

**IN THE HIGH COURT OF JUDICATURE AT PATNA**  
**CIVIL REVISION No. 656 of 2010**

MD. ASLAM PARVEZ S/O Md. Amir Hassan Resident Of Mohalla Fakira Khan, P.S. Laheriasarai, District Darbhanga. ... .. Petitioner/s  
Versus

1. Md. Mohiddin S/O Late Md. Yasin Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
- 2.1. Mostt. Sakeela Wife of Late Nooruddin, Resident of Mohalla - Fakira Khan Bazar, Police Station - Laheriasarai, District- Darbhanga.
3. Md. Salauddin S/O Late Md. Yasin Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
4. Md. Haider S/O Late Md. Yasin Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
5. Md. Akhtar S/O Late Md. Yasin Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
6. Bibi Zarina Khatoon W/O Late Md. Yasin Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
7. Md. Hussain S/O Late Aziz Mother'S Name Most. Habiban Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
- 8.1. Anzum Rizwan Wife of Late Md. Rizwan, Resident of Mohalla - Fakira Khan Bazar, Police Station - Laheriasarai, District - Darbhanga.
- 8.2. Nazir Rizwan Son of Late Md. Rizwan Resident of Mohalla - Fakira Khan Bazar, Police Station - Laheriasarai, District - Darbhanga.
- 8.3. Faiza Rizwan D/o Late Md. Rizwan, Resident of Mohalla - Fakira Khan Bazar, Police Station - Laheriasarai, District - Darbhanga.
- 9.1. Bibi Farhat Naseem Wife of Late Md. Akram, Resident of Mohalla - Fakira Khan Bazar, Police Station - Laheriasarai, District- Darbhanga.
10. Md. Irfanullah S/O Late Nazirul Haque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
11. Shakila Khatoon W/O Late Nazirul Haque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
13. Rubi Khatoon Wife of Late Md. Farooque, Resident of Mohalla - Fakira Khan Bazar, Police Station - Laheria Sarai, District- Darbhanga.
13. Md. Araib Son of Late Md. Farooque, Resident of Mohalla - Fakira Khan Bazar, Police Station - Laheria Sarai, District- Darbhanga.
13. Rehan Moin Son of Late Md. Farooque, Resident of Mohalla - Fakira Khan Bazar, Police Station - Laheria Sarai, District- Darbhanga.
14. Md. Ladle S/O Late Md. Ustaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
15. Md. Haroon S/O Late Md. Mustaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
17. Bibi Guria D/O Late Md. Mustaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.



18. Bibi Najo D/O Late Md. Mustaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
19. Md. Asfaque S/O Late Abdul Razaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
21. Md. Usman S/O Late Abdul Razaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
22. Most. Mahmooda Khatoon W/O Late Md. Mustaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
23. Md. Sohail S/O Late Md. Mustaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
24. Md. Laddan S/O Late Md. Mustaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
25. Md. Seraz S/O Late Md. Mustaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
26. Md. Sahwaz S/O Late Md. Mustaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
27. Most. Anzum Ara W/O Late Md. Ali Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
28. Md. Aslam S/O Late Md. Ali Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
29. Bibi Mussarat D/O Late Md. Ali Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
30. Bibi Shabnam D/O Md. Ali Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
31. Md. Gauhar Ali @ Chand Son of Late Bibi Jaibun, Resident of Mohalla -  
1. Fakhira Khan Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District - Darbhanga.
31. Md. Belal Son of Late Bibi Jaibun Resident of Mohalla - Fakhira Khan  
2. Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District - Darbhanga.
31. Md. Munna Son of Late Bibi Jaibun Resident of Mohalla - Fakhira Khan  
3. Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District - Darbhanga.
31. Bibi Rajo Khatoon D/o Late Bibi Jaibun Resident of Mohalla - Fakhira  
4. Khan Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District - Darbhanga.
31. Bibi Gulshan Khatoon D/o Late Bibi Jaibun Resident of Mohalla - Fakhira  
5. Khan Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District - Darbhanga.
31. Bibi Farida Khatoon D/o Late Bibi Jaibun Resident of Mohalla - Fakhira  
6. Khan Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District - Darbhanga.
31. Bibi Raushan Khatoon D/o Late Bibi Jaibun Resident of Mohalla - Fakhira  
7. Khan Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District -



Darbhanga.

