

Smt. Pushpa Devi Vs. Ramji Pd. and ors

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Court : Patna

Decided On : May-12-2012

Appellant : Smt. Pushpa Devi

Respondent : Ramji Pd. and ors

Judgement :

IN THE HIGH COURT OF JUDICATURE AT PATNA Civil Review No.492 of 2011
In (FA 77/1986) Smt. Pushpa Devi Versus Ramji Pd. & Ors
----- 03. 12.01.2012. The learned counsel, Smt. Anjana Mishra appearing on behalf of the petitioner submitted that First Appeal No.77 of 1986 was filed by Ramji Prasad against the Judgment and Decree passed by the trial Court in title suit No.235 of 1974 / 1 of 1985. The said suit was filed by the plaintiff-appellant for partition of the Schedule A property. The suit was dismissed against that Judgment and decree, the appellant filed the appeal. During the pendency of the appeal, the sole respondent died and in his place one Smt. Kusumlata was substituted. The said Kusumlata had gifted the property by registered gift deed in favour of the present petitioner, Smt. Pushpa Devi and, therefore, on the basis of the said gift deed, the petitioner filed an application under Order 1 Rule 10 of the Code of Civil Procedure for being impleaded as a respondent in First Appeal being I.A. No.3574 of 2006. After hearing the parties by terms of order dated 27.11.2008, this Court directed that this application of the petitioner for being impleaded as party respondent shall be heard at the time of final hearing of the appeal. In other words, the petitioner was not added as respondent in the appeal. Prior to hearing of the First Appeal, a compromise was

filed between the parties and by terms of order dated 16.11.2011, the First -2- Appeal No.77 of 1986 was disposed of in terms of compromise and it is held that this First Appeal is decreed in terms of compromise, i.e., I.A. No.2411 of 2010 and also it was directed to prepare the final decree to which the compromise application shall form a part. According to the learned counsel, the trial Court held that the appellant is not the son of Ram Krishna Prasad and, therefore, the appellant had no title or interest in the property of Ram Krishna Prasad. On the death of Ram Krishna Prasad, one Smt. Kusumlata was substituted in place of Ram Krishna Prasad who also died issueless. The said Kusumlata has gifted the property to present petitioner. On the death of Smt. Kusumlata, the daughter of appellant was substituted by playing fraud and the father and daughter compromise the appeal. According to the learned counsel, therefore, this compromise decree has been obtained fraudulently and they have partitioned the property of Ram Krishna Prasad without their being right title and interest. In fact the present petitioner is the rightful owner of the part of the suit property which has been gifted to her by Smt. Kusumlata, the wife of brother of Ram Krishna Prasad. As stated above, the application filed by the petitioner under Order 1 Rule 10 of the Code of Civil Procedure was not allowed. In fact, it was directed that the same shall be heard at the time of final hearing of the appeal. Therefore, the petitioner was not the respondent in the appeal. At the time of hearing in the compromise application, -3- the respondent never appeared and objected the recording of compromise. In such circumstances, it can safely be held that the petitioner was neither party to the appeal nor she was heard at the time of recording the compromise. In such circumstances, in my opinion, any finding regarding merit of the appeal or disposal of the appeal and / or preparation of final decree will not be binding on the present petitioner and the same shall never affect the right title, interest of the petitioner. However, whatever question that is being raised by the petitioner in this review application is being raised for the first time and, therefore, in review application, this Court is not in a position to record finding of fact which can only be recorded on the basis of oral as well as documentary evidences. Therefore, on this point raised by the petitioner the order of recording compromise cannot be reviewed. If at all the petitioner is desirous of declaration of title and/ or for declaration of confirmation of possession, if she is in possession and / or for

recovery of possession if she is dispossessed, she may approach appropriate forum by initiating appropriate proceeding and if that proceeding is initiated, the concerned Court shall decide the same according to law on merit. Thus, this Review Application is accordingly disposed of. Sanjeev/- (Mungeshwar Sahoo,J.)

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