

## PATNA HIGH COURT

Bindeshwari Pd. Chaudhary

Vs

Debendra Pd. Singh

A.F.O.O. No. 251 of 1955 with Civil Revn. No. 998 of 1955

(V. Ramaswami, C.J. and R.K. Choudhary, J.)

25.07.1958

### JUDGMENT

#### **R.K. Choudhary, J.**

1. Miscellaneous Appeal No. 251 of 1955 has been presented by one of the judgment-debtors, namely, Bindeshwari Pd. Choudhary, against an order of the Subordinate Judge, Darbhanga, setting aside the order dated the 30th of July, 1953, recording a compromise. Civil Revision No. 998 of 1955 has been filed by the same judgment-debtor against the same order by way of precaution. Both of them have been heard together and this judgment will govern them both.

2. The events leading to the presentation of the appeal and the civil revision application, stated shortly, are these. One Lachmi Narain Ojha obtained a decree for mesne profits in Title Partition Suit No. 218 of 1912 against some of the defendants first party of that suit including the appellant and his uncle Ramashray Pd. Chaudhary. A Pleader Commissioner was appointed for determination of the mesne profits, and ultimately a decree was passed for a sum of Rs. 38320 against the appellant and his uncle. The decree for mesne profits, however, was, in the year, 1944, purchased by one Bhola Singh for a sum of Rs. 9000, and he was substituted in place of the original plaintiff Lachmi Narain Ojha. Subsequently, Bhola Singh died on the 17th of February, 1953, and his son Debendra Pd. Singh and widow Musammat Asharfi Devi, respondents first party, were substituted in his place by order dated the 17th of March, 1953. According to the case of these respondents, as respondent No. 1 was a student of the Chapra College and respondent No. 2 was an illiterate Pardanashin lady they entrusted the pairwi of the case to one Rambilas Singh, a cousin of respondent No. 1. It appears that on the 25th of July, 1953, a compromise petition was filed in court according to which the entire claim for mesne profits as against the appellant and his uncle was withdrawn by the respondents first party. In support of the compromise the above named Rambilas Singh gave his evidence also in court and the compromise was directed to be recorded by order dated the 30th of July, 1953. The case of the respondents first party is that they never entered into any compromise and had no knowledge at all of the filing of the same. According to them, they came to know of this compromise on the 2nd of October, 1953, when respondent No. 1 was informed by one Mahendra Narain Singh (A.W. 3) that the judgment-debtors had fraudulently and collusively got a compromise petition

filed by virtue of which the entire claim was withdrawn. On further enquiry, it is alleged, they came to know as to how the compromise was filed and got recorded by the judgment-debtors fraudulently and in collusion with the above named Rambilas Singh. They then made an application on the 5th of October, 1953, under Section 151 of the Code of Civil Procedure for setting aside the order recording the above compromise and for restoring the case to the original file, and Miscellaneous Case No. 104 of 1953 was started on that application. The appellant Bindeshwari Pd. Choudhary contested the case and objected to the setting aside of the order recording the compromise. His uncle Ramashray Pd. Chaudhary also filed an application supporting the compromise but he did not make any further contest. The case of the appellant was that the decree for mesne profits was purchased really by his uncle Ramashray Pd. Choudhary in the farzi name of Bhola Singh and that the compromise was brought about at his instance and it was not fraudulent or collusive. The learned Subordinate Judge, after considering the evidence on the record adduced by the parties, came to the conclusion that Bhola Singh was the real purchaser of the decree for mesne profits and the compromise dated the 25th of July, 1953, was collusive and fraudulent and was not entered into by the respondents first party-decree-holders. He also came to the conclusion that the signatures of the aforesaid decree-holders were forged in the compromise petition and the same was brought into existence and filed in court in collusion with Ram Bilas Singh. In view of the above findings, he passed an order setting aside the order dated the 30th of July, 1953, by which the aforesaid compromise had been directed to be recorded, and directed that the proceeding for mesne profits as against the appellant and his uncle shall proceed. Being thus aggrieved, the appellant has presented the above appeal and has also filed a civil revision application by way of precaution as already stated.

