
(2005) 09 PAT CK 0045

In the Patna High Court

Case No : Second Appeal No. 526 of 1998

National Jute Manufacturers Corporation Unit and Another	APPELLANT
Vs	
Smt. Shakuntala Devi and Others	RESPONDENT

Date of Decision : 14-09-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 100

Citation : (2006) 3 BLJR 2201

Hon'ble Judges : J.N. Bhatt, C.J

Bench : Single Bench

Advocate : S.K. Mishra and Sushmita Mishra, for the Appellant; Suresh Chandra Giri, for the Respondent

Final Decision : Dismissed

Judgement

J.N. Bhatt, C.J.—In this appeal u/s 100 of the Code of Civil Procedure, 1908 (hereinafter called "the Code"), the original defendants-appellants has assailed the judgment and decree passed by the Trial Court in Title Suit No. 9 of 1989 wherein the plaintiff-respondent, inter alia, claimed the right, title and interest as well as possession over M.S. Plot Nos. 176 and 177 Ka, Kha part appertaining to M.S. Khata No. 182 corresponding to C.S. Plot No. 989 part C.S. Khata No. 165 situated at Mauza Daharia, New Ward No. 14 in the district of Katihar.

2. The defendants resisted the suit by filing a written statement and the claim of the plaintiff was countered. Evidence came to be led and in course of the hearing the case law was also relied on. The learned trial Court upon consideration of the facts and circumstances and evaluation of entire evidence found that the plaintiff is entitled to the reliefs claimed for and accordingly decreed the suit.

3. The learned appellate court on judgment and decree being questioned by filing Title Appeal No. 25 of 1997 after a delay of nine months, held that day to day delay has not been satisfactorily explained and, thus rejected the limitation petition resultantly dismissing the appeal.

4. I have heard the learned counsel for the parties and have also gone through the celebrated principles of law, Needless to mention that while sitting in appellate forum, reappraisal and assessment of the evidence is not permissible by this Court. The learned District Judge has found that the appeal being barred by limitation, judgment and decree of the trial court did not require any interference in exercise of the appellate power. Hence, while hearing a Second Appeal u/s 100 of the Code coupled with the text and tenor of the impugned judgment of the appellate Court, it is obligatory for this Court to examine the question of any legality or illegality in the judgment and decree of the trial Court.

5. The unsuccessful defendants assailed the judgment and decree recorded by the trial Court before the appellate Court after a delay of almost nine months which was opposed by the other side. Condonation of delay is refused by passing the impugned judgment of the lower appellate Court. Ordinarily delay is condoned in a given facts situation, if there is sufficient cause in not filing the appeal against the impugned judgment and decree within the prescribed period under the law. The lower appellate Court has found that delay of nine months is not satisfactorily explained day by day. It is in these context that a question would arise as to whether the decision of not condoning the delay in the facts situation examined and appreciated by the first appellate court is in anyway unjust or in any way vulnerable requiring interference by this Court in exercise of the powers u/s 100 of the Code.

6. Whether ground was made out or not or whether the delay day by day has been explained or not is a pure and simple question of fact. There is no other proposition of law involved any more. Therefore, in absence of any substantial question of law, this Court is unable to interfere in exercise of its appellate power u/s 100 of the Code. The resultant effect would be rejection of this Second Appeal without any costs.