

(2024) 04 PAT CK 0045

In the Patna High Court

Case No : Civil Miscellaneous Jurisdiction No. 1678 Of 2017

Mina Devi

APPELLANT

Vs

Ajay Kumar Singh, @ Lallu Singh

RESPONDENT

Date of Decision : 16-04-2024

Acts Referred:

Constitution of India, 1950 — Article 227

Code of Civil Procedure, 1908 — Order 20 Rule 1, Order 41 Rule 27(b)

Citation : (2024) 04 PAT CK 0045

Hon'ble Judges : Arun Kumar Jha, J

Bench : Single Bench

Advocate : S.S. Dwivedi, Parth Gaurav, Ashutosh Kr. Pandey, Kunal Aryan, R.K. Shukla, Pratyush Pratap Singh, Ritu Raj Shukla

Final Decision : Allowed

Judgement

1. Heard learned counsels for the parties on the point of admission and I intend to dispose of the instant petition at the stage of admission itself.

2. The petitioner has filed the instant petition under Article 227 of the Constitution of India against the order dated 23.08.2017 passed by learned Subordinate Judge 3rd, Supaul in Title Suit No. 81 of 2012 whereby and whereunder the learned Sub Judge allowed the petition dated 07.04.2017 filed on behalf of defendant no.1/respondent 1st set for getting the signature of defendant no.2 over the sale deed dated 17.08.1990 examined by Forensic Science Laboratory when the matter was fixed for delivery of judgment.

3. Briefly stated, the facts of the case are that the petitioner is the plaintiff before the learned trial court and she filed Title Suit No. 81 of 2012 against the original respondent no.1, Most. Saraswati Devi and defendant 2nd set/respondent 2nd set seeking relief of declaration of title and ownership of the plaintiff on Schedule-2 land of the plaint apart from confirmation of title and possession over the suit land of Schedule-2. The plaintiff further sought their declaration of gift deed and certain sale deeds executed in favour of defendant

no.3 as well as defendant no.1 void, illegal and not-binding upon the plaintiff. The plaintiff claimed the suit land on the basis of a sale deed executed by defendant no.2 and further submitted that defendant no.1 claimed part of the suit land by way of two sale deeds dated 07.04.1994 executed by defendant no.2 in favour of defendant no.1 acting as guardian of his minor son, defendant no.3, who in turn got the suit land as gift vide a gift deed dated 25.11.1993 by the first wife Laxmi Devi of the grandfather of defendant no.3. The defendant no.1 appeared and contested the suit denying the claims made by the plaintiff. On the other hand, the suit proceeded ex parte against defendant nos. 2 and 3. After closure of evidence and full argument, the matter was fixed for judgment on 30.11.2016. Two days prior to the date fixed for delivery of judgment, on 28.11.2016, a petition was filed on behalf of the son of the defendant no.1 with a prayer to get the signature of defendant no.2 over Exhibit-4, i.e., sale deed dated 17.08.1990 verified and tallied with the signature of admitted document Exhibit-B at the cost of defendant. The plaintiff filed a rejoinder raising the ground of maintainability of the petition as it was filed by a person who was stranger to the suit. However, after the matter was adjourned for sometime, finally it was dismissed on 28.11.2016 as not pressed. Thereafter, on 06.04.2017, defendant no.1 filed an application with the same prayer. The plaintiff filed her rejoinder on 25.04.2017. The parties were heard and the learned trial court allowed the petition dated 07.04.2017 vide order dated 23.08.2017 and the said impugned order is under challenge before this Court in the present miscellaneous petition.

4. The learned counsel appearing on behalf of the petitioner submitted that the order of the learned trial court has been passed without application of judicial mind and the same is without jurisdiction. The learned trial court has not taken into consideration the fact that the suit was posted for pronouncement of judgment ignoring the settled law that there is no hiatus between completion of hearing and passing of the judgment and it is only for the convenience of the court that a future date is fixed for delivery of judgment. In this regard, learned counsel referred to the decision of the Hon'ble Supreme Court in the case of Arjun Singh Vs. Mohindra Kumar & Ors., reported in AIR 1963 SC 993, wherein the Hon'ble Apex Court held that the Code of Civil Procedure (in brief 'the Code') contemplates only two stages in the trial of a suit: (1) Where the hearing is adjourned or (2) where the hearing is completed. The Hon'ble Apex Court further held that where the hearing is completed, the parties have no further rights or privileges in the matter and it is only for the convenience of the Court that Order XX, Rule. 1 of the Code permits judgment to be delivered after an interval after the hearing is completed. But the same does not confer any right on any of the parties to file further petition. At the same time, the court has got no jurisdiction to pass any order on such petition. The order of the learned trial court is completely arbitrary as it has been passed against the settled provisions of law. Learned counsel further submitted that the learned trial court has not taken into account the written statement of the defendant no.1 who has not denied the execution of Exhibit-4, i.e., sale deed dated 17.08.1990, executed by defendant

