

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.18 of 1992

- 1.1. Ashok Kumar Mahton, Son of late Rameshwar Mahto, Resident of Village-Hawaspur, P.S. Mansoor Chak (Previsouly Bachhwara), District- Begusarai.
- 1.2. Sunil Kumar, Son of late Surji Devi, and Bishundeo Mahto, Resident of Village- Sakara Karma, P.S. Bibhutipur, District-Samastipur.
- 1.2. Anil Kumar Anuj, Son of late Surji Devi, Resident of Village- Sakara Karma, P.S. Bibhutipur, District-Samastipur.

... .. Appellant/s

Versus

- 1.1. Dayawati Devi, Wife of Sri Gurucharan Mahton, Resident of Village-Rajwara, P.O.-Rajwara, P.S. Rosera, District- Samatipur.
- 1.2. Ram Dulari Devi, Wife of late Bangali Mahto, Resident of Village-Bhuswar, P.O. Narhan, P.S. Bibhutipur, District- Samstipur.
- 1.3. Urmila Devi, Wife of Sri Pramanand Singh, Resident of Village-Bharpuradih, P.O. Bharpura, P.S. Bibhutipur, District- Samastipur.
- 1.4. Munni Devi, Wife of Sri Udho Mahto, Resident of Village- Chandsurari, P.O. Chandsurari, P.S. Bibhutipur, District- Samastipur.
- 2.1. Baijnath Mahto, Son of late Ramautar Mahton, Resident of Village-Hawaspur, P.S. Mansoor Chak , P.O. Mansoor Chak, District- Begusarai.
- 2.2. Ram Sudin Mahto, Son of late Ramautar Mahton, Resident of Village-Hawaspur, P.S. Mansoor Chak , P.O. Mansoor Chak, District- Begusarai.
3. Ram Narayan Mahton, Son of late Budhan Mahton, Resident of Village-Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
4. Bindeshwari Mahton, Son of late Budhan Mahton, Resident of Village-Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
5. Baijnath Mahton, Son of Ramautar Mahton, Resident of Village- Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
6. Biswanath Mahton, Son of Ramautar Mahton, Resident of Village-Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
- 7.1. Smt. Kushma Devi, Widow of late Lakhan Mahton, Resident of Village-Habaspur, P.S.and P.O.- Mansurchak, District-Begusarai.
- 7.2. Upendra Mahton, Son of late Lakhan Mahton, Resident of Village-Habaspur, P.S.and P.O.- Mansurchak, District-Begusarai.
- 7.3. Shanker Mahton, Son of late Lakhan Mahton, Resident of Village-Habaspur, P.S.and P.O.- Mansurchak, District-Begusarai.
- 7.4. Smt. Bimla Devi, Wife of Sri Suresh Mahton, Resident of Village- Salkhani, Mokhtiarapur, P.S. Dalsingsarai, District-Samastipur.
8. Madho Paswan, Son of late Subansh Mahton, Resident of Village-Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-



Begusarai.

9. Gita Devi, Widow of late Udho Mahton, Resident of Village- Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
10. Bijay Kumar, Son of late Udho Mahton, Resident of Village- Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
11. Binod Kumar, Son of late Udho Mahton, Resident of Village- Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
12. Bina Kumari, D/o of late Udho Mahton, Resident of Village- Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
13. Jamun Mahton, Son of late Subans Mahton, Resident of Village- Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
14. Upendra Mahton, Son of Lakhan Mahton, Resident of Village- Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
15. Shankar Mahton, Son of Lakhan Mahton, Resident of Village- Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
16. Vijay Kumar Mahton, Son of Udho Mahton, Resident of Village- Hawaspur, Police Station- Mansoor Chak (Previsouly Bachhwara), District-Begusarai.
17. Anandi Singh, Son of late Tulsi Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District-Samastipur.
18. Jogendra Singh, Son of late Tulsi Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District-Samastipur.
19. Ram Naresh Singh, Son of Anandi Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District-Samastipur.
20. Mostt. Kanoji Devi, Widow of late Anandi Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District- Samastipur.
21. Mostt. Sumitra Devi, Widow of late Ram Agyan Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District- Samastipur.
22. Mostt. Parmila Devi, Widow of Sarjug Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District-Samastipur.
23. Ram Bilash Singh, Son of late Sarjug Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District-Samastipur.
24. Jagdish Singh, Son of late Sarjug Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District-Samastipur.
25. Jagdeep Singh, Son of late Sarjug Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District-Samastipur.



