

(2003) 07 PAT CK 0007

In the Patna High Court

Case No : Miscellaneous Appeal No. 300 of 2002

Ram Kalewar Prasad Singh and Others

APPELLANT

Vs

Uday Shankar Triyar and Others

RESPONDENT

Date of Decision : 28-07-2003

Acts Referred:

Citation : (2003) 4 PLJR 745

Hon'ble Judges : P.K. Deb, J

Bench : Single Bench

Advocate : Sukumar Sinha, for the Appellant; Chittranjan Kumar Sinha, for the Respondent

Final Decision : Allowed

Judgement

P.K. Deb, J.—This appeal has been preferred against the order dated 27.4.2002 passed by the 1st Additional District Judge, Samastipur in Eviction Appeal No. 4 of 1998 whereby and whereunder it has been held that on death of Anugrah Narain Singh the appeal has abated as the appeal is to be construed to have been filed by Anugrah Narain Singh himself alone and, as such, the whole appeal should be construed as dismissed.

2. The eviction appeal arises out of the judgment and decree passed in Eviction Suit No. 2 of 1989. The Plaintiffs/Respondents filed the suit for eviction of Anugrah Narain Singh stating him to be the monthly tenant in the suit premises but he had defaulted in making payment and that he had sublet it to the Defendant No. 2 the District Congress Committee (I) who was represented through the President of the District Congress Committee (I) and at the relevant time it is admitted fact that Anugrah Narain Singh was the President of the District Congress Committee (I) of Samastipur. The suit was contested mainly on the ground that the Defendant No. 1 Anugrah Narain Singh is not the tenant in his personal capacity but the tenancy was taken by him for and on behalf of the District Congress Committee as its President. To that extent an issue had also been framed but after adjudication it was held that Anugrah Narain Singh was

the tenant and as he defaulted, then decree for eviction was granted. An appeal was filed by Anugrah Narain Singh as Appellant No. 1 and the name of District Congress Committee (I) was also there as Appellant No. 2 representing the same by the former, President namely, Anugrah Narain Singh himself. During the pendency of the appeal i.e. eviction Appeal No. 4/98 Anugrah Narain Singh died. His heirs had not come up for substitution rather one Ram Kalewar Pd. Singh filed a petition for his substitution as an Appellant as in the name and style of working President of District Congress Committee (I) Samastipur. That substitution petition has been vehemently objected to. The learned court below had dismissed the petition for substitution holding that only Ram Anugrah Narain Singh has filed the appeal in his personal capacity as the vakalatnama is there only in his name and that the District Congress Committee (I) did never file the appeal as no vakalatnama had been filed for and on behalf of the District Congress Committee (I) so the appeal was held to be abated as no heirs of Anugrah Narain Singh had filed substitution petition and as there was no other Appellant the appeal was dismissed. Hence the present appeal.

3. It is the contention of Mr. Sukumar Sinha, learned senior Advocate appearing for and on behalf of the Appellant Ram Kalewar Pd. Singh that admittedly in the memo of appeal there are two names Appellant No. 1 is Anugrah Narain Singh while the Appellant No. 2 is District Congress Committee (I), Samastipur. In that way it can only be said that appeal was filed only by Anugrah Narain Singh. It was filed by both Anugrah Narain Singh and the District Congress Committee, (I) Samastipur who were arrayed as Defendants in the eviction suit itself. His further submission is that the District Congress Committee (I) i.e. Appellant No. 2 was being represented by Anugrah Narain Singh himself and as such, by mistake or in-advertance Vakalatnama has not described him to be representing the District Congress Committee (I) itself also and in that way even if the appeal abates on the personal capacity of Anugrah Narain Singh it should proceed for and on behalf of the Appellant No. 2 District Congress Committee (I) allowing the present Appellant Ram Kalewar Pd. Singh to represent the District Congress Committee (I).

4. On the other hand Mr. Chittranjan Sinha, Sr. Advocate appearing for and on behalf of Respondent submitted that only because the name is appearing in the District Congress Committee (I) in the memo of appeal and if the same is not being represented by the proper person then it cannot be said that the District Congress Committee (I) had also preferred an appeal. His submission is that Anugrah Narain Singh was not the President when appeal was filed of the District Congress Committee (I) and as such he had no capacity to represent the District Congress Committee (I) as former President. In that way his submission is that there is definitely a right decision given by the appellate court in dismissing the appeal as a whole. On perusal of the copy of the memo of appeal the judgment delivered by the court below and also the copy of the petition filed for substitution/amendment of the memo of appeal I find that there is some force in the submission of Mr. C.R. Sinha appearing for and on behalf of the Respondent.

5. But then one question remains District Congress Committee (I) is definitely a juristic person and it was the case from the very beginning of the Defendants in the eviction suit that the tenancy was by District Congress Committee (I) and not by its President Anugrah Narain Singh on his personal capacity and the issue was also framed to that effect. Although that issue has been decided in negative against the Defendant but then the same has been questioned in the appeal itself. It is true that District Congress Committee (I) Samastipur cannot be represented by his former President and objection ought to have been raised at that time from the side of the office or from the side of the Respondent who had vehemently contested the matter of stay during the pendency of the appeal. This question that District Congress Committee (I) has not been properly represented only came up when the Appellant No. 2 Anugrah Narain Singh died and the present Appellant Ram Kalewar Pd. Singh has come up for representing the District Congress Committee (I). I find that there are laches on the part of the Appellant and laches on the part of the office also but the question hunts me when a juristic person i.e. District Congress Committee (I) had preferred an appeal although not being properly represented can it not be represented during the pendency of the appeal itself and whether any time limit can be there for such representation? Definitely the answer would be coming in negative. A juristic person can be represented by appropriate authority. Definitely former President could not represent but when the juristic person is already on record and at a later stage appropriate person comes to represent the District Congress Committee (I) then I don't think that there cannot be any barrier or any question of limitation could arise so the petition for substitution should be construed as a petition for amendment of the memo of appeal and when the question of limitation does not come in then the present Appellant can be allowed to continue with appeal. On merit whether the District Congress Committee (I) was tenant or Anugrah Narain Singh of his personal capacity was tenant is a matter to be decided on merit in the appeal itself. But at least for the present the Appellant should be allowed to continue with the appeal.

6. Then again a question raised that working President cannot represent the District Congress Committee (I). That depends upon the circumstances if no elected President is there then as per the Articles of association of the District Congress Committee (I) if the working President is competent one to represent the District Congress Committee (I) then he can do so but i.e. a matter which can be considered at the time of hearing itself and the matter is kept open. Only for the purpose of continuing with the appeal, the Appellant is hereby allowed to proceed but all question regarding his right etc., are kept open.

7. Thus the present appeal is hereby allowed but with no costs by setting aside the impugned order and eviction appeal No. 4/98 is directed to be restored to file.

8. It is found that the appeal is pending since 1998 and the eviction suit is of 1989. Thus the eviction matter is continuing for the last 14 years. In that, way I hereby direct the First Additional District Judge, Samastipur to decide the appeal

on merit within a period of two months from the date of the presentation of a copy of this order or receipt of the same officially from the High Court.

9. Thus the appeal is allowed with no costs.