

Laldhari Mistri and ors. Vs. Vijay Kumar

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SooperKanoon Citation : sooperkanoon.com/126708

Court : Patna

Decided On : Aug-31-2005

Judge : J.N. Bhatt, C.J.

Acts : [Code of Civil Procedure \(CPC\) , 1908](#) - Sections 115 - Order 9, Rule 13

Appeal No. : Civil Revision No. 1139 of 2004

Appellant : Laldhari Mistri and ors.

Respondent : Vijay Kumar

Advocate for Def. : S.S. Dwivedi, Sr. Adv., Kundan Kumar and R.S. Dwivedi, Adv.

Advocate for Pet/Ap. : Triloki Nath Maitin and Ramadhar Singh, Adv.

Disposition : Petition dismissed

Judgement :

J.N. Bhatt, C.J.

1. This revision petition is directed against the impugned order passed by the appellate Court in Misc. Appeal No. 1 of 2002 dated 29.5.2004, an appeal against the order of the trial Court dated 11.12.2001 in Miscellaneous case No. 16 of 1994 arising out of an ex parte order and judgment dated 9.6.1987 passed in Title suit No. 14 of 1986, by invocation of the provisions of Section 115 of the

Code of Civil Procedure, 1908 (in short 'the Code').

2. The learned counsels for the parties are heard. The impugned order passed by the trial Court as well as the appellate Court are perused especially along with the provisions of Section 115 of the Code pertaining to the powers of revision as well as Order IX Rule 13 of the Code along with the second proviso.

3. The following dates are self eloquent:-

DATE FACTS

9.6.1987 Suit for specific performance of contract to sell, against Hira

Mistri, bearing T.S. No. 14 of 1986 was decreed ex parte

19.12.1987 Rest money was deposited by the decree holder.

4.02.1988 Sale deed executed by Court.

29.12.1969 Delivery of possession effected.

6.09.1990 Hira Mistri died leaving behind Jhari, Laldhari (petitioner No.

1), Sallo, and Khokhia Devi. Upendra Sharma (petitioner No.

2) is the son of Jhari Mistri.

26.2.1993 Two vakalatnamas were filed by Jhari Mistri's lawyer, Prem

Ranjan Sinha,

2.3.1993 One for inspection of T.S. No. 14 of 1986 and the other for

inspection of Execution Case No. 12 of 1987.

27.2.1993 Both the cases were inspected (Annexure-A)

2.3.1993 Series of the counter affidavit filed on behalf of the opposite party).

7.12.1994 Petition was filed by petitioner No. 1 and Jhari Mistri for

withdrawal of Money in T.S. No. 14 of 1986.

7.2.1994 Prayer refused by the Court.

1.3.1994 Petitioner No. 1 and Jhari filed petition for withdrawal of the amount in Execution case No. 12 of 1987.

4. Successfully the revision could be brought against the impugned order in terms of the provisions of Section 115 of the Code provided the Court taking up such revision is satisfied that (a) the Court having passed the impugned order has exercised a jurisdiction not vested in it by law; or (b) has failed to exercise a jurisdiction so vested; or (c) has acted in the exercise of its jurisdiction illegally or with material irregularity. Again, the provisions of Order IX, Rule 13 of the Code are very important. Of course, they provide for setting aside the ex parte decrees, if the Court is satisfied that the summons was not duly served, or that the party was prevented by any sufficient cause from appearing when the suit was called on for hearing. It is also material to note that as per the second proviso of Order IX Rule 13 of the Code, no Court shall set aside a decree passed ex parte merely on the ground that there has been an irregularity in the service of summons, if it is satisfied that the defendant had notice of the date of hearing and had sufficient time to appear and answer the plaintiff's claim.

5. The aforesaid facts could not satisfy the requisite satisfaction of the Court for setting aside the ex parte decree.

6. The impugned order of the trial Court, affirmed by the lower appellate Court in appeal against that order could not be said to be in any way falling within the aforesaid parameter empowering this Court to exercise revisional jurisdiction under Section 115 of the Code.

7. In the result, the petition must fail. Accordingly the petition shall stand dismissed at this stage itself but without costs.