



2026:PATHC:6619

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**FIRST APPEAL No.96 of 1990**

1. Iswar Chander Prasad Son of Shri Bhagwan Sah, Resident of Mohalla Bhavdevpur, Ward No. - 14, P.S. Town - Sitamarhi, Dist. - Sitamarhi.
2. Radhe Shyam Prasad Son of Shri Bhagwan Sah, Resident of Mohalla Bhavdevpur, Ward No. - 14, P.S. Town - Sitamarhi, Dist. - Sitamarhi.

... .. Appellant/s

Versus

- 2.1. Smt. Sunita Devi Wife of Janak Lal Sah and D/o Late Awadh Narayan Sah, Resident of Mohalla Kaidrabad, Near Naka No. 2, P.S. Town and Dist. Darbhanga.
- 2.2. Smt. Rekha Devi Wife of Ratan Lal Sah and D/o Late Awadh Narayan Sah, Resident of Thatheri Bazar, Patna Dist. Patna.
- 2.3. Smt. Anju Devi Wife of Binod Kumar Tehri Ka Chauraha Town and P.S. , P.O. Mirzapur, Dist. Mirzapur, U.P.
3. Ram Shankar Sah Son of Awadh Narayan Sah, Resident of Village - Mohalla - Purani Bazar, Ward No. - 8, Town P.S., Dist. - Sitamarhi.
4. Mahshanker Prasad Son of Awadh Narayan Sah, Resident of Village - Mohalla - Purani Bazar, Ward No. - 8, Town P.S., Dist. - Sitamarhi.
5. Manoj Kumar Son of Awadh Narayan Sah, Resident of Village - Mohalla - Purani Bazar, Ward No. - 8, Town P.S., Dist. - Sitamarhi.
6. Santosh Kumar Son of Awadh Narayan Sah, Resident of Village - Mohalla - Purani Bazar, Ward No. - 8, Town P.S., Dist. - Sitamarhi.
- 7.1. Anita Devi W/o Ram Nath Prasad, D/o Sri Bhagwan Sah, R/o Guzri Bazar Road, Main Road, Hajipur, Vaishali.
- 7.2. Shobha Devi W/o Kailash Prasad, D/o Sri Bhagwan Sah, R/o Mohalla - Subhash Nagar, 3 no. - Kalali, District- Munger.
- 7.3. Juli Devi W/o Dilip Prasad, D/o Sri Bhagwan Sah, R/o Mohalla - Khandakpar, P.O. and P.S. - Biharsherif, District- Nalanda.
8. Gauri Shankar Son of Bhagwan Sah, Resident of Mohalla - Bhavdevpur Lakandai, Ward No. 14, P.S. Town and Distt. Sitamarhi.
11. Ram Pratap Rai Son of late Ram Chander Rai, Resident of Village - Punaura Gaon, Post - Panaura West, P.S. Punaura, District - Sitamarhi - 843302.
11. Ram Dinesh Rai Son of late Ram Chander Rai, Resident of Village - Punaura Gaon, Post - Panaura West, P.S. Punaura, District - Sitamarhi - 843302.
12. Smt. Kiran Devi W/o Sri Raghvendra Pd. Gupta, Resident of Ward No. - 14 Town P.S. Distt. Sitamarhi.
13. Shatrughan Singh Son of Chaturbhuj Prasad Singh, Resident of Village and P.O. Rajopatti, P.S. and District- Sitamarhi.





14. Ram Naresh Singh Son of Chaturbhuj Prasad Singh, Resident of Village and P.O. Rajopatti, P.S. and District- Sitamarhi.

... .. Respondent/s

**Appearance :**

For the Appellant/s : Mr. Anshay Bahadur Mathur  
Mr. Ajay Kumar Mathur  
For the Respondent/s : Mr. P.N. Jha, GP 2  
For respondent nos. 2 to 6 and 10 Mr. Barun Kumar Choudhary  
Mr. Ved Prakash Chandan  
For respondent nos. 11.1 and 11.2 Mr. Santosh Kumar

**CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY**

**CAV JUDGMENT**

**Date : 21-01-2026**

I have already heard the learned counsel for the parties.

