
(2020) 01 PAT CK 0030
In the Patna High Court
Case No : Civil Revision No. 263 Of 2017

Niranjan Singh

APPELLANT

Vs

Ramautar Singh And Ors

RESPONDENT

Date of Decision : 07-01-2020

Acts Referred:

Code Of Civil Procedure, 1908 — Section 115, 115(1), Order 1 Rule 10(2)

Citation : (2020) 01 PAT CK 0030

Hon'ble Judges : Chakradhari Sharan Singh, J

Bench : Single Bench

Advocate : Onkar Nath, Ajit Kumar, Uday Shankar Sharan Singh, Uday Bhan Singh

Final Decision : Dismissed

Judgement

1. This revision application has been filed against an order dated 22.08.2017 passed by the Court of learned Sub-Judge-IV, Gaya, in T.S. No. 69 of 2015/892 of 2014, whereby and whereunder the learned Court below has rejected an application filed by the petitioner under Order 1 Rule 10(2) of the Code of Civil Procedure on the reasoning that the petitioner is not a necessary or proper party in the said suit.

2. This application has been filed under Section 115 of the Code, which reads thus : -

"115. Revision.-[(1)] The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate court appears -

(a) to have exercised a jurisdiction not vested in it by law, or

(b) to have failed to exercise a jurisdiction so vested, or

(c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order in the case as it thinks fit:

[Provided that the High Court shall not, under this section, vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings.]

[(2) The High Court shall not, under this section, vary or reverse any decree or order against which an appeal lies either to the High Court or to any Court subordinate thereto.

(3) A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or other proceeding is stayed by the High Court.]

Explanation.-In this section, the expression "any case which has been decided" includes any order made, or any order deciding an issue, in the course of a suit or other proceeding."

3. It is evident on reading of the provisions under Section 115 of the Code that the High Court cannot 'vary or reverse any order made, or any order deciding an issue, in the course of a suit or other proceeding, except where the order, if it had been made in favour of the party applying for revision, would have finally disposed of the suit or other proceedings'. The order, which is impugned, does not fall under the exception to the proviso to sub-section (1) of Section 115.

4. Learned counsel appearing on behalf of the petitioner has, however, submitted with reference to the explanation to the said section, that the expression 'any case which has been decided' would include any order made or any order deciding any issue in the course of a suit or other proceeding. He has submitted that since by the impugned order the petitioner's application for intervention has been finally decided, the bar under proviso to sub- section (1) of Section 115 shall have no application. He has relied on a Division Bench decision of this Court in case of Durga Devi Vs. Vijay Kumar Poddar, reported in 2010(2) PLJR 954 with special reference to paragraph 36 thereof.

5. Since much emphasis has been given on paragraph 36 of this Court's decision in case of Durga Devi (supra), the same is being extracted hereinbelow : -

"36. The acid test which is to be applied is that if by termination of such a proceeding an independent cause of action is put at naught, the application for revision would be maintainable. The interlocutory orders made in the course of hearing of a suit or proceeding is not amenable to revisional jurisdiction if such an order does not put an end to the suit or proceeding and as we have already indicated, the proceeding has to have an independent character. Emphasis in the present provision is whether the order in favour of a party applying for revision would have given finality to the suit or other proceeding. If the answer is `yes', then the revision is maintainable and if the answer is in the negative, the revision is not maintainable. The test that is required to be applied in every case so as to find an outcome is whether the order is interim in nature or finally

disposes of the suit or other proceeding."

6. The Division Bench has held that whether an application under Section 115 of the Code can be maintained or not will have to be determined on the touchstone of the test as to whether, if by termination of such a proceeding, an independent cause of action is put at naught. If it does so, the application for revision would be maintainable.

7. In my opinion, the said observation does not support the petitioner's plea of maintainability of the present revision application, since, in my opinion, the dismissal of the petitioner's application for intervention, after having held that he is neither a necessary or proper party, would not amount to putting at naught any independent cause of action.

8. In my considered view, a revision application, under Section 115 of the Code of Civil Procedure, against an order rejecting an application under Order 1 Rule 10(2) of the Code, cannot be maintained.

9. This application is accordingly dismissed as not maintainable.

10. The petitioner shall be at liberty to seek return of the certified copy of the impugned order from the Registry for the purpose of taking recourse to any other provision of law, which may be available to him against the impugned order.