
(1948) 04 PAT CK 0002

In the Patna High Court

Ram Das Singh and Others

APPELLANT

Vs

Ram Anuplal Rai and Others

RESPONDENT

Date of Decision : 13-04-1948

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 41 Rule 20
Limitation Act, 1963 — Section 5

Citation : AIR 1949 Patna 90

Hon'ble Judges : Manohar Lall, J

Bench : Division Bench

Judgement

Manohar Lall, J.—This is a plaintiffs' second appeal. The point taken on behalf of the appellants is that the decree of the lower Court has been reversed by the Subordinate Judge without jurisdiction as the appeal was not properly constituted.

2. The original decree was in favour of the plaintiffs. For some reason or other, Ramcharitar Singh, who was plaintiff 5, was not made a party respondent in the lower appellate Court. In the circumstances, the decree passed by the lower appellate Court was without jurisdiction, and must be set aside. After the appeal was filed in this Court, by an order of Ray J., it was directed that the name of appellant 5 should stand in the memorandum of appeal with a statement added to it that he was plaintiff 6 in the trial Court but was not impleaded as respondent in the lower appellate Court. This is a special ground taken by the learned advocate in support of his objection to this effect. I am satisfied that the objection is well-founded, and must prevail.

3. Mr. Raj Kishore Prasad on behalf of the respondents drew my attention to an order in the order-sheet where it was stated that the notice of the appeal was served on plaintiff 5 on 21st September 1946. But this service of the notice on plaintiff 5 does not make him, in law, a party to the appeal unless Ramcharitar Singh was made a party to the appeal. He was at liberty to ignore the notice which was served on him on 21st September. The decree passed by the lower Court omits the name of Ramcharitar Singh as respondent. As the memorandum

of appeal has not been amended in the Court below, he could not be made a party in the decree that was prepared.

4. It was also argued by Mr. Raj Kishore Prasad that there might lie a circumstance which would have entitled the Court to extend the period of limitation u/s 5, Limitation Act, and drew my attention to Order 41, Rule 20, Civil P.C. But it is unnecessary to consider the effect of that rule as no application has ever been made to the learned District Judge to bring plaintiff 5 on the record. I must decide the appeal upon the state of the parties on the record that now appears, and not as it might have appeared if a petition u/s 5, Limitation Act, had been filed and allowed.

5. The result is that the decision of the learned Subordinate Judge is set aside and the decision of the learned Munsif, Second Court, Begusarai, is restored. In the circumstances there will be no order as to the costs in this Court.