

Reg.C.S. No.61/2011
Lalit .vrs. Natwarlal

ORDER BELOW EXH.89

(Passed on 11th November, 2020)

1] Plaintiff filed application for permission to withdraw suit against defendant No.2. He submitted that plaintiff filed suit for declaration, permanent injunction whereby claiming ownership over Bhumapan No.44, 100 and 101 by way of adverse possession. During the pendency of suit, compromise arrived in between plaintiff and defendant No.2 and they agreed mutually as follows :-

2] That defendant No.2 admits the possession of plaintiff over Bhumapan No.100, since the time of his father till today. That the plaintiff has handed over the possession of Bhumapan No.100 having area 3.79 Hector, situated at Mouza Khapri, P.H.14, Tah. Umred, Distt. Nagpur on 18.3.2018. That plaintiff has handed over the possession of Bhumapan No.100 to defendant No.2 in lieu of that the defendant No.2 is handing over plot No.133 admeasuring 243.00 sq.mtr. along with Kaccha house admeasuring 9.29 sq.mtr. in the layout of Harihar Housing Agency, Harihar Nagar, situated at Mouza Bidganeshpur having Kh.No.3-A/1 and 3-A/2, P.H. No.77, Gram Panchayat Takalghat, Tah. Hingna, Distt. Nagpur on 18.3.2018 and four boundaries are as under :-

On East : 6 meter wide road
On West : Plot No.132
On North : 9 meter wide road
On South : Plot No.134.

3] The defendant No.2 purchased the above plot No.133 by sale deed dated 28.02.2003 from Harihar Housing Agency, through its partner Arvind Badiyani, Amit Badiyani and Manish Badiyani through their Power of Attorney holder Shri. Manish s/o Arvind Badiyani.

4] In view of settlement, defendant No.1 handing over the original sale deed dated 28.02.2003 to plaintiff and plaintiff has handed over the possession of Bhumapan No.100 to defendant No.2 on 18.03.2018. That now defendant No.2 is cultivate the Bhumapan No.100 as per his choice. That defendant No.2 is handing over the possession of Plot No.133 to plaintiff and will cooperate the plaintiff for mutating his name over the suit plot No.133 and will himself available for signing the document before concerning authority.

5] In view of above settlement, plaintiff does not want to proceed against the defendant No.2 and wants to delete Bhumapan No.100 as suit property from prayer clause. Hence, this application.

6] Defendant No.3 filed his reply on Exh.90 and submitted that entire property including the suit property are joint family property, therefore, plaintiff and defendant No.2 cannot make a compromise in respect of specified portion thereof. In fact there is no pleading about other contents of the application in the plaint. In fact, application has filed in collusion with defendant No.2. Therefore, the application is absolutely illegal and deserves to be rejected. Even otherwise the proposed withdrawal of suit against one of the defendant in respect of one of the property is absolutely illegal.

7] Perused application and say. Perused the pleading of the plaintiff. It is the prayer of the plaintiff that he be declared as owner by way of adverse possession. From the pleading of the party, suit property is joint and ancestral property of plaintiff and defendants. Plaintiff is claiming ownership by way of adverse possession against defendant. Therefore, defendant's ownership is admitted by plaintiff. If the application is allowed, it may amount to declaring plaintiff as owner of the suit property, which can be permitted only after trial and satisfactory evidence. Therefore, compromise of defendant No.2 with plaintiff is seems to be prejudicial, to the interest of other defendants. Therefore, I am of view that compromise does not seem to be legal as per Law. Hence, I pass following Order :-

ORDER

Application for permission to withdraw suit against defendant No.2 is hereby rejected.

Umrer.

Dt. 11/11/2020