
(2011) 01 PAT CK 0019

In the Patna High Court

Case No : Miscellaneous Appeal No. 217 of 1992

Ram Chandra Prasad Mahto

APPELLANT

Vs

Jitan Mahto

RESPONDENT

Date of Decision : 24-01-2011

Acts Referred:

Citation : (2011) 01 PAT CK 0019

Final Decision : Allowed

Judgement

Anjana Prakash, J.—The prayer of the Appellant is for setting aside the judgment and order dated 14th July, 1992, passed by the Additional District Judge-I, Nalanda at Biharsharif, in Title Appeal No. 126 of 1989, by which he has set aside the judgment and decree dated 13.9.1989 and 23.9.1989 respectively passed by the Additional Munsif, Biharsharif at Nalanda in Title Suit No. 24 of 1982 by which he had decreed the suit in favour of the Plaintiff-Respondent-Appellant with costs.

2. The history of the suit is that after the suit was decreed, as stated above, the Defendant-Appellant-Respondent preferred an appeal being Title Appeal No. 126 of 1989, and when it finally came for disposal on 18.5.1990, at the stage of argument on 25.06.1992, two applications were filed on behalf of the Appellant-Defendant-Respondent for amendment of the written statement and admission of sale deed dated 08.07.1941 executed by Most. Gauri Kuer in favour of Bal Kishun Mahto as additional evidence, which was allowed and the case was remanded to the court below for a fresh decision while setting aside the judgment and decree dated 13.09.1989 and 23.9.1989 respectively.

3. Being aggrieved by the said judgment and order, the Plaintiff-Respondent-Appellant approached this Court.

4. The background of the case is that the Plaintiff-Respondent-Appellant had filed a Title suit being Title Suit No. 24 of 1982 for declaration that the deed of gift dated 15.03.1982 executed by Gauri Kuer in favour of the Respondent herein

may be declared invalid since he had no right, title and interest over the suit land. His specific case was that he was the grand son (Naati) of Gauri Kuer and was the sole surviving heir and, therefore, he alone was entitled to right, title and interest over the suit land.

5. As against this, the Respondent herein contended that since he used to look after Gauri Kuer, she gifted the lands to him.

6. The trial court apart from other issues also framed following issues:

"(a) Whether the deed of gift dated 15.03.1982 executed by Gouri Kuer in favour of Jitan Mahton is valid and genuine document or not?

(b) Whether Narain Mahton had daughters or not?

(c) Whether Plaintiff is the Nati of Narain Mahton or not? "

7. The trial court after full elaboration and consideration answered that the deed of gift was not genuine and, in fact, Narain Mahton, husband of Gouri Kuer had daughters and the Appellant was the grand son (Natti) of Narain Mahto. Concluding thus, the Title Suit was decreed, as stated above.

8. As against this, when the Title Appeal was filed, the judgment and decree was set aside and the matter was remanded for afresh consideration.

9. Counsel for the Appellant contends that on going through the judgment impugned one finds that the only consideration of the appellate court was that the nature of the suit was not going to change if the matter is remanded which is against the provision of law as enjoined under Order XLI Rule 27 of the Code of Civil Procedure. For this, he relies on a recent decision of this Court reported in Indian Bank and Another Vs. N. Venkatramani, , wherein, this Court had elaborately discussed the provisions by which the suit could be remanded and specifically held that remand could be ordered only when the trial court has omitted to frame or try any issue or to determine any question of fact which was essential for right decision of the suit. He further contends that since the first appellate court has not reversed any of the finding of the trial court on any point and has remanded the entire suit only for framing fresh issue which it could have done itself the order was liable to be set aside.

10. On the other hand, learned Counsel for the Respondent has placed reliance on the decision reported in Raja Kamala Ranjan Roy Vs. Baijnath Bajoria, , but I find that the issue is not the same since in that case the question that had arisen was only whether the appellate court could take additional evidence.

11. On perusal of the judgment impugned, I find that the appellate court has not considered whether the trial court had illegally refused the evidence it ought to have permitted or whether the evidence sought to be adduced was not available despite due diligence exercised by the Defendant-Respondent. Unfortunately, the appellate court has only reasoned that additional evidence was essential for just decision of the case and it would not change the nature of the suit. In view of

such, I have no hesitation in holding that the appellate court has committed gross error in setting aside the judgment and decree of the trial court and remanding the matter to the court below for giving fresh decision and, therefore, I set aside the judgment and order dated 14th July, 1992, passed by the Additional District Judge-I, Nalanda at Biharsharif, in Title Appeal No. 126 of 1989. The appellate court is directed to dispose of the appeal on merits as expeditiously as possible. 12. However, in case the appellate court still feels the necessity of taking additional evidence, it may do so in accordance with law without remanding the matter.

13. In the result, the appeal is allowed.