

**(2017) 07 PAT CK 0036**

**In the Patna High Court**

**Case No : 1696 of 2003**

Shri Nityanand Chaudhary, & Ors.

APPELLANT

Vs

Braj Kishore Chaudhary, & Ors.

RESPONDENT

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**Date of Decision :** 18-07-2017

**Acts Referred:**

[Code of Civil Procedure, 1908](#), [Order 32 Rule 7](#) -

[Hindu Succession Act, 1956](#), [Section 8](#) -  
General rules of succession in the case of males

**Citation :** (2017) 07 PAT CK 0036

**Hon'ble Judges :** Mungeshwar Sahoo

**Bench :** SINGLE BENCH

**Advocate :** Madhav Roy, Ravindra Kumar Choudhary, Rajeev Roy, Amrendra Kumar Sinha

**Final Decision :** Allowed

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## Judgement

1. I have already heard the learned counsel, Mr. Madhav Roy on behalf of the petitioners and the learned counsel, Mr. Rajeev Roy on behalf of opposite parties.

2. The plaintiffs-petitioners and some of the defendants-opposite parties in the court below have filed this Civil Revision application against the impugned order dated 29.08.2003 passed by the learned Munsif, Sadar Purnea in Misc. Case No.42 of 1994 whereby the learned trial court set aside the compromise final decree passed in Title Suit No.167 of 1972.

3. It appears that Title Suit No.167 of 1972 was filed by the plaintiffs-petitioners claiming for partition of suit property for separating his 1/24th share. The defendants appeared and then Patna High Court C.R. No.1696 of 2003 dt.18-07-2017 compromise application was filed on 30.04.1973 and ultimately the said suit was decreed in terms of compromise and final decree was passed on 14.08.1974. The defendant Nos.12 to 14 then filed Misc. Case No.42 of 1994 alleging that they had no knowledge about the suit or compromise decree,

therefore, they inspected the record through their Advocate on 25.07.1994 after coming to know about the said case from the proceeding in Case No.428M of 1994. Thereafter, they came to know that when the natural guardian of the petitioners of miscellaneous case, who were minors, did not appear, the plaintiff of the suit was directed to get the guardian ad litem appointed by the court but the plaintiff did not take any step. All of a sudden on 30.04.1973, all the defendants appeared and joint compromise petition was filed forging the signature of the three defendants-petitioners in the vakalatnama. In fact, they never appeared nor engaged any Advocate nor they executed vakalatnama. They were admittedly minors and, therefore, they could not have signed the vakalatnama. No leave was obtained from the court on behalf of the petitioners for recording the compromise. In compromise, more area of the lands were partitioned and shown in the different schedules of the compromise application and some of the suit plots were not even touched in the compromise application. Many joint family properties were not even included in the plaint. The father of the petitioners and Patna High Court C.R. No.1696 of 2003 dt.18-07-2017 the opposite parties in collusion with each other got the suit disposed of on the basis of compromise.

4. The present plaintiffs-petitioners of this civil revision application filed reply to the miscellaneous case denying all the allegations. It was stated that the father, mother and elder brothers of the petitioners of miscellaneous case were also party and they have compromised the suit and the court granted leave to compromise on behalf of the minors, therefore, the compromise decree cannot be set aside after 20 years. In fact, these petitioners have signed the vakalatnama.

5. It appears that both the parties adduced evidences in support of their respective cases and then the trial court by the impugned order allowed the miscellaneous case holding that the signature of these minors are forged and no application for leave to compromise on behalf of minor was filed and set aside the judgment and compromise final decree.

6. The learned counsel, Mr. Madhav Roy appearing on behalf of the petitioners submitted following points challenging the impugned order. Firstly, the learned counsel submitted that according to Order 32 Rule 7, as was applicable in the year 1974, the trial court granted leave to the natural guardian of the minors and compromise was recorded. The court below proceeded to decide applying the new Patna High Court C.R. No.1696 of 2003 dt.18-07-2017 provision of C.P.C. inserted in the amendment in 1976.

7. Secondly, the learned counsel submitted that in presence of father and mother the minor defendants will get only share in the share of the father i.e. the natural guardian. On the death of the grandfather of the minor defendants-petitioners of miscellaneous case, the property will go to the father of the petitioners of miscellaneous case and his brothers according to Section 8 of the Hindu Succession Act, 1956. The trial court has not considered this aspect of the matter.

8. Thirdly, the learned counsel submitted that the trial court gave much emphasis on the signatures of the minors on vakalatnama and that nobody appeared on behalf of the minors although, the father and elder brother had appeared and compromised the suit. If there is any grievance, the minor defendant can raise against their father but the entire compromise decree on this ground cannot be set aside particularly when the person who has a right to compromise is not challenging the compromise decree.

9. Fourthly, the learned counsel, Mr. Madhav Roy submitted that it is not the case of the minors that their right or interest is affected by the compromise by their father, mother and elder brother or that the father, mother and elder brother acted adversely to the interest of the minors but the court below without considering this Patna High Court C.R. No.1696 of 2003 dt.18-07-2017 aspect set aside the compromise decree.

10. Fifthly, the learned counsel submitted that whether any less area was given to any party or more area is given cannot be made the basis for setting aside the compromise decree after 20 years that too when the father of the petitioners was satisfied and it is well known that at the time of partition, the properties are distributed according to the nature of land and value of land. On these grounds, the learned counsel submitted that the impugned order be set aside and the Miscellaneous Case No.42 of 1994 be dismissed.

