

Bihari Lal Meena Vs.

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Court : Rajasthan

Decided On : Jun-30-2011

Judge : Narendra Kumar Jain, J.

Acts : Indian Succession Act - Section 372

Appeal No. : S.B. CIVIL REVISION PETITION NO.65 of 2011

Appellant : Bihari Lal Meena

Advocate for Pet/Ap. : Mr. Vimal Chaudhary, Adv

Judgement :

1. Heard the learned counsel for petitioner.
2. Petitioner has preferred this revision petition challenging the impugned order dated 10.03.2011 passed by the District Judge, Jaipur Metropolitan City in Case No.225/2011, whereby his application for restoration of Case No.3475/2009 has been dismissed.
3. Learned counsel for petitioner submitted that Counsel for petitioner was present before lunch in the trial Court on 03.12.2010, but when he came in the Court after lunch, then he came to know that matter has been dismissed in default. He moved an application for restoration of the case on the same day i.e. 03.12.2010, but the learned trial Court dismissed the same vide order dated 10.03.2011, which is per se illegal and against the principle of natural justice, therefore, the said order may

be set aside and the matter may be remanded back to the trial Court for fresh decision of the case on merits.

4. It appears that petitioner moved an application before the trial Court for grant of succession certificate in respect of immovable property left by his wife under Section 372 of the Indian Succession Act, the said application was pending for applicant's evidence, the matter was listed on 03.12.2010. Learned District & Sessions Judge dismissed the application observing that seven opportunities have already been granted for evidence since 08.02.2010 and Counsel for applicant is not present, therefore, the same is dismissed in default. Thereafter, an application was moved for restoration of the case on the same day, but the same has been dismissed vide order dated 10.03.2011, which is under challenge in this revision petition.

5. I have considered the submissions of the learned counsel for petitioner in the light of reasons assigned by the trial Court for rejecting the application for restoration of the case.

6. From the order dated 03.12.2010, it is clear that Counsel for applicant was not present in the Court, therefore, case was dismissed in default. When application for restoration of the case was filed on the same day i.e. 03.12.2010, then the matter should have been restored, but the learned trial Court committed an illegality in not restoring the case on the ground that seven opportunities had already been granted to adduce evidence. It was a matter relating to restoration of the case, therefore, the learned trial Court was required to see whether non appearance of applicant or his Counsel was bonafide or not. If the reason assigned was reasonable, then the matter should have been restored, in the interest of justice. If the applicant had failed to produce evidence, then on subsequent date the matter could have been dismissed on merits, but it was not desirable on the part of the learned trial Court to dismiss the application for restoration itself.

7. In these circumstances, I am of the view that the learned trial Court committed an illegality in passing the impugned order, which is liable to be set aside and the same is hereby set aside.

8. Consequently, the revision petition is allowed. Impugned order dated 10.03.2011 as well as 03.12.2010, both, are set aside. Application for restoration of the case is allowed. Accordingly, Case No. 3475/2009 is restored to its original number. Learned District & Sessions Judge, Jaipur Metropolitan City is directed to decide the case, afresh, on merits in accordance with law after affording an opportunity to petitioner to adduce his evidence.

9. Petitioner is directed to appear before the concerned Court on 22.07.2011.

10. Registry is directed to send a copy of this order to the concerned Court for compliance.

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