

Arun Kumar Vs. Mohan Prasad

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Court : Patna

Decided On : Aug-05-2005

Judge : S. Nayer Hussain, J.

Acts : Limitation Act - Sections 14 - Schedule - Article 59

Appeal No. : Civil Revision No. 731 of 1999

Appellant : Arun Kumar

Respondent : Mohan Prasad

Advocate for Def. : Manoj Kumar, Adv. No. 1 and Bhavendra Pd. Sinha, Adv.

Advocate for Pet/Ap. : Kundan Bahadur Singh and Arjun Prasad Singh, Adv.

Disposition : Petition dismissed

Judgement :

S. Nayer Hussain, J.

1. Heard learned counsel for the parties.

2. The petitioner is defendant of Title Partition Suit No. 488 of 1992 which was filed by the Opposite party for partition of the suit properties. In the said suit a compromise petition was filed by both the parties whereafter a compromise decree was prepared on 5.3.1993 and a Final Decree was also prepared on 27.9.1994.

Thereafter, on 28.11.1996 the defendant-petitioner filed Miscellaneous Case No. 123 of 1996 for setting aside the compromise decree claiming it to be on the basis of fraudulent compromise petition.

3. The petitioner is aggrieved by order dated 19.3.1999 passed in the aforesaid Miscellaneous Case by which the learned Subordinate Judge-I, Patna, dismissed the Miscellaneous Case on the petition filed by the plaintiff Opposite party.

4. Learned counsel for the petitioner submits that his signature on the compromise petition was fraudulently taken by the opposite party who is his full brother twelve years older than him and the petitioner relied upon him and signed on the said compromise petition. But the Opposite party changed the compromise petition and included major portion of the suit property in his name. He further submits that the petitioner had no knowledge of the aforesaid compromise decree and he only learnt about it on 3.11.1995 when he received the lawyer's notice from the Opposite party and thereafter he filed Title Suit No. 12 of 1996 for setting aside the aforesaid fraudulent compromise decree. However, the petitioner later learnt that such a suit was not maintainable and a miscellaneous case should have been filed for setting aside the said compromise decree and hence before withdrawing the said suit on 4.9.1997, he filed Miscellaneous Case No. 123/1996 on 28.11.1996 for setting aside the said compromise decree. He further submits that thereafter on 7.6.1997 the plaintiff-opposite party filed a petition for recalling the Miscellaneous Case and the same was allowed by the learned Court below on 19.3.1999.

5. The learned counsel for the defendant-petitioner further submits that the learned Court below has dismissed the Miscellaneous Case not on merits, but only on the ground that the Miscellaneous Case has been filed after a gap of about a year after delivery of possession was affected on 27.2.1996. In this regard, he submits that Article 59 of the Limitation Act provides three years limitation from the date of knowledge. Here, the petitioner has learnt about the said compromise decree on 3.11.1995 and he had filed Miscellaneous Case No. 123 of 1996 on 28.11.1996 within about a year. Hence, there is no question of any limitation. He further submits that Section 14 of the Limitation Act provides that time consumed due to filing of another case in a Court without jurisdiction with bonafide intention shall be

excluded, hence, the time consumed in filing Title Suit No. 12 of 1996 i.e. from the date of its filing 12.1.1996 till the date of its withdrawal i.e. 4.9.1997 has to be excluded. Hence, there is no question of limitation in this matter and accordingly the impugned order of the learned Court below is illegal, arbitrary and perverse and is fit to be set aside.

6. On the other hand, learned counsel for the Opposite party submits that the said Miscellaneous Case was not dismissed on the ground of limitation, rather it is clear from the impugned order itself that it was passed after finding that there was no illegality in filing the said compromise petition and the Miscellaneous Case was only an after thought and the same had been rejected on merits, hence, there is no necessity for any interference with the impugned order.

7. After hearing the learned counsel for the parties and after perusing the materials on record including the impugned order, it is quite apparent that a preliminary compromise decree was prepared on 5.3.1993 and according to the said preliminary compromise decree, the portion of which was earlier in occupation of the defendant-petitioner was to be handed over to the plaintiff-opposite party and hence after the preparation of Final Decree on 27.9.1994 the plaintiff-decreeholder filed Execution Case No. 57 of 1995 in which delivery of possession was peacefully affected on 27.2.1996. It is also an admitted fact that prior to the said delivery of possession the petitioner had learned about the said compromise decree on 3.11.1995 from the notice of the plaintiff's lawyer. Thus, it is clear that the Miscellaneous Case was filed much after the petitioner was dis-possessed from the suit premises.

8. Furthermore, it is an admitted fact that the compromise petition was signed by the defendant-petitioner and he had appeared in the suit. Hence, there is no occasion for any presumption that he had no knowledge or information about either the preliminary decree of compromise or the final decree of compromise. But his conduct shows that he was not aggrieved by it till he was dispossessed and even after his dis-possession he did not take any immediate step in that regard which clearly supports the finding of the learned Court below that the said Miscellaneous Case was merely an afterthought and there was no illegality in the

compromise petition. Furthermore, by claiming the compromise decree to be fraudulent he was challenging the same as being void or voidable. Hence, in the aforesaid circumstances, a suit before a Court of proper jurisdiction was maintainable for setting aside the said compromise decree on the basis of it being void or voidable. But the petitioner having filed Title Suit No. 12 of 1996 for declaring the said compromise decree as illegal, void and fraudulent, himself withdrew it simplicitor on 4.9.1997, which fact clearly showed that the said grounds were frivolous due to which he was not taking proper interest or steps in correct direction and was merely trying to keep the litigation going on.

9. In the said circumstances, I do not find any illegality or jurisdictional error in the impugned order and accordingly this Civil Revision is dismissed.

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