- 26. Ranjeet Singh, Son of late Harinandan Singh, Resident of Village- Tabhaka, 1. Tola- Kamarayan, P.S. Bibhutipur, District-Samastipur.
- 26. Raj Kumar Singh, Son of late Harinandan Singh, Resident of Village- 2. Tabhaka, Tola- Kamarayan, P.S. Bibhutipur, District-Samastipur.
- 27. Nago Singh, Son of late Shiv Nandan Singh, Resident of Village- Tabhaka, 1. Tola- Kamarayan, P.S. Bibhutipur, District-Samastipur.
- 27. Surendra Singh, Son of late Shiv Nandan Singh, Resident of Village- 2. Tabhaka, Tola- Kamarayan, P.S. Bibhutipur, District-Samastipur.
- 27. Lalan Singh, Son of late Shiv Nandan Singh, Resident of Village- Tabhaka, 3. Tola- Kamarayan, P.S. Bibhutipur, District-Samastipur.
- 28. Nageshwar Singh, Son of Shiv Nandan Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District-Samastipur.
- 29. Surendra Singh, Son of Shiv Nandan Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District-Samastipur.
- 30. Rajendra Singh, Son of late Ladoo Lal Singh, Resident of Village- Tabhaka, Tola-Kamarayan, P.O. Chakbinduliya, Police Station- Bibhutipur, District-Samastipur.

... .. Respondent/s

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Appearance :

For the Appellant/s	:	Mr. Sunil Kumar Verma Mr. Suman Kumar Verma Mr. Amresh Kumar Mishra
For the Respondent 26(AB) & 27(ii)		Mr. Ram Vinay Prasad Singh @ Sanjay Singh
For the respondent		Mr. Shashi Dhar Jha Mr. Ram Sumiran Singh

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CORAM: HONOURABLE MR. JUSTICE NAWNEET KUMAR PANDEY

CAV JUDGMENT

Date : 03-09-2024

I have already heard the learned counsel for the appellants as well as the learned counsel for the respondents.

2. This appeal is directed against the judgment and decree dated 30.09.1991, passed by the 1st Additional District Judge, Bugusarai in M.T.A. No. 02/85/01/89, reversing the judgment dated 30.11.1984, passed by Munsif, 2nd Court,



Begusarai in T.S.No.66 of 1972.

3. The following two substantial questions of law were formulated for adjudication:-

“(i) Whether the first appellate court was justified in holding that payment of consideration money was a condition precedent for passing of a title on the basis of sale deed dated 07.05.1958(Ext.C/1)?

(ii) Whether in view of the earlier ex-parte decree passed against the plaintiff and dismissal of miscellaneous case under Order 9 Rule 13 of the CPC, the present suit is maintainable?”

4. The brief facts of the case are that the father of the original respondent/plaintiff Late Budhan Mahto purchased 10 katha 12 ½ dhur of land (the disputed land), through a sale deed dated 22.08.1964 executed by one Sarju Singh. Sarju Singh was agnate of Tulsi Singh. Prior to execution of this sale deed, Tulsi Singh and others including Sarju Singh had executed two sale deeds on 07.05.1958 (Ext.C & C/1) for consideration money of Rs. 2000/- each in favour of father of the 1st appellant. Father of the 1st appellant Late Rameshwar Mahton was the defendant 1st set in the suit. The area of the land of each sale deed was one bigha, 08 katha and 18 dhur, including the disputed land. It was a condition precedent that the title would pass only after



payment of consideration money. The original respondent no.1 who was defendant-1st set was purchaser of the land. He paid Rs. 2000/- as a consideration money against the first sale deed i.e. Ext.C. Since he did not make the entire payment in respect of Ext.C/1, the title did not pass to the purchaser. Tulsi Singh, the defendant-second party, who was one of the vendors, sent two notices to Rameshwar Mahton, asking him to pay the due amount. The first notice was sent on 29.07.1958 and the second one was sent on 18.10.1958. Rameshwar Mahton, the original appellant, failed to pay the remaining consideration money. As the consideration money was not paid, Tulsi Singh and others executed a deed of cancellation on 07.04.1959 for the land appertaining to Ext.C/1. Sarju Singh was a co-sharer of one-third in that property. He executed a sale deed in favour of Budhan Mahton, the father of the original plaintiff/respondent-1st set of his one- third share i.e. 10 katha and 12 ½ dhur, vide sale deed dated 22.08.1964 (Ext.1)

