

Most. Tilya Devi and ors. Vs. Chandrama Singh and ors.

Most. Tilya Devi and ors. Vs. Chandrama Singh and ors.

SooperKanoon Citation : sooperkanoon.com/129767

Court : Patna

Decided On : Sep-15-1999

Judge : P.K. Deb, J.

Appeal No. : Civil Revision No. 1735 of 1996

Appellant : Most. Tilya Devi and ors.

Respondent : Chandrama Singh and ors.

Disposition : Petition Dismissed

Judgement :

P.K. Deb, J.

1. This revision petition has been preferred against the order dated 21-6-96 passed by the Sub-Judge-I, Siwan, in Misc. Case No. 16/92 by which the Court below has corrected the decree passed earlier on compromise between the parties.

2. The brief facts of the case are as follows:

Opposite Party No. 6, Bashist Singh, as plaintiff filed partition suit No. 1 of 1989 in the Court of Sub-Judge, Siwan, claiming 1/3 share in the suit property and it was also averred that other 1/3 belongs to defendant Nos. 1 to 6 who were opposite party Nos. 1 to 5 in this revision petition and the balance of 1/3 to defendant Nos.

7 to 11 who were petitioners in this revision petition. While the suit was pending then at the instance of village elderly persons as Panchas a compromise was arrived at between the parties and a joint compromise petition was filed on 2-1-1990. In the compromise petition, three schedules of properties were annexed. Schedule-I was allotted to opposite party No. 6 i.e. plaintiff, Schedule-II was allotted to defendant Nos. 1 to 6 and defendant Nos. 7 to 11 were given Schedule-III. The compromise petition was accepted by the Court and on the basis of the compromise petition a decree was passed showing the compromise petition to be apart of the decree. According to the petitioners, as per compromise in plot No. 1862 khata No. 287, in khata 10 dhooors was allotted to each of the three parties and the western most corner plot was allotted to the petitioners. But after the decree was passed in the year 1990 the petitioners constructed house and started business thereon as it was a road side plot. On 16-11-92 the petitioners filed the petition under Order XXIII, Rule 3 read with Section 151 of the Code of Civil Procedure alleging that although the compromise was arrived at to give the western plot to defendant Nos. 1 to 6 but in the certified copy, which was obtained afterwards, of the decree it could be found that after making interpolations in the decree regarding the boundaries the western plot was given to defendant Nos. 7 to 11 although the same was allotted to defendant Nos. 1 to 6 and three interpolations, according to the petitioners, were made after the decree was passed behind the back of defendant Nos. 1 to 6 doing forgery on the records and as such, prayer was made either for correction of the decree by setting aside the interpolation or making the boundaries as it was in the original compromise petition to set aside the whole of the compromise decree and proceed with trial of the suit afresh. Objections were filed by the petitioners i.e. defendant Nos. 7 to 11. The plaintiff, who is opposite party No. 6, had filed petition supporting the case of the defendant Nos. 1 to 6. Both the parties adduced evidence in support of their respective cases.

3. The petitioners' case was that the western most plot was never given to defendant Nos. 1 to 6 as it was a roadside plot and the allotment was made in respect of the plot in question by partitioning the same from north to south and not from east to west. But according to defendant No. 1 to 6, the partition was made in the plot in question not from north to south but not from east to west. Only after by

the-go of the day when the plot became valuable one and when it was by the side of the road, interpolation was made by the contesting petitioners in the records by changing the boundaries. On consideration of the evidence on record and also on perusal of the compromise petition itself, learned Court below came to the finding that the original compromise petition was changed afterwards by making interpolations and as such, he ordered for setting aside those interpolations and restoring the original boundaries mentioned in the compromise petition. Thus, in the Misc. case No. 16 of 1992, which was registered on the petition filed by defendant Nos. 1 to 6, correction was made in respect of the decree in question by the impugned order. Thereafter, the said impugned order was challenged in this revision petition.

4. It was firstly contended that there was no scope of correcting the decree under Section 151 read with Order XXIII, Rule 3 of the Code of Criminal Procedure, as prayed for by the defendants No. 1 to 6 and as such, the whole order is without jurisdiction. Secondly, it was submitted that the learned Court below did not at all consider the relevant facts and came to an erroneous finding without going into the merits. There was no scope of correction of the compromise decree because the compromise petition was the result of the agreement arrived at between the parties. If the original agreement which was resorted to black and white in the compromise petition could not be proved then such correction is invalid in the eye of law. Such submissions of the learned Counsel for the petitioners have been controverted by referring to the findings of the learned Court below in the impugned order and also to the legal position as contemplated by different High Courts.

