

1925.

RANJIT
NARAIN
SINGH

v.

RAMPRAHADUR
SINGH.

BUCKNELL, J.

a complaint should be made under section 476 is almost invariably a matter of discretion: and the High Court is under those circumstances always loath to interfere except in extraordinary cases.

[The remainder of the judgment is not material to this report. In the result the appeal was dismissed.]

ADAMI, J.—I agree.

APPELLATE CIVIL.

Before Jwala Prasad, J.

PARSHAN SAHI

v.

G. L. RICHARDSON.*

1925.

Nov., 16.

Code of Civil Procedure, 1908 (Act V of 1908), section 151—application impugning a compromise-decree, dismissal of—whether bars subsequent suit.

The dismissal of an application under section 151, Code of Civil Procedure, 1908, impugning the validity of a compromise-decree, is not a bar to the institution of a subsequent suit to avoid the compromise on the ground of fraud.

Ramratan Singh v. Khublal Gope (1), followed.

Kailash Chandra Poddar v. Gopal Chandra Poddar (2), distinguished.

Appeal by the plaintiffs.

The facts of the case material to this report are stated in the judgment.

L. N. Sinha, for the appellants.

S. Dayal and Sambhu Saran, for the respondents.

JWALA PRASAD, J.—The plaintiffs are the appellants. They ask for an adjudication of their title to and confirmation of possession over 1 bigha, 9 kathas,

* Appeal from Appellate Decree no. 18 of 1923, from a decision of M. Wali Muhammad, Additional Subordinate Judge of Muzaffarpur, dated the 18th September, 1922, confirming a decision of B. Jugal Kishore Narain, Additional Munsif of Muzaffarpur, dated the 27th September, 1921.

(1) (1917) 39 Ind. Cas. 891.

(2) (1913-14) 18 Cal. W. N. 1204.

of land situate in mauza Yusufpatti, pargana Morwah Khurd, bearing tauzi nos. 4388 and 4390. They also seek to recover Rs. 173-8-0 as the price of sugarcane raised on the disputed land, and an injunction restraining the defendants first party from paying the price of the sugarcane to the defendants second party. The disputed land is a part of a holding consisting of 6 bighas, 9 kathas, and 1 dhur. The holding belonged to the defendants second party and one Abdhu Singh. It was sold in an execution sale and was purchased in the name of plaintiff no. 1, Parshan Sahi, on the 19th May, 1896 (*vide* sale certificate, Exhibit M, which shows the area sold to be 3 bighas and not 6 bighas as claimed by the plaintiffs). The plaintiffs base their title upon this auction-purchase and upon a compromise said to have been filed subsequently in suit no. 360 of 1918 whereby the defendants and Abdhu Singh relinquished their claim to the land. The plaintiffs say that in spite of the said compromise, the defendants brought a small cause court suit against the defendants first party and obtained a decree for the price of the sugarcane which was supplied by the plaintiffs to the defendants first party who now refuse to give the price of the sugarcane to the plaintiffs. The plaintiffs base their cause of action upon this refusal and on account of resistance of the possession by the defendants. Defendants second party, on the other hand, contend that at the auction sale they purchased the property in the farzi name of the plaintiff no. 1 who is their close relation and that the alleged compromise is fraudulent, void and inoperative and that they and not the plaintiffs are entitled to the price of the sugarcane. The defendants first party have no objection to the payment of the price of the sugarcane to the party who may be held by the court to be entitled to receive the same. The real contest is therefore between the plaintiffs and the defendants second party, and several issues were raised in the trial court. The only important issues tried in the lower appellate court are :

- (1) Have the plaintiffs got any title to the disputed land? and
- (2) Is the compromise decree binding on the defendants?

1925.

PARSHAN

SAHI

v.

G. L.

RICHARDSON.

JWALA

PRASAD, J.

1925.

PARSHAN
SAHI
v.
G. L.
RICHARDSON.

J WALA
PRASAD, J.

