2026 INSC 662

REPORTABLE

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NOS. OF 2026
(Arising out of SLP(C) Nos.13671 of 2025)

KRISHNA KUMAR OJHA &ORS. …APPELLANT(S)

Versus

JITENDRA CHAUDHARY & ORS. …RESPONDENT(S)

J U D G M E N T

SANJAY KAROL, J.

1. Leave Granted.

2. This appeal has been filed by the Appellants (the legal heirs of the original plaintiffs and other co-sharers) who are aggrieved by the dismissal of civil revision no.103 of 2024 by learned single judge of the High Court of Judicature at Patna which was in turn directed against order dated 7th February 2024 passed by Sub-Judge-01(East) Muzaffarpur in Miscellaneous Case No.07 of 2022, whereby petition for setting aside decree dated 22nd February 1994 in Suit 128 of

1989[1], on the basis of a compromise entered by Sub-Judge-01, Muzaffarpur[2], was allowed.

3. The plaintiff, Dinbandhu Ojha, filed a partition suit, including, against the predecessors of the present respondent, seeking 1/4th share in the total property of common ancestor by the name of Thakur Ojha. Chaturbhuj Chaudhary (Defendant No. 5), the abovesaid predecessor of the respondents appeared through counsel on summons in the suit. During the pendency thereof, a compromise petition was filed by the plaintiffs and defendants 'jointly' which was accepted by Sub-Judge-01 Muzaffarpur *vide* order dated 22nd February 1994. Pursuant thereto, a final decree was prepared on 27th May 1997 in terms of the above said compromise petition. All appeared fine for approximately a quarter of a century thereafter, but it was not so. The defendant no.5 represented through LRs - the respondents herein filed a Miscellaneous Case No.07 of 2022 before the concerned Court on 7th April 2022, seeking setting aside of the aforesaid compromise decree on the ground that the same had been obtained by fraud and without the signatures of defendant no.5. The same was allowed by the Trial Court, on 07.02.2024. Appeal thereagainst has been dismissed by the High Court. Hence, the case is before us.

4. The short question which arises for consideration is whether the compromise as accepted by the Civil Court on 22nd February 1994 was in accordance with Order XXIII Rule 3 of Code of Civil Procedure, 1908[3] or not?

5. We are of the considered view that it was not. Our reasons for such a conclusion shall be made clear in the following paragraphs.

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[1] Partition suit
[2] Civil Court
[3] CPC

5.1 Order XXIII is titled '*Withdrawal and Adjustment of Suits*' and Rule 3 thereof provide for compromise of suit in the following terms:

> "3. Compromise of suit.—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 in writing and signed by the parties or where the defendant satisfied the plaintiff in respect to 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 parties to the suit, whether or not the subject-matter of the agreement, compromise or satisfaction is the same as the subject-matter of the suit:
> Provided that where it is alleged by one party and denied by the other that an adjustment or satisfaction has been arrived at, the Court shall decide the question; but not adjournment shall be granted for the purpose of deciding the question, unless the Court, for reasons to be recorded, thinks fit to grant such adjournment.
> Explanation.— An agreement or compromise which is void or voidable under the Indian Contract Act, 1872 (9 of 1872), shall not be deemed to be lawful within the meaning of this rule."
>
> (emphasis supplied)

5.2. A perusal of various decisions of this Court reveals the following aspects regarding compromise decree:

(a) Prior to the 1976 Amendment to the CPC, a compromise could be either oral or written, and the Court could decide the same on the basis of general evidence by the parties, ***Gurpreet Singh v. Chatur Bhuj Goel***[4]

(b) After the amendment, it has been clarified that a compromise must be in writing and must be signed by the parties, ***Som Dev v. Rati Ram***[5]

(c) The objective of the amendment is to prevent false and frivolous pleas of compromise having been entered into between the parties; (***Gurpreet Singh supra***)

(d) A compromise decree being signed by all parties is a mandate of the law; (***Gurpreet Singh supra***)

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[4] (1988) 1 SCC 270)
[5] (2006) 10 SCC 788)

(e) It has to be voluntarily accepted by parties and once such acceptance is recorded by the Court, it acquires the sanctity of the judicial order, ***Banwari Lal v. Chando Devi***[6]

(f) A counsel/duly authorised representative/GPA holders is permitted to sign a compromise decree on behalf of those he represents, granted there is express authorisation or exigency of circumstance (***Byram Pestonji Gariwala v. Union Bank of India***[7]; ***Pushpa Devi Bhagat v. Rajinder Singh***[8],

(g) In accepting a compromise decree, while it is true that the court merely put a seal of approval, but its role cannot be reduced to being only a recorder. It has to apply its judicial mind to the terms to ensure that they are lawful; (***Banwari Lal supra***)

