
(1993) 11 PAT CK 0009

In the Patna High Court

Case No : Civil Miscellaneous Appeal No. 5 of 1993

Kamla Singh and Others

APPELLANT

Vs

Dev Nath Singh and Another

RESPONDENT

Date of Decision : 04-11-1993

Acts Referred:

Citation : (1994) 42 BLJR 687 : (1994) 1 PLJR 282

Hon'ble Judges : B.K. Roy, J

Bench : Single Bench

Judgement

B.K. Roy, J.—After further arguments in regard to the hearing of the petition at Flag "P", Mr. Shashi Shekhar Dwivedi, learned Counsel appearing on behalf of the appellants, Mr. S.C. Ghose, learned Counsel appearing on behalf the plaintiff Respondent No. 1, Mr. Krishna Behari, learned Counsel appearing on behalf of Respondent No. 2 herein and Mr. Kamal Nayan Choubey, learned Counsel appearing on behalf of the Intervenor, who claim to have purchased the properties before institution of suit in question, agree as follows:

(i) The plaintiff-Respondent No. 1, who has been appointed Receiver of the entire suit properties by the order dated 26-2-1993 of this Court shall continue to act as Receiver of the properties described in the suit except those which are standing in the name of the ladies and which, according to the intervenors before this Court, were purchased by them before the institution of the suit.

(ii) The plaintiff will keep accounts in regard to the management of the suit properties barring the aforementioned properties and subject to the acceptance of his accounts and final adjudication of the suit by the trial Court, he shall keep 1/3rd of the usufructs for him and 2/3rd of the usufructs for the appellants.

(iii) Respondent No. 2, if his claim is upheld by the trial court, shall be entitled of his interest protected out of the usufructs of the shares appropriated by the Plaintiff-Respondent No. 1 and the appellants.

(iv) The suit itself be directed to be disposed of expeditiously in view of the controversy raised by the parties and the nature of the Order proposed by them.

2. In the interest of justice, I accept the suggestions made by all the learned Counsel for the different parties appearing before me and, accordingly, with their consent, dispose of the appeal itself along with the petition (at Flag "P") on following terms and conditions:

(i) The parties are directed to appear before the trial court on 6-12-1993 along with their written statements, if not filed so far. The trial court will fix a date for framing/recasting of issues if already framed and on that date will direct the parties to file their documents and list of witnesses if they so desire and, thereafter direct the plaintiff-Respondent No. 1 to lead evidence afresh. The hearing will proceed on day to day basis unless extraordinary circumstances compel him to adjourn the suit, but in any event adjournment will not be of a longer period.

(ii) The Plaintiff is appointed Receiver of the suit properties except in regard to those, which are standing in the name of the females and which have already been sold out by one or the other party including Respondent No. 2, Ganga Singh.

(iii) The plaintiff will submit accounts every year before expiry of the financial year, namely, 31-3-1994 onwards. Till acceptance of his Accounts and final adjudication of the suit by the trial Court he will after, keeping 1/3rd usufructs hand over balance usufructs to the appellants herein and the trial Court will be fully competent to take action in future under the Code of Civil Procedure.

(iv) This arrangement will continue till the decision by the trial Court only irrespective of the claim of one or the other party and this arrangement shall not be taken to be settlor of the controversy raised by one or the other party in the suit.

3. If any application is filed by the intervenors-respondents herein for excluding their properties, the same shall be considered and disposed of on its merit in accordance with law by the trial Court.

4. Since the appeal is disposed of with consent of all concerned. make no order as to cost.