

(2006) 12 PAT CK 0020
In the Patna High Court
Case No : Civil Revision No. 1385 of 2004

Baidyanath Bhagat and Others

APPELLANT

Vs

Kamaldeo Bhagat and Others

RESPONDENT

Date of Decision : 01-12-2006

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (2007) 1 PLJR 224

Hon'ble Judges : Chandramauli Kr. Prasad, J

Bench : Single Bench

Advocate : Umakant Shukla, for the Appellant; Suman Kumar, for the Respondent

Final Decision : Dismissed

Judgement

Chandramauli Kr. Prasad, J.—This revision is directed against the order dated 23.7.2004 passed by the District Judge, Motihari, East Champaran dismissing Title Appeal No. 24 of 2003, being barred by limitation. Plaintiffs-opposite party Nos. 1 to 4 filed Partition Suit No. 81 of 1988 for partition of the property and carving out its share. By judgment and decree dated 31.1.1991 same was dismissed. Aggrieved by the same, plaintiffs preferred Title Appeal No. 26 of 1991 and the appellate court allowed the appeal, set aside the judgment and decree dated 31.1.1991 and remitted the matter back to the trial court for consideration afresh. Thereafter the relief sought for by the plaintiff was granted by judgment and preliminary decree dated 17.10.1996. Defendant 1st party aggrieved by the same preferred Title Appeal No. 2 of 1997, which, it is common ground, is pending for hearing.

2. During the pendency of the aforesaid appeal, plaintiff-decree holder took steps for preparation of final decree. According to the defendant 1st party-petitioners, notice of the said proceeding was given to one Mr. Parmanand Dwivedi, who was representing them before the trial court before the remand of the suit by the appellate court. According to the defendant 1st party after the decree dated

31.1.1991 was set aside by the appellate court by judgment and decree dated 17th of October, 1996, Mr. Vidya Kant Dubey appeared on their behalf, but no notice of the final decree proceeding was given to him. Ultimately the final decree was prepared on 2.3.2001 and aggrieved by the same defendant 1st party filed Title Appeal No. 24 of 2003 with an application u/s 5 of the Limitation Act for condoning the delay in filing the appeal. The learned Judge finding that the appeal has been filed beyond the period of limitation of 710 days and no sufficient cause having been shown dismissed the limitation application and consequently the title appeal.

3. Aggrieved by the same, defendant 1st party-petitioners have preferred this application.

4. Mr. Shukla, appearing on behalf of the petitioners contends that no notice having been given to the Counsel for defendant 1st party in the final decree proceeding, defendant 1st party did not know about the final decree proceeding and they knew about it only when final decree was put to execution. This, according to Mr. Shukla, is sufficient cause to condone the delay in filing the appeal.

5. Mr. Suman Kumar, appearing on behalf of plaintiffs-opposite party Nos. 1 to 4, however, submits that in fact defendant 1st party-petitioners had filed application and their advocate Shri Vidya Kant Dubey appeared on their behalf in the said final decree proceeding. Mr. Kumar, therefore, contends that the plea of the defendant 1st party that they were not aware of the final decree proceeding and ultimately the final decree and they could know about the same only after same was put to execution is absolutely untrue.

6. Having appreciated the rival submissions, I do not find any substance in the submission of Mr. Shukla.

7. From the record, it appears that Shri Vidya Kant Dubey appeared on behalf of defendant 1st party in the final decree proceeding and, as such, it cannot be said that they were not aware of the final decree proceeding. In my opinion, petitioners have not shown sufficient cause for condoning the delay in filing the title appeal and the learned Judge did not commit any jurisdictional error in holding that the appeal is barred by limitation and dismissing the same accordingly.

8. In the result, I do not find any merit in the application and it is dismissed accordingly. No Cost.