31. Bibi Nimmi Khatoon D/o Late Bibi Jaibun Resident of Mohalla - Fakhira
8. Khan Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District - Darbhanga.
31. Bibi Meri Khatoon D/o Late Bibi Jaibun, Resident of Mohalla - Fakhira
9. Khan Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District - Darbhanga.
31. Bibi Najma Khatoon D/o Late Bibi Jaibun, Resident of Mohalla - Fakhira
10. Khan Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District - Darbhanga.
31. Bibi Guria Khatoon D/o Late Bibi Jaibun, Resident of Mohalla - Fakhira
11. Khan Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District - Darbhanga.
31. Bibi Roja Khatoon D/o Late Bibi Jaibun Resident of Mohalla - Fakhira
12. Khan Bazar, Post Office - Lalbagh, Police Station - Laheria Sarai, District - Darbhanga.
32. Bibi Kausar D/O Late Abdur Razaque Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
33. Md. Firoz S/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
34. Bibi Shahnaz D/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
35. Bibi Alam D/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
36. Bibi Adam D/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
37. Md. Haider S/O Late Abul Hassan Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
38. Md. Jamshed Alam S/O Late Abul Hassan Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
39. Md. Mumtaz S/O Late Abul Hassan Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
40. Md. Imteyaz S/O Late Abul Hassan Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
41. Bibi Shahjadi D/O Late Abdul Hassan Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
42. Munni D/O Late Abul Hassan Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
43. Md. Shamim S/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
44. Md. Naseem S/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
45. Md. Wasim S/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.



46. Md. Jasim S/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
47. Md. Ashraf S/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
48. Md. Phool S/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
49. Bibi Hasna Bano D/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
50. Bibi Sajda Parween D/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
51. Bibi Najma Khatoon D/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
52. Bibi Ruksana Khatoon D/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
53. Bibi Zarina Khatoon W/O Md. Alam D/O Late Fuddin Mian Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
54. Md. Idris S/O Late Asghar Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
55. Md. Amir Hassan S/O Late Abdul Shakoor Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
56. Bibi Munni D/O Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
57. Shabana Parween D/O Md. Amir Hassan Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
58. Parween D/O Md. Amir Hassan Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
59. Ruksana Parween D/O Md. Amir Hassan Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
60. Yasmin Naz D/O Md. Amir Hassan Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
61. Daulat Jahan D/O Md. Amir Hassan Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
62. Safiur Rahman S/O Late Md. Hasim Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.
63. Bibi Jaibun Nisha W/O Late Md. Kalo Resident Of Mohalla Fakira Khan Bazar, P.S. Laheriasarai, District Darbhanga.

... .. Respondent/s

**Appearance :**

For the Petitioner/s	:	Mr. S.S. Dvivedi, Sr. Advocate Mr. Parth Gaurav, Advocate Mr. Ashutosh Pandey, Advocate
For the Respondent/s	:	Mr.



**CORAM: HONOURABLE MR. JUSTICE KHATIM REZA**  
**CAV ORDER**

37 20-12-2024

This revision application has been filed against the judgment and order dated 14.05.2010 passed by the District Judge, Darbhanga in Partition Appeal No. 13 of 2010 whereby, learned lower Appellate Court has rejected the memo of appeal filed under Order 41 Rule 1 & 2 of the Code of Civil Procedure at the time of admission itself.

2. It is admitted facts of the case that, Partition Suit No. 47 of 1964 was decreed on the basis of compromise against original defendant nos. 2, 3 & 4 and ex parte against defendant nos. 1, 5 & 6. Against the compromise decree, judgment debtor filed Miscellaneous Appeal as well as Partition Appeal. Both were dismissed. Against the dismissal of Miscellaneous Appeal, judgment debtor preferred S.L.P. before the Hon'ble Apex Court, which too was dismissed. Md. Mohiddin (respondent no. 1) filed Execution Case No. 17 of 2001 for executing the compromise decree. During the pendency of Execution Case No. 17 of 2001, opposite party no. 1 filed application dated 30.08.2007 to engross the compromise decree/preliminary decree on stamp paper and treat it as a final decree in which objection was filed by the judgment debtor that no execution case can proceed against the preliminary decree only. After



hearing the parties, the learned Munsif allowed the petition dated 30.08.2007 on 11.02.2010. On the same day, the petitioner filed an application dated 13.12.2007 to recall the order dated 13.12.2007 because the said order has been passed without giving opportunity of hearing to him. In that petition, petitioner also raised objection with regard to death of original party and further submitted that the execution case cannot proceed and any order passed therein, is nullity in the eye of law. It is further case of the petitioner that on his aforesaid application, the learned court *vide* its order dated 26.06.2008 held that because there was a compromise decree in as much as, partition has already been made on the basis of the same, it will be deemed to be final decree and therefore, the order of engrossment has been passed rightly. It is also pleaded that an application dated 30.08.2007 was filed on behalf of the plaintiff-decree holder, who was a party but, he died in the year 1995 praying to engross the aforesaid decree. The said application was filed on behalf of dead person. A supplementary petition was also filed and ultimately, the matter was heard on 11.02.2010 and prayer was allowed on the strength of an earlier order passed by him in Execution Case and again on 10.04.2010/12.04.2010, the office was directed to engross the decree dated 21.08.1968 on stamp.



Accordingly, the final decree was prepared on 25.02.2010 and seal & signed on 04.03.2010.

3. Aggrieved by the final decree dated 25.02.2010/04.03.2010 passed by the Munsif Ist, Darbhanga, appellant preferred Partition Appeal No. 13 of 2010 in the court of learned District Judge, Darbhanga.

