
(2012) 03 PAT CK 0141
In the Patna High Court
Case No : CWJC No. 4455 of 2011

Dadan Ojha @ Dadanjeer Ojha and Others	APPELLANT
Vs	
Shiv Mandir Ojha and Others	RESPONDENT

Date of Decision : 20-03-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 11, Order 22 Rule 4, 151, 152

Citation : (2012) 2 PLJR 804

Hon'ble Judges : Sheema Ali Khan, J

Bench : Single Bench

Advocate : Rajiv Shankar Dvivedi, for the Appellant;

Judgement

Sheema Ali Khan, J.—This application has been filed for a direction by this Court to quash the order dated 12.1.2011 passed by the 1st Subordinate Judge, Buxar in F.D. Case No. 53 of 1968 by which he has allowed the amendment of the final decree as well as the plaint on the basis of an application filed on behalf of the respondents. The respondents' family commenced an action for redemption before the Court below, which was registered as Title (Redemption) Suit No. 53 of 1968, which was dismissed. The suit lands were mortgaged by two separate deeds in favour of the ancestors of defendants 1st and 2nd set, though the mortgagor was the same, the mortgage was executed by Mahendra Mishra in favour of Nand Lal Ojha and others. The plaintiffs claim to be the purchasers from the heirs of Mahendra Mishra, who were impleaded as defendants 3rd and 4th set. The claim is with respect to schedule-2 lands of the plaint. The mortgagors, namely, defendant 2nd and 3rd set have already accepted the mortgage amount and have redeemed the same, but defendants 1st set refused to do so and claimed that the mortgage is not subsisting. Against the judgment of the Court below, an appeal was filed before the 2nd Additional District Judge, Begusarai being Title Appeal No. 147 of 1987. The appeal was decided in favour of the respondents. The petitioners have filed Second Appeal No. 400 of 2000, which is pending for disposal.

2. During the pendency of the appeal the respondents filed an application for preparation of final decree and ultimately final decree was prepared vide order dated 27.8.2008, thereafter they have filed Execution Case No. 5 of 2008 which is pending in the Court of the 1st Subordinate Judge, Buxar. While the title appeal was pending the petitioners in this writ application filed miscellaneous petition under Order 22 Rule 4 read with Rule 11 and Section 151 of the Code of Civil Procedure. The said matter was heard at length and finally while keeping the appeal pending, the records were sent back to the Trial Court for passing a fresh decision in accordance with law after hearing both the parties vide order dated 26.4.2010. It may be pointed out here that the miscellaneous petition filed was with respect to substituting some of the heirs who had died during the pendency of the case. After the matter was sent to the Trial Court in view of the order passed on 26.4.2010, a petition was filed by the respondents/decreed holders in this Court bringing on record the related consolidation proceedings in respect of the suit lands alongwith the list of documents. The substitution petition was disposed of and thereafter the amendment petition was taken up and disposed of by the impugned order.

3. The objection of the petitioners is that the application was filed u/s 152 of the CPC by which the Court can only correct clerical errors in the judgment. It was also contended on their behalf that the amendment was filed after a great delay and that by filing the said amendment a new case was being introduced by the respondents.

4. The nomenclature under which an application is filed before the Court below is of no consequences, what is important is the contents of the application. The objection thus, raised on behalf of the petitioners that an application would not be maintainable u/s 152 of the CPC is of no real consequences. The question, therefore, arises as to whether the amendment could have been allowed by the Trial Court to whom the matter was remanded for a limited purpose for adding the heirs of the deceased parties in this case. The amendment sought was correction of the Khata Number and the Khesra (Plot) Number. This suit, it may be noted was filed in the year 1968. At that time the revisional survey had not taken place much less the consolidation proceedings. A plot of land can be traced and identified by its old Khata and Plot Number and the fact that it has been allotted a new number does not mean that the plot of land cannot exist. There is certain credibility to be given to the records of rights and there is a presumption of truth while interpreting such records. Therefore, the mere fact that the parties want to amend the plaint by substituting the new Plot Number so as to trace the plot of land, it cannot be said that a new case is being made out by the parties.

5. The next question is whether the Trial Court could have heard the amendment petition. Regarding this aspect I agree with the writ petitioners to the extent that the amendment ought to be filed in the Title Appeal 44 of 2008 which according to both the parties is still pending or for that matter the Title Appeal were not pending they may do so as per this Court's finding and direction. The question of

amendment would be considered by the appellate Court and decided expeditiously and preferably within a period of one month on receipt of a copy of this order. The order dated 12.1.2011 passed by the Subordinate Judge-I, Buxar in F.D. No. 53 of 1968 is set aside on this technical ground. This writ application is accordingly disposed of with the aforesaid observations and directions.