2. Being aggrieved and dissatisfied with the order and decree dated 24.03.1990 passed by the learned sub-ordinate Judge-IV, Sitamarhi in Title Suit No. 09/87, the appellants have preferred this appeal.

3. Brief facts of the case is that the father of the plaintiffs/appellants filed Partition Suit No. 11 of 1980 in the court of Sub-Judge Sitamarhi for partition against his father and brother. The father of the appellants/plaintiffs was respondent no. 7 herein who died and was substituted by respondent nos. 7.1 to 7.3. The father and brother of respondent no. 7 have been impleaded as respondent no. 1 and 2, respectively, in the present appeal. In the partition suit filed by respondent no. 7, a compromise petition was filed on 25-01-1982 and preliminary





decree was drawn on 26-05-1982.

4. The plaintiffs/appellants filed Title Suit No. 09 of 1987 to declare the compromise decree dated 26-05-1982 in Title Suit No. 11 of 1980 as illegal, void, and not binding on the plaintiffs/appellants. They also sought relief for declaration that the deed of gift dated 30-01-1984 executed by respondent No. 1 (grandfather of plaintiffs/appellants), in favour of Radha Devi, respondent No. 10, (daughter-in-law of respondent No. 1). The plaintiffs/appellants also made prayer for relief to declare the suit dated 09-06-1984 as not binding upon the plaintiffs/appellants. The said sale deed was executed by Awadh Narain Shah (the brother of respondent No. 7), in favour of Ram Chandra Rai (respondent No. 11). The plaintiffs/appellants' averment is that they were not party to Title Suit No. 11 of 1980, and the compromise decree is behind their back. They were minors at that time, and his father, plaintiff of Title Suit No. 11 of 1980, put his LTI on the compromise petition under the coercion of his father and brother, respondent Nos. 1 and 2.

5. The defendants appeared and filed their written statements. Respondent Nos. 1, 5, and 10 filed their written statements, denying the averments of the plaintiffs. These opposite parties/defendants averred in their written statement





that the plaintiffs and their father (respondent No.7) are in collusion and with intention to get the decree of a competent civil court null and void, they have filed the present suit. respondent No.7, father of the plaintiffs/appellants also filed his separate written statement and he supported the claim of the plaintiffs/appellants.

6. Respondent No. 7, father of the plaintiffs/appellants, also filed his separate written statement and he supported the claim of the plaintiffs/appellants.

7. The following issues were framed on the basis of pleadings of the parties:-

- 1. Is the suit as framed maintainable?*
- 2. Have the plaintiffs got cause of action for the suit?*
- 3. Is the suit barred by law of limitation, waiver, estoppel and acquaintance?*
- 4. Is the suit barred under the provisions of specific relief Act?*
- 5. Is the suit is bad for defect of parties?*
- 6. Has the suit correctly been valued?*
- 7. Is the court fee paid sufficient?*
- 8. Is the suit is barred by the*





*principal of res judicata?*

*9. Is the compromise decree passed in T.S.No.11/80 illegal and fraudulent?*

*10. Is the deed in question illegal, fraudulent and without consideration?*

*11. Is the sale deed dated 9.6.1984 executed by Avadh Narain Shah in favour of Ramchandra Sah binding on the plaintiffs?*

*12. Is there any unity of title and possession between the parties in recovery of suit land?*

*13. Are the plaintiffs entitled for a preliminary recovery of possession, if so to what extent of their share?*

*14. To what other relief or reliefs are the plaintiffs entitled for entitled for?*

8. On 11-05-1989, the defendants filed a petition, raising the preliminary issue that the suit is barred by the provision of Order XXIII, Rule 3A of the Code of Civil Procedure 1908 (hereinafter to be referred to as 'the Code'). This provision says that no fresh suit shall lie against the compromise decree.

9. The learned court below decided this preliminary issue and came to the conclusion that the present





suit was barred under the provision of Order 23, Rule 3A of the Code and accordingly dismissed the suit filed by the plaintiffs/appellants.