5. It is settled principle of law that wrong nomenclature in a petition filed cannot take away the redressal right of a party. If the petitioner's case comes within the purview of the provisions of the Code of Civil Procedure, and agreement then relief can be granted after proper adjudication of the correct provisions of law. From the contents filed by the defendant Nos. 1 to 6 in Misc. case, it could be found that their main prayer was to get the decree corrected which was sought to be changed by interpolation, after the decree was passed, by some interested party in collusion with the Court's staff and for abundant caution they have also made an

alternative prayer for setting aside the compromise decree as the same do not confirm to the amicable settlement arrived at the instance of the Panchas between the parties in the partition suit. So the main prayer for correction of the decree is as contemplated under Section 151 of the Code of Civil Procedure. Practically, it also does not come within the purview of Section 152 of the Code of Civil Procedure rather comes within the inherent jurisdiction as contemplated under Section 151 of the Code of Civil Procedure because the decree as per contention of the opposite party Nos. 1 to 5 passed correctly on the compromise petition between the parties but afterwards interpolation was made in the decree and the Court also found so and as such by his inherent jurisdiction has passed the order for removing the interpolation and correcting the decree with its original compromise petition having boundaries given therein. The Court has got every jurisdiction to pass order under Section 151 of the Code Civil Procedure in such circumstances if the Court's records are attempted to be changed by some interested party. Although it has not been stated in so many words in the impugned order that the decree as it was passed has been changed afterwards but from the contents of the impugned order it is revealed that the learned Court below came to the finding that when the compromise petition was filed there was no interpolation in the boundaries rather it was done afterwards. He could find whatever the correction was made in the original compromise decree was in Somepur and with the compromise initials of the advocates. The change in the boundaries by interpolation was with different pen having no initials which supports the case of opposite party Nos. 1 to 6. Thus, considering the correction of the records, it was within the jurisdiction under Section 151 of the Code of Civil Procedure and learned Court below has rightly exercised its jurisdiction. It appears the correction of the decree rather the decree which was passed was being straitened after quashing the interpolation made afterwards. So it does not come with the purview of Section 152 of the Code of Civil Procedure rather it comes under Section 151 of the Code of Civil Procedure, So there was no wrong nomenclature in the petition filed by opposite party Nos. 1 to 5 before the Court below on the basis of which the Misc. case was registered, tried and disposed of. Thus, the contention of the learned Counsel for the petitioner has got no force. Learned Counsel has referred to a judgment of Punjab and Haryana High Court

reported in *Kewal Krishan v. Shiv Kumar and Ors.* wherein it was held that there was no scope of setting aside a compromise decree under Sections 151/152 Order XLVII, Rule 1 of the Code of Civil Procedure on the ground of interpolation or fraud and proper remedy was to file a separate suit. But, these judgments has got no relevance of the present circumstances of the case. Even that judgment does not remain a good law in view of amendment of the Code of Civil Procedure in the year 1976 by inclusion of Rule 3 (a) under Order XXIII of the Code of Civil Procedure wherein a separate suit has been specifically barred and it was included to be decided within the purview of Order XXIII, Rule 3 of the Code of Civil Procedure if the compromise decree was not recorded lawfully. Learned Counsel has further referred to a Division Bench judgment in the case of *Bindeshwari Pd. Choudhary v. Devendra Pd. Singh and Ors.* reported in : AIR1958 Pat618 , wherein it was held that under Section 151 read with Order XXIII, Rule 3 of the Code of Civil Procedure the Court has got inherent jurisdiction to set aside a compromise decree. Thus, this judgment also does not support the petitioner's case in any way. The question of Order XXIII, Rule 3 on setting aside has not been done up-till-now. It was only pointed out by the opposite parties to the notice of the Court that the decree obtained on compromise decree had been changed afterwards by doing interpolation and the Court after consideration of the evidence on record found the contention of the opposite parties to be correct and had ordered for straitening the Court's records. Now, after straitening of the records, if the petitioners feel that the compromise decree which now reached at, after the impugned order is passed, is not according to the agreement arrived at for amicable settlement then having got every power and jurisdiction to move the Court in appropriate forum either Order XXIII, Rule 3 of the Code of Criminal Procedure or any other provisions of law which is deemed to be proper and justified in the circumstances.

6. Now, coming to the factual position, the fact remains that the western plot is a valuable one and according to the opposite parties, it became valuable after go of the day and being greedy the petitioners had interpolated the decree to oust the opposite parties from the plot allotted land as per the compromise decree. As to who had interpolated, the Court had not gone to that aspect but from the records and on the basis of the evidence the Court found that western plot was given to

the defendant Nos. 1 to 6 and that the plot in question was partitioned from east to west and not from north to south. It was also found by the Court that the Panchas, at whose instance the amicable settlement has been arrived at, had come before the Court (at least two of them) to support the case of defendant Nos. 1 to 6.

7. Thus, I do not find that the learned Court below has committed any error of law when it was brought to the notice of the Court from the side of the defendant Nos. 1 to 6. It is further mentioned that for abundant caution the defendant Nos. 1 to 6 had also included as alternative prayer if the Court finds that the interpolation as alleged from the side of the defendant Nos. 1 to 6 was not correct then the compromise decree should be set aside as the compromise was tainted with fraud and as such the same should be set aside under Order XXIII, Rule 3 of the Code of Civil Procedure but the Court had not gone with the alternative relief claimed as the first relief was found to be proper and justified on the basis of evidence on record and on scrutiny of the compromise itself. The impugned order does not suffer from any jurisdictional error or impropriety rather the learned Court below considered all aspects of the matter and then came to its finding and exercised its jurisdiction of inherent power as contemplated under Section 151 of the Code of Civil Procedure.

8. In that view of the matter, there is no scope of interference under Section 115 of the Code of Civil Procedure and hence the petition is dismissed. But in the facts and circumstances, no order as to costs.

SooperKanoon - India's Premier Online Legal Search - sooperkanoon.com