma as one more son of Chandeshwar Prasad Singh and thus a coparcener having a share in the suit property had been actively suppressed by the parties to the suit for obvious reasons. The fact of relinquishment by him of his share in the joint family property after accepting "Nanihali" property by gift, which might have justified his non-impleadment as party to the suit, had also not been mentioned in the pleadings. The court was clearly made to believe that all the persons interested in the suit property and having a share in it were present before it and had settled their dispute by compromise. The court, thus, had accepted the compromise in the background of the facts as presented before it by the parties to the suit.

13. The issue of suppression of material facts amounting to commission of fraud upon the court has come to be examined by a Bench of this Court in Bindeshwari Pd. Chaudhary vs. Debendra Pd. Singh & Ors. (AIR 1958 Patna 618), and it has been observed as follows:-

...If fraud has been committed upon the party and as a result of that fraud the court has been misled into passing certain orders which otherwise it would not have passed, then it is a fraud upon the court itself and that in such case, under its inherent powers the Court is not only entitled to, but it must, set aside any order or orders which may have been passed by it upon a false representation..,

The Hon''ble Supreme Court has also considered the facets of fraud upon court and the exposition of law in this regard made in Ram Chandra Singh Vs. Savitri Devi and Others, is as follows:-

18. A fraudulent misrepresentation is called deceit and consists of leading a man into damage by willfully or recklessly causing him to believe an act on falsehood. It is a fraud in law if a party makes representations which he knows to be false, and injuries ensue therefrom although the motive from which the representations proceeded may not have been bad.

It has been further observed:-

An act of fraud on court is always viewed seriously. A collusion or conspiracy with a view to deprive the rights of the others in relation to property would render the transaction void ab initio. Fraud and deception are synonymous,

Similar view has been expressed by the Apex Court in S.P. Chengalvaraya Naidu (dead) by L.Rs. Vs. Jagannath (dead) by L.Rs. and others, observing as follows:-

...The courts of law are meant for imparting justice between the parties. One who comes to the Court, must come with clean hands.... The fraud is an act of deliberate deception with the design of securing something by taking unfair advantage of another. It is a deception in order to gain by another loss It is a cheating entertained to get an advantage... A litigant, who approaches the court, is bound to produce all the documents executed by him, which are relevant to the litigation. If he withholds a vital document in order to get advantage on other side then he would be guilty of playing fraud upon the court as well as on the opposite party...

14. The parties to T.P.S. No. 112/ 1986 clearly colluded with each other in keeping out Surendra Kumar @ Satyapal Verma from the suit and suppressing the fact of his share in the suit property and obtained the compromise decree by making the court to believe that all the share holders in the suit property had settled their dispute by way of compromise. Nothing prevented the parties to T.P.S. No. 112/86 from stating the facts of family arrangement and relinquishment of his share in the ancestral property (suit property) by Surendra Kumar @ Satyapal Verma in the suit itself and entering into compromise in the suit thereafter in presence of Surendra Kumar @ Satyapal Verma who would have no objection to the same, if those facts were true. This conduct of the parties to T.P.S. No. 112/ 86, in itself, is expression of their intention to gain something surreptitiously.

15. The learned counsel appearing on behalf of the Petitioners has strongly relied upon a decision reported in 2009(2) PLJR 168(SC) to buttress his submission that the compromise decree passed in T.P.S, No. 112/86 would not be binding upon the Applicants as they were not parties thereto and as such they cannot be said to be aggrieved by the same and they are not entitled to maintain the petition for setting aside the compromise decree. However, this decision by the Apex Court has been rendered in entirely different setting of facts and although the bar of limitation has been dealt with but the question of maintainability of a petition, by a stranger to the decree for setting aside the Compromise decree has nowhere been considered. In the present case, there is no evidence brought on record to show that the Applicants had the prior knowledge of the T.P.S. No. 112/ 1986 and the compromise decree passed therein.

16. In view of the aforesaid well settled principles of law there is no escape from the conclusion that the parties to T.P.S. No. 112/1986 had played a fraud upon the court as well as upon the Applicants (opposite parties in this revision

application) by suppressing the material facts from the notice of the court relating to the interest of the Applicants or their predecessor in the suit property. There is, therefore, no legal infirmity in the conclusion reached upon by the learned court below that the decree on the basis of compromise had been obtained by the Petitioners of this revision application surreptitiously and consequently it is held that there is no illegality in the impugned order of the Court declaring the compromise decree as null and void after setting aside the orders dated 2.5.1987 and 15.1.1988, For the foregoing reasons, I do not find any merit in the revision application which is, accordingly, dismissed.