no.2 in favour of plaintiff nor she made any averment about impersonation which she made in the petition dated 06.04.2017. The learned trial court has also not considered the fact that defendant no.1 has made out a new case than what has been stated by her in her written statement. Nowhere in the written statement, there is even a whisper about sale deed dated 17.08.1990 being a forged, illegal or fabricated document or that the signature of defendant no.2 was result of impersonation. The defendant no.1 has made a categorical statement that the husband of the plaintiff and the defendant no.2, in connivance with each other and in order to grab the share of Laxmi Devi, got executed the sale deed dated 17.08.1990 in favour of the plaintiff, Mina Devi without any consideration and it was a sham transaction. At the stage, when the suit was fixed for pronouncement of judgment, the defendant came out with a third case in order to delay the disposal of the suit and to avoid the bench of the then learned Presiding Officer. Learned counsel took this court to the dates and events of this case to show that the defendant no.1 firstly tried to delay in pronouncement of judgment and disposal of the matter by getting a petition filed by her son and when the same was not entertained, she herself filed another petition with same prayer and same averment. Learned counsel further submitted that it is not permissible in law that when the matter has been fixed for delivery of judgment, any petition could be entertained. Further the said petition was against the specific case of the defendant no.1 as made out in the written statement and still the learned trial court allowed the petition. Thus, the learned counsel submitted that the impugned order could not be sustained and the same be set aside.

5. On the other hand, learned counsel appearing on behalf of the defendant 1st set/respondent 1st set vehemently contended that there is no infirmity in the impugned order and the same needs to be sustained. Learned counsel further submitted that the case of the plaintiff is based on a forged and fabricated document and the same could be challenged at any stage because a forged document confers no right on any person. Learned counsel further submitted that if the court felt that it was necessary for it to get certain document examined for reaching any conclusion on the basis of report on such document, it was within its rights to refer the matter for examination by Forensic Science Laboratory. The learned trial court has not committed any illegality since a document of doubtful character has been sent to the expert of examining its genuineness. It is the primary duty of any court to clear any doubt in its mind or to verify certain facts before reaching any logical conclusion. Since there were doubts over the signature of defendant no.2 on the said document, the learned trial court rightly decided to refer the matter to the forensic expert for scientific examination of the said signature. Learned counsel further submitted that the document under question was found to be doubtful by defendant no.1 in course of inspection and immediately the same was brought to the notice of the learned trial court. The learned counsel referred to the decision of the Hon'ble Apex Court in the case of Damara Venkata Murali Krishna Rao vs. Gurujupalli Satvathamma reported in (2008) 12 SCC 170, wherein the Hon'ble Apex Court allowed the

appeal setting aside the orders of the High Court which dismissed the application filed for eliciting opinion from Government expert for comparison of the signature of the son of the plaintiff on the receipts issued by him. Learned counsel further relied on the decision of the Hon'ble Apex Court in the case of Gurdev Singh & Ors. Vs. Mehnga Ram & Anr., reported in AIR 1997 SC 3572, wherein the Hon'ble Apex Court held that High Court should not have interfered with the order which was within the jurisdiction of the learned first appellate court in a matter under Order 41 Rule 27(b) of the Code since the respondents could challenge the same in accordance with law if an occasion arose to carry the matter in second appeal after an appellate decree was passed. But at the interim stage, the High Court should not have interfered in the matter saying that order was without jurisdiction and thus the appeal was allowed and the order of the High Court was set aside. Thus, the learned counsel submitted that there is no infirmity in the impugned order and the same be sustained.

6. By way of reply, learned counsel for the petitioner submitted that both the decisions Damara Venkata Murali Krishna Rao (supra) and Gurdev Singh & Ors. (supra) cited by the learned counsel for the respondents are not of any help since the facts are entirely different. In the first case, the matter was at the stage of arguments after closure of evidence and the matter was not fixed for judgment. Similarly, in the second matter it was a case of adducing additional evidence and jurisdiction of the learned first appellate court was under challenge and both the decisions have no application in the given facts and circumstances of the present case.

7. I have given my thoughtful consideration to the different aspects of the matter as well as the rival submissions made on behalf of the parties. After the hearing has been completed, evidently the parties cease to have any rights or privileges and only thing which is required to be done is delivering the judgment, though after an interval, as provided under Order XX Rule 1 of the Code. The clock could not be set back and the issues which ought to be raised at the time of hearing cannot be allowed to be raised when the hearing has completed and the matter is fixed for pronouncement of judgment as held by the Hon'ble Supreme Court in the case of Arjun Singh (supra) that there is no hiatus between two stages of reservation of judgment and pronouncement of judgment. Therefore, the learned trial court was not correct in its approach in entertaining the application dated 07.04.2017 and passing the order dated 23.08.2017 which has been challenged before this Court. The authorities cited by the learned counsel for respondent 1st set do not help the cause of the respondent 1st set due to dissimilarity of facts.8. In the light of discussion made so far, I am of the considered opinion that the impugned order dated 23.08.2017 passed by learned Subordinate Judge 3rd Supaul in Title Suit No. 81 of 2012 suffers from error of jurisdiction and, hence, the same is set aside.

9. Accordingly, the instant petition stands allowed.

10. However, this Court has not made any comments on the merits of the case

and the learned trial court would proceed in the matter uninfluenced by any observation of this Court.