5. Rameshwar Mahton and other defendants-first set filed a Title Suit No. 68 of 1964 for declaration of their right and tittle over the land comprising Ext.C/1. Budhan Mahton was also made party in that suit and as per the plaint, no summons was served to him. Rameshwar Mahton and Tulsi Sigh, in



collusion, compromised the case in absence of Budhan Mahton, who was also a party. In the compromise petition, it was mentioned that consideration money was paid by Rameshwar Mahton to Tulsi Singh and the delivery of possession was given to Rameshwar Mahton. In the compromise petition, it has been mentioned that Budhan Mahton had got consideration money from Rameshwar Mahton and he also delivered the possession to Rameshwar Mahton and others. The plea of plaintiff/respondent is that Budhan Mahton had no knowledge of that suit and he never participated in the compromise. No summons was served upon him.

6. As the compromise decree was ex parte against Budhan Mahton, he filed an application under Order IX Rule 13 of the CPC for setting aside that ex parte decree. The application was registered as Misc. Case No. 69 of 1969, which was dismissed. After dismissal of the application under Order IX Rule 13 CPC, the plaintiff/respondent filed the present title suit for declaration of their title and confirmation of possession over the suit land appertaining to plot no. 706 measuring 10 katha and 12 ½ dhur.

7. Tulsi Singh and others, who were defendants-second set, did not contest the suit. Rameshwar Mahton, the



defendant- first set filed written statement, denying the title and possession of the plaintiff(s) on 10 katha 12 ½ dhur which is the suit land. They claimed to be the bona fide purchasers from Tulsi Singh and others. It has been mentioned in the written statement that plot no. 706 was of an area of 03 bigha, 03 katha and 16 dhur. Tulsi Singh and others executed the sale deed in respect of the entire area in favour of Rameshwar Mahton and others for consideration money of Rs. 4000/-. At the time of registration, the vendor(s) and vendee(s) came to the registration office but as no stamp was available for Rs. 4000/-, so two stamps, each of Rs. 2000/- were purchased and two sale deeds were executed in favour of Ramehwar Mahton. At that time, Rameshwar Mahton was lacking Rs. 500/- so he paid only Rs.3500/- as consideration money and a sum of Rs. 500/- remained to be paid. It has also been averred that Rameshwar Mahton was ready to pay the remaining money to Tulsi Singh, but he was not ready to receive. It has also been mentioned in the written statement that T.S.No. 68 of 1964 was within the knowledge of Budhan Mahton and he knowingly did not appear in that suit. The suit was compromised between Rameshwar Mahton and Tulsi Singh and delivery of possession was given to Rameshwar Mahton on 30.07.1969.



8. After discussing the evidences as well as the points of law, the learned first appellate court was of the opinion that the payment of consideration money was a condition precedent for passing of title to the vendors through the sale deed dated 07.05.1958 (Ext.C/1).

9. It is an admitted fact that the entire consideration money in respect of Ext.C/1 was not given to the vendor(s). Ext.H, which is the evidence of the defendants-first set Rameshwar Mahton and others, is the notice dated 18.10.1958 sent by Tulsi Singh, asking Rameshwar Mahton to pay the remaining money of Rs. 2500/-. In that notice, it has been mentioned that at the time of execution of the sale deed only Rs. 1500/- was paid to the vendor(s). The learned first appellate court came to the conclusion that it was also not a fact that only R. 500/- remained to be paid by Rameshwar Mahton to Tulsi Mahton and others.

10. Here it is to be determined as to whether the title passed to Rameshwar Mahton and others in respect of the sale deed dated 07.05.1958 (Ext.C/1).