The courts below have concurrently held that the plaintiffs have failed to prove their title to the land in dispute, and that in spite of the purchase being in the name of the plaintiff no. 1, the defendants continued to be in possession of the property. They have further held that the auction-purchase was only farzi; that the real purchasers were the defendants second party in the name of their close relation, Parshan Sahi, whose father, Ramdihal was the maternal uncle of Ramdhari, defendant no. 5 and that Abdhu Singh is a full brother of Ramdhari. The lower appellate court has further held that neither any dakhaldhani was taken out by the plaintiffs nor any chalan for payment of the purchase-money has been produced and though the sale took place prior to 1896 and the finally published record-of-rights in 1897, yet the name of Parshan was not substituted therein. Similarly the batwara papers of 1915 contained the name of Awadh Singh in respect of several plots including plots nos. 12 and 24 which are the disputed ones. His name also appears in Exhibits E, J and J(a). In the criminal case (Exhibit N) defendant no. 5 was found to be in possession. It has not been shown before me that the finding of the court below as to the purchase being farzi in the name of plaintiff no. 1 and the continuity of the possession by the defendants over the property in spite of the sale is in any way vitiated by the court in not having taken into consideration any relevant evidence on the record. The finding of the court below that the plaintiff did not acquire any title by the auction-purchase of 1896 in the name of plaintiff no. 1, is a finding of fact and not open to challenge in second appeal. As to the compromise (Exhibit 4) the court below in concurrence with the trial court has come to the conclusion that it was a fraudulent one. The compromise petition was filed in a suit (no. 360 of 1919) after the aforesaid criminal case was upheld. Under this compromise, Ramdhari, defendant no. 5, and Abdhu relinquished all claims to the entire land. The compromise, as stated therein, was to be given effect to by executing a registered deed. No registered deed was however executed. The compromise petition

has not been legally proved and defendant no. 6 who is son of defendant no. 5, is no party to it. The court below has held that it has not been proved that the defendants had any knowledge of the terms of the compromise petition. The finding of the court below that the compromise petition is fraudulent and inoperative is again a finding of fact and cannot be challenged in second appeal.

The learned advocate on behalf of the appellants has, however, urged that the compromise has become final and is not open to challenge by the defendants in this suit. In support of this contention he has referred to the case of *Kailash Chandra Poddar v. Gopal Chandra Poddar* (1). In that case, after the compromise was filed in a suit and decree prepared in accordance therewith, one of the plaintiffs applied to the court for a review of the decree and to set aside the compromise and his application was based upon the allegation that he had not consented to the compromise. The review petition was dismissed by the trial court. Subsequently a suit was brought by another plaintiff along with the plaintiff who had applied for the review of the judgment. The ground of attack to the compromise taken in the suit was the same as in the review petition, *viz.*, that the plaintiffs had given no consent to the compromise. It was further suggested that there was fraud. The alleged fraud was, however, negatived and the only ground of relief was the absence of consent. It was held that the dismissal of the petition of review was a bar to the subsequent suit contesting the validity of the compromise filed in the previous suit. It seems to me that the aforesaid case was decided upon the principle of *res judicata* inasmuch as the review matter and the subsequent suit were founded upon the same ground, *viz.*, the absence of the consent to the compromise in question. The parties and the subject-matter of the relief sought were the same in both the proceedings in the suit and the review. The matter in controversy in the review proceeding and in the suit was decided and the relief sought was refused and the court which

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1925.

PARSHAN
SAHI
v.
G. L.
RICHARDSON.
JWALA
PRASAD, J.

dealt with the review-matter was competent to deal with the suit. All the conditions embodied in section 11 of the Code of Civil Procedure were fully satisfied. The learned advocate on behalf of the appellant, however, contends, that the principle of the aforesaid case would apply to the present case inasmuch as the defendants had challenged the compromise decree in an application made by them under section 151 of the Civil Procedure Code and their petition was rejected. There is no substance in this contention. The application under section 151 was not an application which the defendants could, as a matter of right, press. It simply invoked the inherent power of the court. In the next place the matter was not gone into in the court below and the application under section 151 was dismissed summarily upon the ground stated by the Munsif that he could not, under the provision of section 151, give the defendants the relief which they sought. There was no decision as to whether the compromise was fraudulent or not in the miscellaneous application of the defendants under section 151 of the Civil Procedure Code and no *res judicata* can apply to a matter left undecided. The defendants in the present case stand on a firmer ground. They attack the compromise upon the ground of fraud. The learned Chief Justice, Sir Lawrence Jenkins, in the case referred to above, clearly stated that in the review question the allegation of fraud was negatived. In the present case the ground of fraud urged to impugn the validity of compromise by the court below has been upheld. The case will, therefore, be governed by the principle laid down by this court in the case of *Ramratan Singh v. Khublal Gope* (1). The defendants were quite competent to take the plea of fraud in order to avoid the compromise and fraud having been once established, the compromise is void and cannot stand.

The result is that the decision of the court below is affirmed and the appeal is dismissed with costs.

Appeal dismissed.