11. On the other hand, the learned counsel, Mr. Rajeev Roy submitted that the minors-petitioners never appeared in the suit nor any vakalatnama was filed by even the natural guardian. Since the minors did not appear, the trial court directed the plaintiff for taking steps for appointment of guardian ad litem on behalf of the minors but no steps were taken and compromise application was filed. The vakalatnama was filed wherein signatures of the minors were also taken and in fact those signatures are forged signatures. The trial court considering the evidences clearly recorded finding that the signatures are not the signatures of minors and that no affidavit was filed for obtaining leave of the court and leave was not granted. Since the findings recorded by the trial court are pure finding of fact in exercise of civil revisional jurisdiction, the High Court cannot Patna High Court C.R. No.1696 of 2003 dt.18-07-2017 interfere with the finding of fact. The learned counsel placed different paragraphs of the impugned order. According to the learned counsel, the minors had no knowledge because they were not represented in the suit nor they appeared, therefore, when they came to know in the year 1994 they have filed the miscellaneous case. Moreover, the plaintiffs never took any steps for appointment of G.A.L. on behalf of minors and without compliance of Order 32 Rule 7 i.e. without obtaining leave, compromise was recorded as such, the learned trial court had rightly allowed the miscellaneous case.

12. Perused the impugned order dated 29.08.2003. From perusal of the order, it appears that admittedly, the applicants of the miscellaneous case were minors on the date of filing of compromise application. In the suit, they were sued through

their natural guardian and other, Satyadeo Choudhary. The compromise order recorded by the court has been quoted in paragraph 21 of the impugned order. The order is in Hindi wherein it is clearly mentioned that on behalf of the minors, leave is granted to their natural guardian to compromise. It appears that the court below proceeded to examine this order sheet vide paragraph 22 and held that the court has wrongly mentioned that petition to grant leave for compromise was placed on behalf of all the minors-defendants. It may be mentioned here that the court, who was hearing miscellaneous case, was not hearing appeal Patna High Court C.R. No.1696 of 2003 dt.18-07-2017 against the compromise decree, therefore, it could not have been held by the court that wrongly it is mentioned that petition to grant leave to compromise was placed on behalf of all the minors. It appears that while observing this, the court below considered the present provision of Order 32 Rule 7 C.P.C. which provides for filing an application for leave to agreement or compromise. However, in the present case at our hand, the compromise was recorded in the year 1974. At that time, the unamended provision of C.P.C. Order 32 Rule 7 was as follows:

"7. Agreement or compromise by next friend or guardian for suit:- (1) No next friend or guardian for the suit shall, without the leave of the Court, expressly recorded in the proceedings, enter into any agreement or compromise on behalf of a minor with reference to the suit in which he acts as next friend or guardian.

(2) Any such agreement or compromise entered into without the leave of the Court so recorded shall be voidable against all parties other than the minor."

13. In view of this provision, prior to amendment in 1976, there was no requirement of filing prior application for obtaining leave.

14. From perusal of the impugned order, it appears that nowhere any finding has been recorded by the court below regarding as to whether there is allegation made by the defendants- applicants that their right, title and interest was affected adversely because of compromise. Although, allegation is that their father Patna High Court C.R. No.1696 of 2003 dt.18-07-2017 colluded but then there is no finding recorded by the court below that whether there is any evidence on that point and whether there was collusion. The court below also not recorded any finding regarding whether prior order from the court for leave to compromise is necessary according to the provision applicable in the year 1974.

15. According to Section 8 of Hindu Succession Act, the property of a male Hindu shall firstly devolve on the heirs specified in Class I and son's son is not an heir specified in Class I. According to the case of the parties, Satyadeo Choudhary has five brothers who were recorded in revisional survey record of right. They have got equal share in the suit property. Satyadeo Choudhary is the father of the applicants. Their elder brothers and mother including the father had compromised the suit. Therefore, whether in presence of father of the applicants, who is admittedly the natural guardian, can it be said that the minors had a separate share then that of their father. In other words, whether in the lifetime of

father, these minor applicants were entitled a share in addition to the share of their father. The court below has not at all considered this aspect of the matter. According to law, on the death of the father of the five brothers the property will go to five brothers per stripe i.e. each brother will have one equal share. If any brother died prior to partition, it will be divided between the remaining brothers equally and according to Section 8, the property Patna High Court C.R. No.1696 of 2003 dt.18-07-2017 will not go to any sons of these brothers. The deceased son's son is a Class I heir and not the son. If the minor applicants are entitled to a share they are entitled from the share of their father. In other words, the property will not devolve per capita then how their interest or right is affected is not clear. From perusal of the impugned order, it becomes clear that the court below recorded finding that the signatures are not the signatures of minors but what will be the effect of the fact that their father, mother and elder brothers had compromised has not been considered by the trial court. Can it be believed that after passing the decree, the father, mother and elder brothers had knowledge but minors had no knowledge for 20 years. No finding has been recorded by the trial court. The father was alive, the elder brothers were alive and they were party in miscellaneous case but they never challenged the compromise decree on the ground that less area has been given fraudulently. Why they colluded with the plaintiffs and whether they colluded no finding has been recorded. In my opinion, therefore, the learned trial court has exercised the jurisdiction in the manner not permitted by law without considering the law applicable, as such, the impugned order suffers from jurisdictional error.

16. In the result, this civil revision application is allowed. The impugned order dated 29.08.2003 is set aside and the Patna High Court C.R. No.1696 of 2003 dt.18-07-2017 matter is remanded to the Munsif, Sadar Purnea for passing a fresh order after hearing the parties in Misc. Case No.42 of 1994. It is made clear that any observation made by this court either on merit or on any point shall not prejudice the court or the parties. The court shall pass the order without being influenced by any observation made by this court.