(h) A consent decree which is the conclusion of a compromise, does not operate as a *resjudicata* for it does not meet Section 11 (CPC) requirements; (***Baldevdas Shivlal v. Filmistan Distributors (India) (P) Ltd***.[9])

(i) The only remedy available against a compromise decree is a recall application. A fresh suit or an appeal is not maintainable against this kind of decree; (***Navratan Lal Sharma v. Radha Mohan Sharma***[10]

5.3 The compromise that has been furnished to this Court by the respondents along with the written submissions records that there is no objection on behalf of defendant no.5 Chaturbhuj Chaudhary, and the said

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[6] (1993) 1 SCC 581)
[7] (1992) 1 SCC 31
[8] (2006) 5 SCC 566)
[9] (1969) 2 SCC 201
[10] 2024 SCC OnLine SC 3720

statement has come through his counsel Ram Krishna Mehta, whose vakalatnama is dated 27th August 1992. The question is whether Mr. Mehta learned counsel had been permitted by his client to act in a way that sealed, the fate regarding the entire property. In ***Byram Pestonji Gariwala supra*****,** subsequently referred in ***M.P. Rajya Tilhan Utpadak Sahakari Sangh Maryadit v. Modi Transport Service***[11] it has been categorically observed that a counsel should not act on implied authority in the absence of exigent circumstance.

5.4 Similar observations have been made in ***Himalayan Coop. Group Housing Society v. Balwan Singh***[12] by a three judge Bench as under**:**

> **"31.** Therefore, it is the solemn duty of an advocate not to transgress the authority conferred on him by the client. It is always better to seek appropriate instructions from the client or his authorised agent before making any concession which may, directly or remotely, affect the rightful legal right of the client. The advocate represents the client before the court and conducts proceedings on behalf of the client. He is the only link between the court and the client. Therefore his responsibility is onerous. He is expected to follow the instructions of his client rather than substitute his judgment.
> **32.** Generally, admissions of fact made by a counsel are binding upon their principals as long as they are unequivocal; where, however, doubt exists as to a purported admission, the court should be wary to accept such admissions until and unless the counsel or the advocate is authorised by his principal to make such admissions. Furthermore, a client is not bound by a statement or admission which he or his lawyer was not authorised to make. A lawyer generally has no implied or apparent authority to make an admission or statement which would directly surrender or conclude the substantial legal rights of the client unless such an admission or statement is clearly a proper step in accomplishing the purpose for which the lawyer was employed. We hasten to add neither the client nor the court is bound by the lawyer's statements or admissions as to matters of law or legal conclusions. Thus, according to generally accepted notions of professional responsibility, lawyers should follow the client's instructions rather than substitute their judgment for that of the client. We may add that in some cases, lawyers can make decisions without consulting the client. While in others, the decision is reserved for the client. It is often said that the lawyer can make

[11] (2022) 14 SCC 345
[12] (2015) 7 SCC 373

> decisions as to tactics without consulting the client, while the client has a right to make decisions that can affect his rights."
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> (emphasis supplied)

5.5 Recently, the decision authored by *J.B. Pardiwala J.,* in ***Prasanta Kumar Sahoo v. Charulata Sahoo,*** noted that almost sixty years ago the Madras High Court had observed that express authorisation is the norm and has to be followed:

> **"105.** Almost six decades back, the Madras High Court speaking through Ramaswami, J. (as his Lordship then was) in *Govindammal* v. *Marimuthu Maistry* [*Govindammal* v. *Marimuthu Maistry*, 1957 SCC OnLine Mad 47 : AIR 1959 Mad 7] had sounded the note of caution observing as under : (SCC OnLine Mad para 5)
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> > "*5*. … The decisions appear to be fairly clear that even in cases where there is no express authorisation to enter into a compromise, under the inherent authority impliedly given to the Vakil he has power to enter into the compromise on behalf of his client. But in the present state of the clientele world and the position in which the Bar now finds itself and in the face of divided judicial authority and absence of statutory backing prudence dictates that unless express power is given in the vakalatnama itself to enter into compromise, in accordance with the general practice obtaining a special vakalatnama should be filed or the specific consent of the party to enter into the compromise should be obtained. If an endorsement is made on the plaint, etc. it would be better to get the signature or the thumb impression of the party affixed thereto, making it evident that the party is aware of what is being done by the Vakil on his or her behalf."