3. A preliminary objection has been taken by Mr. De appearing for the decree-holders-respondents first party that no appeal lay against the order in question. He has put forward an argument that the order setting aside the order recording the compromise was passed under Section 151 of the Code of Civil Procedure and no appeal lay against such an order. On behalf of the appellant, however, it has been contended that an order setting aside the order recording the compromise and restoring the proceeding to its original file substantially amounted to an order refusing to record the compromise and an appeal lay under Order 43 Rule 1 (m) of the Code of Civil Procedure. In support of this contention reliance has been placed on a decision of this Court in *Sheosagar Singh v. Sitaram Kumhar*<sup>1</sup>, It is not disputed in this case that the order under appeal was passed by the court under its inherent jurisdiction under Section 151 of the Code of Civil Procedure. The very case on which reliance has been placed on behalf of the appellant has laid down that if fraud has been committed upon the party and as a result of that fraud the court has been misled into passing certain orders which otherwise it would not have passed, then it is a fraud upon the court itself and that in such case, under its inherent powers, the court is not only entitled to, but it must, set aside any order or orders which may have been passed by it upon a false representation. A similar view has been taken in earlier decisions of this Court in *Sadho Saran Rai v. Anant Rai*<sup>2</sup>, and *Chatur Pd. Sah v. Mt. Bishuni Kuer*<sup>3</sup>, On the finding of the court below, therefore, fraud was practised on the court in obtaining an order recording the compromise and the learned Subordinate Judge was, therefore, perfectly justified in setting aside the same under his inherent powers. It is also not disputed before us that no appeal lies against an order passed under Section 151 of the Code of Civil Procedure. The contention, however, is that where the effect of the order passed under inherent jurisdiction of the Court is to pass an order which is appealable under the provisions of the Code, then an appeal

lies against that order, and it has, therefore, been argued that since the effect of the order setting aside the order recording the compromise is to refuse the recording of the compromise, an appeal lies to this Court under Order 43 Rule 1 (m) of the Code of Civil Procedure. In my opinion, the contention has no substance. Order 43, Rule 1 (m) provides that an appeal shall lie from an order under Rule 3 of Order 23 recording or refusing to record an agreement, compromise or satisfaction. Order 23, R. 3 states that where it is proved to the satisfaction of the court that a suit has been adjusted wholly or in part by any lawful agreement or compromise, or where the defendant satisfies the plaintiff in respect of the whole or any part of the subject-matter of the suit, 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 the suit. Reading the above two provisions together, it appears to me that an appeal lies against an order recording or refusing to record a compromise at the time when the question of recording or refusing to record the same has to be determined after the filing of the compromise petition. They do not envisage that an appeal will lie against an order passed subsequently setting aside the order recording the compromise. The reason is obvious that there is no provision under Rule 3 of Order 23 for such an order which has to be passed only under Section 151. No doubt, in AIR 1952 Patna 48, which is a Bench decision of this Court, C. P. Sinha, J. who gave the judgment in the same, held that where the effect of the order under Section 151 is that the petition to record a compromise is rejected, the order would be appealable under Order 43 Rule 1 (m). Sarjoo Prasad, J. (as he then was), in his order of concurrence, however, doubted the competency of the appeal. In that case it appears that on the facts and circumstances similar to those of the present case the court below passed an order under Section 151 of the Code of Civil Procedure setting aside the order recording the compromise and further ordered that the petition recording the compromise be rejected. C. P. Sinha, J. relying on the latter portion of the order rejecting the compromise petition, held that the order came within the purview of Order 23 Rule 3 of the Code and was, therefore, appealable. With great respect to the learned Judge, I am unable to agree with the view taken by him. The order passed by the court below was really an order under Section 151 of the Code of Civil Procedure setting aside the order recording the compromise and restoring the case to its original file. Its further order refusing to record the compromise was only a surplusage. That, however, could not give a right to the aggrieved party to come up in appeal. An order under Section 151 is nothing else but an order under that section and is not appealable. In that view of the matter, the preliminary objection succeeds and it is held that the appeal is not maintainable.

4. On behalf of the appellant it has then been contended that the Court should interfere with the order in question under its revisional jurisdiction for which purpose he has filed the civil revision application. On behalf of the respondents, however, it has been submitted that the question involved in this case is a pure question of fact and there is no error of jurisdiction so as to call for an interference by this Court under its revisional jurisdiction. In my opinion, the contention of the respondents is well founded and must be accepted.

5. Assuming, however, that an appeal lay against the order in question, there appears to be no merit in the appeal. (His Lordship discussed the evidence and held that the findings arrived at by the Subordinate Judge were correct and dismissed the appeal and revision application, Ramaswami, C.J. agreeing.)  
Appeal and revision dismissed.

## Cases Referred.

<sup>1</sup> AIR 1952 Pat 48

<sup>2</sup> ILR 2 Pat 731

<sup>3</sup> AIR 1943 Pat 13