10. The learned counsel for the plaintiffs/appellants has submitted that the appellants, who are co-parceners were minors at the time of the decree dated 26-05-1982 passed in Title Suit No. 11 of 1980 and they were neither impleaded as party, nor their interest was taken care of by his father (respondent no. 7). They were co-parceners and were necessary parties to the suit. The father of the plaintiffs/appellants, according to the averments of the plaintiffs, was under coercion of respondent Nos. 1 and 2, and in their coercion/pressure, he put his LTI on the so-called compromise petition. The learned counsel has submitted further that in various judicial pronouncements, it has been held that, if a compromise decree is fraudulent, a fresh suit is not barred under Order XXIII, Rule 3A of the Code. He has also submitted that the compromise petition was not prepared in the court, rather it was prepared before the *Sarpanch* and thereafter it was filed in the court and the Court passed decree on the basis of compromise. The learned counsel for the appellants has relied upon the following decisions in support of





his submissions.

- 1. *Gosto Behari Pramanik vs. Sm. Malati Sen and others (AIR 1985 Calcutta 379).***
- 2. *S.G. Thimmappa vs. T. Anantha and others (AIR 1986 Karnataka, page 1).***
- 3. *Mam Raj vs. Smt. Sabiri Devi and others (AIR 1999 Punjab and Haryana page 96).***
- 4. *Smt. Sukhrani (dead) by L.R's. and others vs. Hari Shanker and others (AIR 1979 Supreme Court page 1436).***
- 5. *Mahabir Mahton and others vs. Chandeshwar Mahton and others (AIR 1985 Patna page 251),***
- 6. *Smt. Anita Vs. R Rambilas (AIR 2003 Andhra Pradesh 32)"***

11. The learned counsel for the contesting opposite parties has submitted that father of the plaintiffs/appellants was himself the plaintiff of Partition Suit No. 11 of 1980. On the basis of consent of the parties, the compromise decree was drawn up. Respondent No. 7, put his LTI without any coercion, threat, or inducement/influence. He conceded to the terms and conditions of the compromise, after considering the recitals thereof and thereafter the compromise decree was passed. Respondent No. 7 never filed any suit to declare the said decree as null and void. After near about 5-6 years of





passing of the compromise decree, the sons of O.P. No. 7 brought the present suit. According to the provisions of Order XXIII, Rule 3A, no fresh suit can be filed to declare the compromise decree as null and void and not binding on the parties. During the lifetime of respondent No. 7, his sons are/were not necessary parties to the suit, and it was the reason that they were not included as parties in the earlier suit for partition of the properties. The learned counsel has submitted further that the judgment and decree of the learned court below is according to the mandate of Order XXIII, Rule 3A of the Code.

12. In support of his submission, the learned counsel for the contesting opposite party has relied upon a judgment of Hon'ble Supreme Court in case of *M/s Silver Screen Enterprises vs. Devki Nandan Nagpal (AIR 1970 S.C. 669)*.

13. I have perused the impugned judgment of the trial court and carefully perused the lower court records I have also given my thoughtful consideration to the rival submissions advanced on behalf of the parties.

14. The provision of Order XXIII, Rule 3A is being extracted hereinbelow:-





**3A. Bar to suit.-** *No suit shall lie to set aside a decree on the ground that the compromise on which the decree is based was not lawful.”*

15. Now, I discuss the judicial pronouncements cited by the learned counsel for the appellants.

16. In case of **Gosto Behari Pramanik vs. Sm. Malati Sen and others (AIR 1985 Calcutta 379)**, the Hon’ble Supreme Court held that the compromise decree can only be set aside in a separate suit or proceedings on the ground that consent was obtained by fraud or coercion, and such consent of compromise decree resulted in serious and substantial justice. The relevant portion of the judgment (para-12) is being extracted hereinbelow:-

*“It is well known that the consent or compromise decree can only be set aside in separate suit or proceedings on the ground that the consent was obtained by fraud or coercion, and such consent or compromise decree resulted in serious and substantial injustice.”*

17. In case of **S.G. Thimmappa vs. T. Anantha and others (AIR 1986 Karnataka, page 1)**, the Hon’ble Karnataka High Court held that the compromise decree can be challenged





on the grounds of fraud, undue influence and coercion.