5.6 In the present case, there is no express authorisation by defendant no.5 allowing Mr. Mehta to sign the compromise on his behalf, nor is there anything on record to demonstrate the exigent circumstances which prompted the counsel to act without seeking a clear approval from defendant no.5. In absence of the aforesaid, the '*voluntary*' aspect mandated by Order XXIII Rule 3 of the Code of Civil Procedure, 1908, which is essential for a compromise

decree cannot be established on the record. As such, the requirements of Rule 3 have not been complied with. The

resulting compromise is contrary to law.

6. On the aspect of delay, *prima facie* the gap between 1994 and 2022 is egregiously large and it requires to be examined in detail. To that end, we must consider the application filed under Section 151 CPC and the reasoning on this aspect given both by the Civil Court and also the High Court.

6.1 The paragraph in the application is reproduced as under:

> "**10.** That after inspection of record following facts were revealed to the applicants first of all
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> …
>
> (v) That the plaintiff has not sought for any relief against Chaturbhuj Chaudhary with respect to R.S. Khata- 77 and 78.
> (vi) That Chaturbhuj Chaudhary was made formal party (defendant) vide para 7 of the plaint.
> (vii) That a fraudulent compromise petition with respect to R.S. Khata- 77 and 78 was filed on 18-02-1994 but not signed by Chaturbhuj Chaudhary.
> (viii) That a power and written statement without supported with an affidavit and statement etc. alleged to be signed by Chaturbhuj Chaudhary was filed on 27-08-1992 by the lawyer Shri Ram Kishor Mahto.
> (ix) That one lawyer namely Ramkishor Mahto allegedly wrote no objection on behalf of defendant no.-5 on compromise petition.
> (x) That the compromise petition was accepted by the Learned Court on 22-02-1994 without calling for the case as well as parties including defendant no.-5. The compromise petition does not bear the signature of Chaturbhuj Chaudhary.
> (xi) That the above said compromise decree dated 22-02-1994 is fraudulent and illegal one.
> …
> 11. That it is submitted that no notice of Partition Suit- 128/1989 was ever served to the father of the applicants.
> 12. That Chaturbhuj Chaudhary never engaged any lawyer much less namely Ramkishor Mahto to do Pairvee of Partition Suit-128/1989.
> 13. That the signature appearing on written statement dated 27-08-1992 as well as Wakalatnama dated 27-08-1992 are not of Chaturbhuj Chaudhary rather it is fake one got created by plaintiff and other defendants of Partition Suit-128/1989 in collusion with each other.

…
16. That Chaturbhuj Chaudharv never said any where that R.S. Khata-77 and 78 have been wrongly recorded in his name.
17. That since Chaturbhuj Chaudhary was not acquainted with Partition Suit – 128/1989 then question of taking part in Partition Suit-128/1989 by any mode does not and cannot arise by him.
…

28. That cause of action arose to the Applicants on 03-04-2022 when the members of opposite parties came to the spot and asked the applicants to vacate the lands of R.S. Khata-77 and 78 on the basis of fraudulent Compromise Decree on 04-04-2022 when the applicants filed "Inspection Petition" on 06-04-2022 when record of Partition Suit-128/1989 was available to the applicants for inspection then the applicants finally came to know about the fraudulent Compromise Decree got passed by Learned Sub Judge First, Muzaffarpur."

6.2 The plaintiff took objection to the aforesaid pleadings and instead averred as follows:

"12. That from the said G.T. it would clear that Chatarbhuj Ojha was the own Mama of opp. Party no. 1 (Krishna Kumar Ojha), maternal uncle of Opp. Party no.1 and Nana (grand father) of other opp. Parties. It is necessary to mention here that Chatarbhuj Ojha has much affection with his two sisters namely- Ramjhari Devi and Asarfi Kuer, so he mostly lived in her sister's house situated in village Khabara, P.S. -Sadar, District- Muzaffarpur and look after the cultivation work of his sisters and also helped his Bhagina (Nati) grandson and in the cultivation work. It is necessary to mention here that Thakur Ojha died in the 1956, so the ancestral Revisional Survey Khatian has been prepared in the guidance of Chatarbhuj Chaudhary who is the own mama of opp. Party no.1 and own (nana) grand father of the opp. Parties.
13. That while living with her sister's house chaterbhuj Ojha has got recorded some ancestral land of these opp. Parties in his name under Khata No. 77and 78. It is a settled principle of law that Revisional Survey Entry does not creates title as discussed in A.I.R. 1972 Patna page 27 (FB). It is necessary to mention here that inspite of wrong survey entry the disputed land bearing Khata no. 77 and 78 has been coming in possession of these opp. Parties.
14. That when these opp. Party no.1 and other opp. Party have raised their objection before his mama about the wrong survey entry with respect to the land of Khata no. 77 and 78 then Chatarbhuj Chaudhary executed a registered Ladavi on 14.12.88 in favour of Daya Sindhu Ojha, Din Bandhu Ojha, Sri Krishna Kumar Ojha sons of Thakur Ojha, Smt. Raj Kumari Devi wife of Ramchandra Ojha with with respect to the land of Khata No. 77 and 78 to the

knowledge of applicant and the sold land has been mentioned in Sch. B and C of P.S. No. 128/89.

