
(2008) 09 PAT CK 0119
In the Patna High Court
Case No : SA No. 97 of 2006

Bihar State Electricity Board and Another APPELLANT
Vs
Ram Deo Prasad Singh and Others RESPONDENT

Date of Decision : 22-09-2008

Acts Referred:

Bihar Reorganisation Act, 2000 — Section 89, 89(1)
Civil Procedure Code, 1908 (CPC) — Order 41 Rule 11, Order 9 Rule 2, Order 9 Rule 3,
Order 9 Rule 4, 11

Citation : (2008) 09 PAT CK 0119

Hon'ble Judges : S.N. Hussain, J

Bench : Single Bench

Advocate : Chittaranjan Singh and Vinay Kirti Singh, for the Appellant; S.S. Dvivedi and B.K. Bariar, for Respondents No. 1 to 10, for the Respondent

Final Decision : Dismissed

Judgement

This Judgment has been overruled by : Bihar State Electricity Board and Another Vs. Ram Deo Prasad Singh and Others, (2011) 6 CTC 457 : (2011) 10 SCALE 177 : (2011) 5 UJ 3305

S.N. Hussain, J.—Heard learned Counsel for the parties.

2. This second appeal has been filed by the defendants-appellants-appellants, namely, Bihar State Electricity Board and its Chairman against the judgment and decree of affirmance.

3. The matter arises out of Title Suit No. 95 of 1979 (28 of 1981) which was filed by the plaintiffs-respondents- respondents 1st set for declaration that the order of their dismissal dated 11.11.1975 passed by the defendants-appellants was bad, illegal, inoperative and consequently the plaintiffs be declared to have continued in service since the date of their dismissal.

4. The said suit was decreed on contest with cost by the learned Additional Munsif-5, Patna by judgment and decree dated 29.08.1981, which was

challenged by the defendants-appellants in Title Appeal No. 147 of 1981 (62 of 2004). The said title appeal was dismissed on contest with cost by the learned Additional District Judge-cum-Fast Track Court No. 2, Patna by his judgment and decree dated 18.01.2006. Against the aforesaid judgments and decree of the learned courts below the instant second appeal has been filed by the defendants.

5. Learned Counsel for the appellants has raised three questions claiming to be substantial questions of law for being considered in the instant second appeal, namely:

(i) Whether the instant suit was maintainable in view of Order-9 of the CPC (hereinafter referred to as "the Code" for sake of brevity)?

(ii) Whether the suit was barred by law of limitation?

(iii) Whether the learned lower appellate court had the jurisdiction to hear the title appeal after coming into force of the Bihar Reorganisation Act, 2000 (hereinafter referred to as "the Act" for the sake of brevity)

6. So far the first question is concerned, Order-9 Rule-4 of the Code specifically provides that where a suit is dismissed under Rule 2 or Rule 3, the plaintiff may bring a fresh suit or he may apply for an order to set the dismissal aside. In the instant case it was alleged that Title Suits No. 65 of 1975, 66 of 1975, 67 of 1975 and 72 of 1975 were filed before the Munsif, Hazaribagh but the same were dismissed for default, but the said claim of the defendants was denied by the plaintiffs. However, the learned courts below have specifically found that Ext.-G and E series show that some suits were filed in the court of Munsif, Hazaribagh in the name of the plaintiffs in which the court of Munsif, Hazaribagh had passed an order for dismissing the suits in default but neither the plaintiffs signatures on the plaint or on the Vakalatnama had been proved to show that these plaintiffs had filed the suits or had authorized the lawyer to file the suits at Hazaribagh. In the said circumstances it was decided by the learned courts below that it cannot be held that the said suits were filed by the plaintiffs. It is also apparent that realizing the said matter the defendants themselves did not press issues No. (i) and (iv) of the suit, regarding maintainability of the suit or the jurisdiction of the trial court to try the suit. In the said circumstances when the earlier suits were themselves not found to have been filed by the plaintiffs, there was no question of applicability of either Order-9 or Section 11 of the Code.

7. So far the second question is concerned, both the learned courts below have specifically found that the plaintiffs had earlier no knowledge of their dismissal from service and they got knowledge on 08.08.1976 when they went to draw their salary. It was also found that plaintiffs had been able to prove the said fact by valid material but the defendants could not disprove the said claim by any material. Hence the learned courts below rightly found that the suit filed in the year 1979 was well within the period prescribed and was not barred by the provision of the limitation Act.

8. So far the third question raised by the appellants is concerned, Section 89 of the Act reads as follows:

Transfer of pending proceedings-

(1) Every proceeding pending immediately before the appointed day before the court (other than the High Court), tribunal, authority or officer in any area which on that day falls within the State of Bihar shall, if it is a proceeding relating exclusively to the territory, which as from that day is the territory of Jharkhand State stand transferred to the corresponding court, tribunal, authority or officer of that State.

(2) If any question arises as to whether any proceeding should stand transferred under Sub-section (1), it shall be referred to the High Court at Patna and the decision of that High Court shall be final.

(3) In this section,-

(a) "proceeding" includes any suit, case or appeal; and

(b) "corresponding court, tribunal authority or officer" in the State of Jharkhand means,-

(i) the court, tribunal, authority or officer in which, or before whom, the proceeding would have laid if it had been instituted after the appointed day; or

(ii) in case of doubt, such court, tribunal, authority, or officer in that State, as may be determined after the appointed day by the Government of that State or the Central Government, as the case may be, or before the appointee day by the Government of the existing State of Bihar to be the corresponding court, tribunal, authority or officer.

9. It is not in dispute that when the title suit was filed the said Act had not come into force and even when the title appeal was filed in the year 1981 the said Act was not in force and the said Act came into force in the year 2000 and it was made effective from 15.11.2000 much after the title appeal had been admitted and was pending for hearing. Furthermore, there was an issue before the trial court with respect to the jurisdiction of the court to try the suit as objection was raised by the defendants that the suit should have been filed at Hazaribagh and the said issue was framed as issue No. (iv) but the same was not pressed by the defendants before the trial court and hence it appears to have been conceded by them that the court at Patna had jurisdiction to try the suit.

10. Section 89 of the Act specifically provides that a suit or an appeal pending in the territory of reorganized State of Bihar would stand transferred to the State of Jharkhand if the subject matter of the suit falls within the State of Jharkhand. But it is also provided that if any question arises as to whether it shall be referred to Patna High Court and decision of that High Court shall be final. However, in the instant case it is quite apparent that the title appeal remained pending for about four years after coming into force of the aforesaid Act but the

defendants who were the appellants in that court never raised any such question with regard to the jurisdiction of the court nor any such matter was ever referred to the High Court at Patna as per the said provision of Law. Hence, in these circumstances the learned court of appeal below was quite justified in hearing the said title appeal and deciding it on merits.

11. In the aforesaid facts and circumstances the questions raised by the learned Counsel for the appellants are not substantial question of law and this Court does not find any illegality, as pointed out, in the judgments and decree of the learned courts below.

12. Accordingly, this second appeal is dismissed at this stage of hearing under Order 41 Rule 11 of the Code.