18. The facts of the case of *Mam Raj vs. Smt. Sabiri Devi and others (AIR 1999 Punjab and Haryana page 96)* are that the plaintiff, Mam Raj, filed a suit for declaration of his title and his 4/9<sup>th</sup> share of the land in dispute. Mam Raj claimed himself to be adopted son of late Kirpal Singh. Kirpal Singh died on 8th April, 1991. Smt. Sabiri Devi, widow of Kirpal Singh, claimed the land in dispute on the basis of will deed dated 13.03.1981 in her favour executed by her husband **Kripal Singh. Smt. Sabiri Devi** was an old and illiterate lady of 80 years and not keeping good health. She stated that taking advantage of her physical condition, Mam Raj had played fraud and had got some documents signed from her. She signed the said documents on the plea that the property was being given to her and her children and she was subjected to a fraud as even the counsel, who allegedly engaged on her behalf, Shri Bir r Singh, Advocate, in fact, was working with the counsel for the plaintiff. When the suit was fixed for argument on 21.04.1993, the defendant Smt. Sabiri Devi filed an application under Order 18 Rule 17-A of the Code of Civil Procedure, praying therein that her statement be recorded on the basis of above facts and that previous statement before the Court was given





under the pressure of the plaintiff. That application was allowed by the trial court. The revision application preferred by the plaintiff, Mam Raj, was rejected by the Hon'ble High Court of Punjab and Haryana. It has been held that compromise was arrived at by playing fraud upon her, and she is entitled to lead additional evidence.

19. The case of ***Smt. Sukhrani (dead) by L.R's. and others vs. Hari Shanker and others (AIR 1979 Supreme Court page 1436)*** relates to the principles of *res judicata*. It does not relate to a bar created by Order XXIII Rule 3-A of the CPC if the compromise has been arrived between the parties in the earlier suit.

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20. In case of ***Mahabir Mahton and others vs. Chandeshwar Mahton and others (AIR 1985 Patna page 251)***, the minors were already party to the suit but the major party only compromised the case. The minors were defendant nos. 14 to 16, (minor sons of Mahabir Mahton). In that case, after concluding the evidences of both the parties, the suit was fixed for argument and date was fixed for 3-8-1962. The case was adjourned for 4-8-1962 for further argument. On the date of argument i.e. on 4-8-1962, a compromise was recorded





between the major parties and the suit was decreed. After the compromise was recorded, on the same day, a petition was filed on behalf of the defendants to recall the order recording the compromise, and the learned trial court recalled the order, which was passed on the basis of compromise. That order was challenged before this Court and this Court after setting aside the order, recalling the compromise, sent back the matter to the trial court for fresh consideration of the applications filed by the defendants with certain directions. The direction of this court in that case is as follows:-

*“I must however state that the learned Munsif will give effect to the compromise if he finds that no fraud was practised on the court. He will have jurisdiction to recall his previous order only if he finds that the compromise was recorded as a result of fraud on the court by either party.”*

21. When the matter was remitted back to the trial court, a petition dated 1-6-1967 was filed on behalf of the minor defendants, i.e. defendant nos. 14 to 16 (minor sons of Mahabir Mahton), for setting aside the compromise and it was mentioned in the petition filed by the minor defendants that the provision of Order 32, Rule 7 of the Code were not complied





with and neither these minors, nor their guardian, had compromised the suit, nor they were represented in the court on 04.08.1962, on the date when compromise decree was passed.

The co-ordinate Bench of this Court held as follows:-

*“.....The plaintiffs also suppressed the fact from the court that there were minors in the suit and that the compromise was only recorded between the major plaintiffs and major defendants. I hold that as the plaintiffs were not absolved of their own responsibility/duty and as they deliberately suppressed this fact from the court, it was a fraud on the court. If the court would have been appraised of this fact, the court would not have recorded the compromise. Thus the finding that there was no fraud upon the court is not binding in the second appeal, as it is erroneous in law. The court of appeal below, it seems, agreed with the trial court that the defendants were equally responsible for the fraud. This itself shows that a fraud was, in fact, committed and it were also the plaintiffs who played fraud with the court. Only because the defendants were equally responsible for the fraud, it could not be held that no fraud was committed.”*