…

16. That Chatarbhuj Chaudhary had filed his written statement on 27.8.92 where Chatarbhuj Ojha admitted that the lands of Khata no. 77 and 78 belonged to the family of these opp. Parties and it is the ancestral lands of these opp. Parties.

17. That thereafter Chaterbhuj Chaudhary had also joined in the compromise petition and duly signed on the compromise petition. It is necessary to mention here that since filing of the partition suit no. 128 of 1989 till final Decree, Chatarbhuj Ojha had pay a big role for passing of the final Decree because Chaterbhuj Chaudhary was acquainted with the court's work.

…

34. That the contents of para no. 10 (vii) and vii of the injunction petition are wrong and incorrect. It is wrong to say that a fraudulent compromise petition with respect to P.S. Khata no. 77 and 78 was filed on 18.02.1994 but not signed. Fact is that Chatarbhuj Chaudhary in his written statement as well as in compromise of P.S. No. 128/89 after going through the contents has signed his signature in the written statement as well as in the compromise petition.

35. That the contents of para no. 10(ix) of the injunction petition are wrong and incorrect. It is wrong to say that one lawyer namely Ram Kishore Mahto allegedly wrote no objection on behalf of the defendant need on compromise petition. Fact is that Ram Kishore Mahto the lawyer of Chatarbhuj Chaudhary after instruction from his client has dully signed objection in the compromise petition.**"**

6.3 The Sub-Judge-01(East) Muzaffarpur in Miscellaneous case no.07 of 2022 rejected the ground of limitation observing that the case of the applicant is that he came to know of the allegedly fraudulent compromise decree, just shortly before filing the said application. Whether or not this was the case, is a matter of evidence to be decided at trial. Further, it was observed that the law of limitation applies against act of parties and not action of the Court. It was also observed that assuming truth to the matter of knowledge being subsequent, the power under Section 151CPC can be exercised by the Court for the ends of justice especially where fraud is alleged to have been perpetuated and the same cannot be defeated due to irregularity in procedure.

6.4 The aspect of delay was not gone into by the High Court and instead the order overall was affirmed as there was no illegality or jurisdictional error therein.

6.5 In our view, if the delay had been the ground to dismiss the miscellaneous case, the effect would be to perpetuate something which is not in accordance with law. The same cannot be permitted. The law of limitation, while undoubtedly an important facet of the legal system, cannot be used as a means to defeat substantive rights. In this case, although the compromise was not signed by him, defendant no.5's rights in the property which is not miniscule were directly affected by the compromise.

6.6 There is another aspect that requires to be noted. All of the essential facts which form the basis of the compromise are itself contested. One party says that they are not family members while the other, in the objection *via* family chart demonstrates them to be relatives; One submits that the defendant no.5 had been made party only because his name had been inadvertently recorded in the survey register, while the other says that they have full right over the property and no part of the disputed property had been given up by them; there is also a statement regarding the complete lack of authorisation any which way, to the counsel for defendant no.5; the appellants submit that they/their father (defendant no.5) were not aware of the suit proceedings whereas the other party submits that defendant no.5 knew about all of the going-ons that led to the compromise decree. It was nearly 22 years after defendant no.5 died, which was in itself *eight* years after the decree of 1994, that the respondents sought to dispossess the appellants thereby setting into motion the present proceedings. Clearly, the most basic facts are disputed. This, along with the fact that the compromise decree is not in accordance

with law gives us enough reason to agree with the reasoning of the Court below. It is for the aforenoted reasons that the delay of 25 years has to be given a go-by in the facts of this case. It is not in all cases that such large delay can be set aside. Whether or not a particular case warrants taking such a view is to be determined after a detailed examination of the record in each case.

6.7 The compromise decree has been correctly set aside. In fact, we are of the view that the issues of the partition suit require to be adjudicated in a full trial. While we acknowledge the difficulty that may arise in 1989 suit being taken to trial 37 years later, but it is not possible to decide the rights of the parties without the due process of collection and weighing of evidence, whatever may be available.

7. In view of the aforenoted, appeal is dismissed. No costs.

……..…J.
(SANJAY KAROL)

……..……J.
(NONGMEIKAPAM KOTISWAR SINGH)

New Delhi;
July 1, 2026