

Sk. Kamruddln and ors. Vs. Sk. Ajimuddln and ors.

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SooperKanoon Citation : sooperkanoon.com/122239

Court : Patna

Decided On : Mar-19-1996

Judge : Gurusharan Sharma, J.

Appeal No. : Civil Revision No. 442 of 1990 (R)

Appellant : Sk. Kamruddln and ors.

Respondent : Sk. Ajimuddln and ors.

Disposition : Application Allowed

Prior history : Gurusharan Sharma, J. 1. The plaintiffs-petitioners filed Partition Suit No. 99 of 1980 'for' partition of their 1/4th share in the properties detailed in Schedule B to the plaint. 2. According to the plaintiffs, Sk. Rojan had four sons, Sk. Hassan Ali, Sk. Amar Ali, Sk. Kigan and Sk. Pachu. The plaintiffs are the four sons and one daughter of Sk. Panchu, whereas the defendants 1 to 8 are the descendants of Sk. Hassan Ali the defendants 9 to 12 and 19 are descendants of Sk. Amar Ali and the de

Judgement :

Gurusharan Sharma, J.

1. The plaintiffs-petitioners filed Partition Suit No. 99 of 1980 'for' partition of their 1/4th share in the properties detailed in Schedule B to the plaint.

2. According to the plaintiffs, Sk. Rojan had four sons, Sk. Hassan Ali, Sk. Amar Ali, Sk. Kigan and Sk. Pachu. The plaintiffs are the four sons and one daughter of Sk. Panchu, whereas the defendants 1 to 8 are the descendants of Sk. Hassan Ali the defendants 9 to 12 and 19 are descendants of Sk. Amar Ali and the defendants 13 to 18 are descendants of Sk. Bigan, Defendant No. 13, Sk. Dilawar is said to be the son of Sk. Bigan from his first wife Pariba.

3. According to the defendants 14 to 17, Sk. Rojan had five sons and the plaintiffs omitted one of his sons, namely Sk. Rahim, who was married with Pariba and died issue-less. Thereafter, Pariba got a son Sk. Dilawar from one Sk. Sahijan. Neither Pariba was the first wife of Sk. Bigan, nor Sk. Dilwar is his son and both of them had no interest in the suit properties.

4. By judgment and preliminary decree dated 14.5.19986, the suit was decreed and Sk. Dilwar was held to be the son of Sk. Bigan and hence entitled to a share.

5. Against the said preliminary decree, the defendant No. 14 to 17 have preferred title Appeal No. 32 of 1996 before the Judicial Commissioner, Ranchi. In that said Appeal on 26.3.1990, they filed a petition under Order 41, Rule 27 of the Code of Civil Procedure to call for and admit the entries in Nikah Registers relating to the marriages of the said Pariba and her son Sk. Dilwar as additional evidence in the Appeal. A rejoinder thereto was filed on 28.5.1990. By the impugned order dated 19.7.1990, the learned Third Additional Judicial under Order 41, Rule 27 of the Code.

6. In the petition under Order 41, Rule 27 of the Code, it was alleged that they recently came to know about the marriage of Pariba with Sk. Sahijan in the year 1908 and that of he ion Sk. Dilwar with Sahidan in the year 1931 and the entries made there for by the Kazi in the Nikah Registers, Accordingly, they filed the petition for admitting those entries as additional evidence.

7. From the very beginning, it, was contended by them that Pariba was not the first wife of Sk. Bigan, She was the wife of his brother Sk. Rahim and after the death of Sk. Rahim. Shu1 get a son a Sk. Dilwar from Sk. Sahijan and re-married with him. They, however, failed to prove the same in course of the trial.

8. In the petition under Order 41, Rule 27, they have not come up with a case that notwithstanding the exercise of due diligence either such evidence was not within their knowledge or could not, after the exercise of due diligence, be produced by them At the time when the decree appealed against was passed. They have not even disclosed their sources of knowledge about the alleged entries in the Nikah Registers after disposal of the suit. The defendant appellants have failed to show that the entries in the Nikah Registers could not be produced, inspite of their reasonable diligence, for use at the trial. In my opinion, it was necessary for them to show that they exercised due diligence and/or the evidence was not within their knowledge and for the court to indicate that it was of opinion that the evidence could not be produced notwithstanding the exercise of due diligence.

9. Certainly, the provisions of Order 41 Rule 27 of the Code are not intended to allow the litigant, who has been unsuccessful in the lower court, to patch up the weak parts of his case and fill up the omission in the court of appeal. It is only where, the appellate court required it i.e. found it needful to pronounce judgment or for any other substantial cause, it can admit additional evidence. The requirement must be of the court upon its appreciation of evidence as it stands. The learned Additional Judicial Commissioner has passed the impugned order admitting additional evidence before, examination of the evidence on the record and, consequently, before reaching on a decision that the evidence as it stood disclosed lacuna/which required to be filled up for pronouncing its judgment. In my opinion, the learned Additional Judicial Commissioner, in the circumstances stated above, was not justified in admitting additional evidence.

10. In the result, the impugned order dated 19.7.1990 passed by the Third Additional Judicial Commissioner, Rahchi, in Title Appeal No. 32 of 1986 is set aside and this Revision application is allowed. However, there shall be no order as to costs.