22. The case of **Smt. Anita Vs. R Rambilas (AIR 2003 Andhra Pradesh 32)** relates to recall a decree of dissolution of marriage on the basis of consent of husband and wife. The husband and wife jointly filed Suit No. 259 of 1998 under Section 13(B) of the Hindu Marriage Act for dissolution of their marriage on the basis of their consent. On 14.06.1994, the learned trial Judge recorded the statements of husband and wife on oath and finally dissolved the marriage of the parties on the basis of mutual consent, under Section 13B of the Hindu Marriage Act and the Suit No. 259 of 1998 was disposed of. The wife, after 6 months of decree, filed I.A. No. 585 of 1999 for recalling the decree on the grounds that her consent was obtained by her husband under threat, undue influence and coercion. She was examined on oath as PW-1 and six more witnesses were examined on her behalf. She also filed documents, Ext. A-1 to A-36 and on hearing the matter on merits, the learned Judge dismissed her I.A. on 14.03.2002.

Being dissatisfied with that order, she filed appeal in Andhra Pradesh High Court. The Andhra Pradesh High Court set aside the order of the trial court, whereby interlocutory application of wife was dismissed. The High Court came to the conclusion that the joint petitions signed by the wife and her





husband was under coercion and threat. Para- 24 of the decision is being referred herein below:-

“By looking to the conduct of the wife-appellant herein, we are of the considered view that the theory put forward by the wife-appellant herein that she was made to sign the joint petition under coercion and threat is a totally concocted story. Therefore, on facts also we are of the considered view that the wife-appellant herein was not able to prove the fact that the husband-respondent herein had played fraud on her by obtaining the signature for divorce by mutual consent.”

23. In case of *M/s Silver Screen Enterprises vs. Devki Nandan Nagpal (AIR 1970 S.C. 669)*, the Hon’ble Supreme Court has held as follows:-

*“....Once a dispute is validly settled out of Court, it is open to a party to a litigation to move the Court to pass a decree in accordance with the compromise. Rule 3 of Order 23, of Code of Civil Procedure provides that where it is proved to the satisfaction of the Court that a suit*





*(which expression includes an appeal) has been settled wholly or in part by any lawful agreement, the Court shall order such agreement, compromise or satisfaction to be recorded and shall pass a decree in accordance therewith so far as it relates to that suit. This is a mandatory provision. It is somewhat surprising that the High Court should have felt itself helpless under the circumstances of the case to do justice between the parties. Clause 12 of the compromise provides that if the respondent does not carry out the terms of the compromise, he shall be held responsible for all the losses that the appellant may suffer because of its breach. This clause does not preclude the appellant from putting forward the compromise and asking the Court to dismiss the appeal in accordance with its terms. Both the factum and the validity of the compromise are not in dispute. Hence the appellate court was bound to accept the same. That Court acted in accordance with law in dismissing the appeal. Hence the High Court was clearly wrong in*





*interfering with the judgment of the appellate court.*

*4. In the result, this appeal is allowed and the decree and judgment of the High Court are set aside and that of the appellate Court restored. The respondent shall pay the costs of the appellant in the High Court and in this Court. Appeal allowed.”*

24. So far as the present matter is concerned, the appellants were admittedly minor at the time of pendency of Partition Suit No. 11 of 1980 filed by their father. The appellants were co-parceners and they were necessary parties to that suit. But without impleading them, the major members of the family entered into the so-called compromise that too not recorded in the court, rather before the *punches*, so the decree dated 25.01.1982 passed in Partition Suit No. 11 of 1980 is not binding on the appellants.

25. The compromise decree was not signed in court, rather it was signed and prepared before the *punches* and later on produced before the court on which the decree was passed. Since the said decree is not binding on the appellants, the Title Suit No. 09 of 1987 filed by the plaintiffs/appellants is





maintainable and it is not barred under Order 23 Rule 3A of the Code.

26. On the basis of the above noted observations, the order and decree dated 24.03.1990 passed in Title Suit No. 09 of 1987 is set aside.

27. Consequently, the appeal is allowed.

32. The learned trial court is directed to decide the suit on merits after giving proper opportunities to the parties to lead oral and documentary evidences.

28. The office is directed to remit back the LCR to the court below at once.

**(Nawneet Kumar Pandey, J)**

HR/-

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