

(1923) 01 PAT CK 0049
In the Patna High Court
Case No : F.A. No. 81 of 1920

Shahdeo Shukul and others

APPELLANT

Vs

Jageshar Prasad Shukul alias Bhola Shukul and others

RESPONDENT

Date of Decision : 12-01-1923

Acts Referred:

Citation : (1923) 01 PAT CK 0049

Final Decision : Allowed

Judgement

Das, J.—It is quite impossible to support the decree passed by the Court below. The suit was one for partition and the appellants who were some of the defendants in the Court below contended in their written statement that some of the properties stated in the plaint to be joint properties did not exist and could not therefore be partitioned. The suit was compromised between the plaintiffs, defendants 1 to 4, defendant No. 6 and defendants 9 to 12, it being assumed that the defendants other than those who had entered into the compromise were benamidars and were therefore not interested in the action. The compromise petition, after stating that the dispute in the suit had been compromised between the parties, proceeded to allot the properties to the different parties according to certain shares. It then stated that the claim for naqdi, etc, had been settled privately among the parties and then it prayed that the suit may be decided and decreed in terms of the petition of compromise.

2. Now whatever may have been the real facts, there is no doubt that on a construction of the compromise petition the whole suit was settled between the parties and that no portion of it was left outstanding for the determination of the Court. This was undoubtedly the position when the petition of compromise was filed in Court on the 23rd of May 1918. As some of the defendants were not parties to the compromise the suit had to be heard as against them and the Court adjourned the hearing of the suit from time to time in order to enable the plaintiffs to take steps as against them. On the 24th August 1918 the plaintiffs filed a petition for amendment of the compromise petition; they stated that some

of the properties of which they gave a list were left joint by the settlement and that as they had not been mentioned in the petition of compromise it was necessary to amend the petition so as to include those properties in the petition. Now it does appear that many items of properties which were claimed by the parties as joint properties were in fact not dealt with in the petition of compromise. This may have been due to an oversight or to the fact that the claim as to those properties had been settled amicably between the parties, and it was thought that it was wholly unnecessary to mention them in the petition of compromise. The Court summarily rejected the application without giving notice of it to the defendants and then proceeded to hear the suit, and taking the view that it was competent to it to partition the properties which were not mentioned in the petition of compromise, it gave the plaintiffs an ex parte decree in respect of those properties to the extent of their shares therein. His decision on this point is as follows:-

There are certain properties, however, which are mentioned in the plaint but they have not been included in the petition of compromise. With respect to those properties the defendants are free to contest. But they have not been appearing before me although the suit has been postponed from" day to day. Plaintiff has therefore proved his case against them and also against those defendants who have not appeared and on whom the service of summons has been proved.

3. Now it ought to have struck the learned Subordinate Judge that it was not fair to pass a decree against the defendants in their absence. The learned Subordinate Judge does say that the defendants did not appear before him, but a little reflection would have convinced him that the suit having been compromised and the defendants having put their signature on the petition of compromise, it was not necessary for them to appear in Court from day to day to meet a case which had never been made by the plaintiffs to their knowledge. The petition of compromise on the face of it was a complete settlement and as the defendants had no notice of the case which was made by the plaintiffs it was not competent to the Court to partition the properties which were not included in the petition of compromise. The petition of compromise itself showed that the claim as to certain properties had been settled amicably and it may well have been that those properties were not mentioned in the petition of compromise because the claim in regard to those properties was settled amicably. The defendants had the right to put forward their case before the Court but the course adopted by the Court below gave them no opportunity to place their case before the Court. The decree passed by the Court cannot for a moment stand and we must accordingly set it aside.

4. But then the question arises as to what we should do in the circumstances. As I have said before the petition of compromise, on the face of it, is a complete settlement of the dispute between the parties and there is much force in the argument of the appellants that the claim as to the properties not included in the petition of compromise was settled amicably between the parties, especially as in

their written statement they set out a list of properties mentioned in the plaint which, according to the appellants, were no longer in existence. If this view be correct then there ought to be a decree in terms of the petition of compromise. But it is pointed out by Mr. Varma on behalf of the respondents that many properties admitted by the appellants in their written statement to be joint properties have not been dealt with in the petition of compromise, and the learned Counsel has made out a strong case to the effect that the petition of compromise as drawn up does not represent the actual settlement at which the parties arrived. Both the parties agree that the petition of compromise should stand but they differ on the question whether the Court should investigate the claim of the parties in regard to the properties not included in the petition of compromise.

5. I have come to the conclusion that the fairest course would be to remand the case to the Court below for disposal according to law. It is agreed between the parties that the petition of compromise, so far as it goes, should stand. In regard to the claim of the plaintiff's as to the properties not included in the petition of compromise, the Court will try the question whether there was an amicable settlement between the parties in regard to those properties. If he agrees with the contention of the defendants on this point, then he will merely pass a decree in terms of the petition of compromise: if on the other hand he does not agree with the contention of the defendants, then he will proceed to try the case in regard to the properties not included in the petition of compromise, and in trying the case he will have to consider whether the defendants are right in their view that some of the properties, and if so which of the properties, are no longer in existence.

6. We allow the appeal, set aside the judgment and decree passed by the Court below and remand the case to that Court for disposal according to the observations made in this judgment. The appellants are entitled to their costs in this Court; the costs incurred in the Court below will abide the result and will be disposed of by the Lower Court.

Kulwant Sahay, J.

7. I agree.