4. Learned senior counsel submitted that without considering the facts and circumstances of the case, the learned District Judge dismissed the aforesaid appeal at the stage of admission itself on the ground that the appeal has not been filed against the judgment and further held that the memo of appeal has not been prepared in proper format under Order 41 Rule 1 & 2 of the Code of Civil Procedure.

5. It is further submitted that since compromise decree was passed ex parte against defendant nos. 1, 5 & 6, it is a partial compromise decree and cannot be treated to be final decree by engrossing stamps unless the determination of share of compromising party and contesting party is carved out by a Survey knowing Pleader Commissioner. It is further contended that the learned lower Appellate Court has assumed that the judgment has not been filed. It is well known that in final decree proceeding, the judgment in question, is the order by which



either the Commissioner's report is confirmed or the Court directs to prepare a final decree. In the present case, the Partition Suit No. 47 of 1964 has been decreed on the basis of compromise *vide* judgment and order dated 07.08.1968. On that basis, after engrossment on a stamped paper under Article 45 of the Stamp Act, 1889, the said decree is a final decree. Learned lower Appellate Court has wrongly dismissed the appeal, which is statutory right of the party.

6. On the other hand, learned counsel for the opposite party nos. 1, 3, 6 and 7 vehemently submitted that the petitioner has filed appeal according to Order 41 Rule 1 & 2 CPC where the judgment and decree has to be filed along with memo of appeal. The learned Appellate Court has rightly held that the memo of appeal has been filed without judgment. The compromise decree has been prepared on the basis of judgment dated 07.08.1968. The said compromise decree has been duly engrossed over stamp paper on the requisite value and after engrossment, the decree is final. Learned counsel for the opposite parties submitted that it is apparent from the record that the petitioner has not filed judgment of compromise which was passed on 07.08.1968 therefore, the memo of appeal is not entertainable in the eye of law.





7. Considering the submissions made by the parties and materials on record as well as impugned order, it is admitted fact that the suit for partition though initially contested by defendant nos. 2, 3 & 4 ended into a compromise *vide* judgment dated 07.08.1968 on the basis of which, a compromise decree was passed on 21.08.1968. However, the judgment dated 07.08.1968 was passed ex parte against the defendant nos. 1, 5 & 6 which was affirmed upto the Hon'ble Supreme Court. From perusal of the judgment/order passed in Partition Suit No. 47 of 1964 dated 07.08.1968 it appears that, learned Trial Court ordered that the suit be decreed on compromise as against defendant nos. 2, 3 & 4 and ex parte as against defendant nos. 1, 5 & 6 on the same terms as stated in the joint petition of compromise and, the same shall be incorporated in decree on the application of decree holder for preparation of final decree by engrossing the preliminary decree on stamp paper, which was allowed on 11.02.2010. Accordingly, final decree was prepared on 25.02.2010 and sealed & signed on 04.03.2010.

8. The distinction between preliminary and final decree is this: a preliminary decree merely declares the rights and shares of the parties and leaves room for some further inquiry to be held and conducted pursuant to the directions



made in the preliminary decree which inquiry having been conducted and the rights of the parties finally determined a decree incorporating such determination needs to be drawn up which is the final decree.

9. From perusal of the decree dated 07.08.1968 and the contents of the compromise application, it would appear that the property was partitioned by metes and bounds; not only the shares but the property actually falling to the share of each of the parties were defined and given to the party entitled thereto and adhered to the compromise petition. No further enquiry was at all necessary. In true sense, it was not preliminary decree but it was the final decree in the suit. A compromise decree in a partition suit allotting specific portion to the parties is a final order for effecting partition. There being already a final decree, the only thing that remained to be done was to engross it on a stamped paper under Article 45 of Stamp Act, 1889. The decree to be engrossed on the stamp will bear the date of decree. The only effect of engrossment of the decree on stamped paper would be that it will be rendered legally effective which it is not until so engrossed. This view of the Division Bench of Patna High Court in **Raghubir Sahu v. Ajodhya Sahu and Ors.**, (AIR 32 (1945) Patna, 482) has been affirmed by the Apex



Court in **Renu Devi vs. Mahendra Singh and Ors** reported in **AIR 2003 SC 1608**. The decree dated 07.08.1968 being a decree effecting partition by meets and bounds ought to have been engrossed on requisite stamp paper. The deficiency stood supplied by the same being rewritten on stamped papers on 25.02.2010 and sealed and signed on 04.03.2010.

10. On consideration of aforesaid authority laid down by the Hon'ble Supreme Court, in my view, accepting the compromise petition and direction to prepare the decree on terms of compromise petition which shall be part of the decree is legally justified. It is apparent from the records of the case of the parties that the Partition Appeal No. 13 of 2010 has been preferred only against decree and not judgment, which is not permissible or sustainable under Order 41 Rule 1 CPC.

11. In the aforesaid background, this Court does not find that the learned lower Appellate Court has committed error of jurisdiction and illegality in passing the impugned order.

12. This Civil Revision application is accordingly dismissed.

**(Khatim Reza, J)**

Sankalp/-

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