11. From perusal of Section 8 of the Transfer of Property Act, it transpires that the title and interest passes to the transferee as soon as the transfer is completed, provided there is



a different intention expressed or implied. A bare perusal of Section 8 of the said Act makes it clear that if there is express or implied condition that the title would not pass forthwith, it would not pass at the time of transfer (registration). The intention can only be gathered from the recitals of the sale deed if it is available.

12. In the present case, it has specifically been mentioned in the sale deed (Ext.C/1) that the title would not pass till payment of consideration money. In the meantime, Budhan Mahton had purchased one-third share of one of the co-sharers Sarju Singh. At the time of purchase made by Budhan Mahton, the title was not with Rameshwar Mahton and others and after execution of the sale deed in favour of Budhan Mahton the land in dispute was vested in Budhan Mahto.

13. The learned counsel for the appellants relied upon a decision of Hon'ble Supreme Court reported in the case of *Bishundeo Narayan Rai and another Vs. Anmol Devi and others [(1998) 7 SCC 498]* and submitted that in the case of *Bishundeo Narayan Rai* (supra), the Hon'ble Supreme Court held that even if part of the consideration money remains to be paid, the title would pass to the vendors. In my view, this case is entirely different from the case of *Bishundeo Narayan Rai*



(supra). In that case in the sale deed itself it was mentioned that the vendors had put the vendees in possession of the property. It has also been mentioned that in that sale deed, that the vendors (of that case) may get their names recorded in the office of Anchal, which means the intention of the parties was to transfer the title. Without passing of the title, the name of the vendors could not be entered into the revenue records.

14. So far as the present case is concerned, it is entirely different. In the sale deed itself it has been mentioned that the title and possession would pass only after payment of the remaining consideration money.

15. This Court in case reported in *AIR 1931 Patna page 236* has held that the title passes on the execution and registration of sale deed, though the purchase money may remain wholly or partly unpaid except where there is an agreement that the sale deed should take effect only if the consideration is first paid. I am of the view that if it is condition precedent in the sale deed itself that the title would pass after payment of full consideration money, the title would not pass unless the consideration money is paid.

16. In the present case, before passing of the title one of the co-title holder executed sale deed in favour of



Budhan Mahton in respect of his share. As such, the title was passed in Budhan Mahto.

17. On the basis of the above mentioned observations, I came to the conclusion that the learned first appellate court was justified in holding that payment of consideration money was a condition precedent for passing a title appertaining to the sale deed dated 07.05.1957 (Ext.C/1).

18. So far as the second question is concerned, in my view, the dismissal of the petition under Order IX Rule 13 of the CPC is not a bar in filing a fresh suit. The decree in T.S.No. 68 of 1964 was ex parte against Budhan Mahto. He filed restoration application under Order IX Rule 13 of the CPC by way of Misc. Case No. 69 of 1969 which was dismissed. Merely because his application for setting aside the ex parte decree was dismissed, he is not debarred from filing of a fresh suit challenging the collusive ex parte compromise decree passed against him. In an application under Order IX Rule 13 of the CPC, the merit of the case of the applicant is not considered. Only thing which is considered as to whether the summons was served to the applicant or whether he was aware of the existence of the suit or not. The merit of the case and its adjudication on the point of fraudulent and collusive compromise decree could



not be looked into in an application under Order IX Rule 13 of the CPC which can be determined only after challenging that decree in a fresh suit. There is no bar on filing of a fresh suit after dismissal of the application under Order IX Rule 13 of the CPC. Wherever there is intention of the legislature to create a bar in filing of a suit, it has specifically been provided in the CPC itself. For example, when the suit is dismissed in default under the provision of Order IX Rule 8 of the CPC, no fresh suit can be brought and it is barred under Order IX Rule 9 of the CPC. There is no such bar in a case when an application under Order IX Rule 13 of the CPC is dismissed.

19. In my view, despite the fact that the application of the plaintiff/respondent was dismissed under Order IX Rule 13 of the CPC, still they can maintain a fresh suit for their tittle and recovery of possession.

20. On the basis of above-mentioned observations, this appeal stands dismissed.

(Nawneet Kumar Pandey, J)

HR/-

AFR/NAFR	NAFR
CAV DATE	04.01.2024
Uploading Date	09.2024
Transmission Date	

