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(2002) 04 PAT CK 0040

In the Patna High Court

Case No : Civil Revision No. 235 of 2002

Abhinandan Jha @ Abhed Jha and Another — APPELLANT

Vs

Anant Mishra and Others — RESPONDENT

Date of Decision : 22-04-2002

Acts Referred:

Citation : (2002) 04 PAT CK 0040

Final Decision : Dismissed

Judgement

Nagendra Rai, J.—The Plaintiffs are the Petitioners against the order dated 25.1.2002 passed by Munsif, 1st, Madhubani in Title Suit No. 39 of 2001 deciding the preliminary issue and holding that the suit is barred by principle of res judicata.

2. A preliminary objection has been raised by the opposite parties with regard to maintainability of the civil revision application.

3. The facts necessary for disposal of the present application are that the Defendant opposite parties (1st party) filed a suit against the Plaintiffs of present suit and another and that suit was decreed ex parte. The Petitioners filed Miscellaneous Case No. 11 of 1999 under Order IX, Rule 13 of the CPC (hereinafter referred to as the Code) for setting aside the ex parte decree but the same was dismissed and the said order was upheld in Miscellaneous appeal. Thereafter, the present suit has been filed by the Plaintiffs-Petitioners. The Defendants opposite parties raised an objection with regard to maintainability of the suit and preliminary issue was framed and the Court below held that the suit is barred by res judicata.

4. According to learned Counsel for the opposite-parties, once the suit has been disposed of on the ground of its being barred by res judicata the order falls within the definition of decree as defined u/s 2(2) of the Code and as such the appeal will lie against the said order and the revision is not maintainable u/s 115 of the Code.

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5. Learned Counsel appearing for the Petitioners on the other hand submitted that the civil revision application is maintainable. In support of his submission he relied upon a judgment of this Court in the case of Sri Awadh Kishore Singh and Another Vs. Sri Brij Bihari Singh and Others as well as the decision of the Supreme Court recent being in the case of Ratansingh Vs. Vijaysingh and Others,

6. In my view, none of the decisions cited by learned Counsel for the Petitioners is applicable in this case. In the case of Brij Bihari Singh (supra), a Division Bench of this Court held that if an issue has been decided that will amount to be a case decided but further held that the order will be challenged in Civil Revision only provided no appeal thereto lies against the said order.

7. So far the case of Ratan Singh (supra) is concerned that was a case where the appeal was dismissed on technical ground and the Apex Court held that when the appeal is dismissed on technical ground like limitation etc., then the order of the appellate court is not a decree.

8. Such is not the position here. The decree has been defined u/s 2(2) of the Code and it provides inter alia that any final adjudication by Court dealing with the matter conclusively deciding the rights of the parties with regard to all or any of the matters in controversy will be a decree.

9. The question whether the suit is barred by res judicata was a matter in controversy before the Court below and it has decided the said controversy and the suit was held to be not maintainable on the said ground. The said decision, in my view, is a decree. In this connection, reference may be made to the two decisions of this Court Rameshwar Thakur and Others Vs. Smt. Bhagwati Devi and Others, and Ram Barai Bhagat and Others Vs. Munni Lal Singh and Others,

10. Thus, in my concluded opinion, the revision application is not maintainable and it is dismissed as such.

11. However, the Petitioners, if so advised, may prefer an appeal against the said order within a period of one month from today and in case appeal is filed along with limitation petition, the appellate court will consider the question of limitation after taking into consideration the fact that under a bonafide legal advice, the revision application was filed before this Court.

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