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Court : Patna

Decided On : Mar-14-2014

Judge : Amaresh Kumar Lal

Appeal No. : Miscellaneous Appeal No. 155 of 2007

Appellant : Awadesh Kumar Singh @ Awadesh Kumar Singh and Another

Respondent : Mithilesh Singh and Others

Judgement :

The plaintiffs-appellants have preferred this appeal against the judgment and decree dated 15.03.2007 passed by the learned Additional District Judge, F.T.C.IV, Saran at Chapra in Title Appeal No.28/2005 by which the judgment and decree of the trial court i.e. Munsif-II, Saran at Chapra dated 18.08.2005 passed in Title Suit No.73/1994 has been set aside and the case has been remanded to the trial court to decide the case afresh in the light of the observation made in point nos. 1, 2 and 3 as mentioned in Paragraph 12 of the impugned judgment.

The plaintiffs-appellants filed Title Suit No.73/1994 in the court of learned Munsif for declaration of their right, title and recovery of possession on the suit lands.

The case of the contesting defendants is that no deed of gift was executed by Ram Narayan Singh in favour of his daughters Rambali Devi and Deepa Kuer.

Rajbali Devi never sold her share to the plaintiffs. Deepa Kuer did not execute a registered deed of mortgage and the mortgagee never came in possession. The main defence of the defendants is that the land revenue of the disputed land was due against Tarkeshwar Singh and others and for the realization of the rent, rent suit no.816/1944 was filed against the plaintiff nos. 1 and 2 with Tarkeshwar Singh in the court of Munsif-1, Chapra. The rent suit was decreed and the ex-landlord filed Execution Case No.456/1946 against the plaintiffs. As the judgment debtor could not deposit the rent, the land was auction sold in execution proceeding and ex-landlord purchased the land and the land was settled orally by the ex-landlord in favour of the defendants and the rent receipts were issued.

After framing of the issues by the trial court, documentary as well as oral evidence was adduced on behalf of both the parties. Thereafter, learned Munsif passed the judgment dated 18.08.2005 declaring title of the plaintiffs over the land in dispute. Against that judgment, Title Appeal No.28/2005 was filed by heirs of defendant no. 3 and defendant nos. 7 to 9.

After hearing both the parties, the appellate court i.e. Additional District Judge has considered the evidence as well as arguments on behalf of both the parties and has framed the issues for the determination before the appellate court as mentioned in paragraph 12 of the impugned Judgment, which is as follows :

- (i) Whether the judgment and decree passed by the learned lower court is justified, legal and sustainable in law?
- (ii) Whether the judgment and decree are nullity due to non-substitution of the heirs of the defendant no.2 (Ka) and 4 (Kha).
- (iii) Whether the suit is barred by the principles of res-judicata?

Point No. (i)- The appellate court has held that the trial court has committed errors of law and facts and should have considered these facts before arriving at the conclusion of his finding.

Point no.(ii) has been decided that the judgment and decree has been passed against a dead person and the same will be nullity under law because the

judgment and decree passed by the learned lower court has already abated the suit.

Point no. (iii) has also been decided against the plaintiffs holding that the claim of the plaintiffs on the suit land is hit by principles of res-judicata.

The learned counsel for the appellants has submitted that there is sufficient material on the record to decide the appeal by the learned appellate court. There is no finding of the appellate court that the materials were insufficient to decide the appeal and there is no finding of mistrial. So far the judgment against the dead person due to non-substitution of heirs of defendant no. 2 (Ka) and 4 (Kha) is concerned, it is apparent from the plaint of the title suit that Ganga Dayal Singh was defendant no.2. After his death, his heirs including his widow and son were substituted. Similarly, defendant no.4 Radha Raut died during the pendency of the trial and his heirs were also substituted. As such, there is no question of abatement. Similarly, the heirs of widow of Radha Raut were on the record as mentioned above. Only her name was to be deleted. The estate of the deceased were already represented by their heirs, as such, the finding of the appellate court that the judgment has been passed against the dead person and as such is nullity, is not correct.

The heirs of defendant no. 2 (ka) and 4 (kha) have not filed any appeal against the judgment and decree passed by the learned Munsif.

Since there was sufficient material on the record, the learned appellate court should not have remanded the case before the learned Munsif and the appeal should have been decided under the provisions of Order 41, Rule 24 of the Code of Civil Procedure. In support of his contention, he has relied upon a decision in the case of Ashwinkumar K. Patel Vs. Upendra J. Patel and Ors. reported in AIR 1999 SC 1125.

Since the appellate court has not given any finding that materials are not sufficient and the appellate court is not in a position to decide the issues involved, as such, no order of remand should have been passed. In support of his contention, he has relied upon a decision in the case of Laxmi Mahto and Ors. Vs. Leela Devi @

Bindeshwari Devi and Ors. reported in 2014 (1) PLJR 358.

The learned counsel for the respondents has submitted that the appellate court has considered the evidence of both the parties and has framed the issues for the guidance of the Munsif to decide the matter in view of points mentioned in paragraph 12 of the impugned judgment. He has further submitted that in view of Section 107 of C.P.C. the appellate court has power to frame issue and refer them for trial, as such, the appellate court has exercised its power in right prospect and no interference by this Court is required.

After hearing the learned counsel for both the parties and on perusal of record, it appears that the submission of the learned counsel for the appellants is correct.

It further appears that there is no finding by the learned appellate court that the evidence adduced on behalf of both the parties is insufficient to decide the matter nor any parties has ever filed any petition showing their eagerness to adduce any oral or documentary evidence. Both the parties have adduced their oral as well as documentary evidence.

Considering the facts and circumstances, it appears that remand of the case to the trial court by the learned appellate court was uncalled for. Similar matters have been considered by the Honble Supreme Court in the case of Ashwinkumar K. Patel Vs. Upendra J. Patel and Ors. reported in AIR 1999 SC 1125 (Supra) wherein it has been held that the High Court should not ordinarily remand a case under Order 41 Rule 23 C.P.C. to the lower court merely because it considered that the reasoning of the lower court in some respects was wrong. It is better to quote paragraph 7 of the judgment.

œ7. In our view, the High Court should not ordinarily remand a case under Order 41 Rule 23 C.P.C. to the lower court merely because it considered that the reasoning of the lower Court in some respects was wrong. Such remand orders lead to unnecessary delays and cause prejudice to the parties to the case. When the material was available before the High Court, it should have itself decided the appeal one way or other. It could have considered the various aspects of the case mentioned in the order of the trial court and considered whether the order of the

trial court ought to be confirmed or reversed or modified. It could have easily considered the documents and affidavits and decided about the prima-facie case on the material available. In matters involving agreements of 1980 (and 1996) on the one hand and an agreement of 1991 on the other, as in this case, such remand orders would lead to further delay and uncertainty. We are, therefore, of the view that the remand by the High Court was not necessary?.

Considering the facts and circumstances, in my opinion, the learned appellate court should decide the appeal on its own merit without remanding the case to the trial court.

For the reasons mentioned above, I do not find any valid reason for remanding the case to the trial court. Accordingly, the impugned judgment and decree passed by the learned appellate court are set aside and the matter is remanded to the learned Additional District Judge, F.T.C.IV, Saran at Chapra/court concerned to decide the matter in accordance with law.

In the result, this appeal is allowed.

No order as to costs.

Let the lower court records be sent down to the court below.

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