

In the Patna High Court

Case No : Appeal from Appellate Decree No. No. 101 of 2004

Ram Lakhan Mahto

APPELLANT

 V_S

Hari Charan Mahto and Satyadeo Prasad

RESPONDENT

Date of Decision : 23-01-2009

Acts Referred:

Citation : (2009) 01 PAT CK 0045

Judgement

S.K. Katriar, J.—The plaintiff is the appellant against the judgment of affirmance. This appeal is directed against the judgment and decree dated 27.1.2004, passed by the learned Ist Additional District Judge, Patna, in Title Appeal No. 84 of 1996 (Ram Lakhan Mahto v. Hari Charan Mahto and Anr.), whereby he has dismissed the appeal preferred by the plaintiff (the appellant herein), and has affirmed the judgment and decree dated 17.4.1996, passed by the learned Subordinate Judge I, Danapur, in Title Suit No. 61 of 1991 (Ram Lakhan Mahto v. Hari Charan Mahto and Anr.), whereby the suit was dismissed. In other words, the suit has been dismissed and affirmed in appeal. We shall go by the description of the parties occurring in the plaint.

2. The plaintiff and defendant No. 1 (respondent No. 1 herein) are full brothers, and defendant No. 2 (Satyadeo Prasad) (respondent No. 2 herein) is the son of defendant No. 1. The genealogy of the parties is not in dispute and is reproduced hereinbelow for the facility of quick reference:

SITARAM	MAHOTO	(Died	in	1983)		
-----					Wife No. 1	Rukhiya
Devi Wife No. 2		Dhankueri		Devi		----- ----- -----
	Raghunath Shivnath		Hari	Jeetu		Nandan
-----			Hari Ram Charan Lakhan (D. 1) (Plaintiff)			
	Satyadeo (D. 2)					

3. Sitaram Mahto had four sons by his first wife (Rukhiya Devi). He had two sons from the second wife (Dhankueri Devi) who are parties to the suit. Ram Lakhan Mahto, the younger son, is the plaintiff. Hari Charan Mahto, the elder son, is

defendant No. 1, and Satyadeo Mahto (the son of defendant No. 1) is defendant No. 2. The plaintiff instituted the suit for declaration that he is entitled to half of 1.68 acres of the land acquired by the family by a registered deed of Patta Kabuliyat in 1952 (Exhibit F/8).

4. The plaintiff has filed the suit for declaration of his title and non-title of the defendants over the suit land in the memo indicated hereinabove, and also for declaration that the mutation order dated 23.6.1989, in Appeal No. 12/82-83, passed by the D.C.L.R., Danapur, and Mutation order dated 22.3.1991, in Mutation Appeal No. 10(A) of 1989, passed by the learned Additional Collector, Patna, are without jurisdiction, illegal, and would not affect the title of the plaintiff. The plaintiff's case as per the plaint is that Sita Ram Mahto had from his first wife four sons namely Raghunath Mahto, Shiv Nath Mahto, Harinandan Mahto and Jittu Mahto. He had from the second wife two sons, namely, the plaintiff (Ram Lakhan Mahto), and defendant No. 1 (Hari Charan Mahto). The four sons from the first wife separated by metes and bounds from their father and the two step brothers. After the partition, Sita Ram Mahto started living separately with his second wife (Dhan kueri Devi) and his two sons from her. In the year 1952, through a registered deed of Patta Kabuliat dated 28.01.1952, Sita Ram Mahto had acquired the lands detailed in schedule-I of the plaint from joint family funds and accordingly kept the same in joint possession. Since the plaintiff was minor and Sita Ram Mahto had apprehension in mind that if acquisition be made in his name, the four separated sons from the first wife might claim in future and as such registered Patta Kabuliat was executed only in the name of defendant No. 1. Later on, there was private partition between the plaintiff and the defendant No. 1 through a Panchayati and accordingly a memorandum of partition was drawn up on a stamp paper on 26.4.1972. All the joint family properties including schedule-I lands were divided half and half between the plaintiff and defendant No. 1, and their parents took only maintenance. Sita Ram Mahto died in the year 1983, and his wife had predeceased him. The lands of Schedule II of the plaint were allotted to the share of defendant No. 1, and the lands mentioned in Schedule III of the plaint were allotted to the share of the plaintiff, and accordingly they were coming in separate possession. As per partition, 84 decimals of land towards west was allotted to the share of defendant No. 1, and the rest 84 decimals of land towards east was allotted to the share of the plaintiff. Defendant No. 1 had sold away entire 84 decimals of land of his share towards west in the plot to three purchasers through three different sale deeds in the year 1973. The residue 84 decimals of land mentioned in Schedule III of the plaint remained in possession of the plaintiff over which he has sought declaration of right title, and interest by filing this suit.

5. The defendants have set up common cause and their case as per their written statement is that in the year 1950 all the sons of Sita Ram Mahto from both wives had separated from each other and also from their father they have got separate lands and have separate possession since 1950. In the said partition

the father and mother were given 13 Kathas of plot No. 1070 for their maintenance till life. Soon thereafter the lands of Kazipur were acquired by the government and the father and all the brothers of defendant No. 1 had taken payment of compensation of their respective shares separately, and they had separately purchased lands from the compensation money so received. The defendants denied that there was partition between the plaintiff and the defendants through Panchayati and a memorandum of partition was executed on 26.4.1972. It is alleged by the defendant that if any such memorandum of partition is produced the same is forged and fabricated document in order to create evidence.

6. The learned court below framed the following issues for adjudication:

- I. Is the suit as framed maintainable?
- II. Has the plaintiff got valid cause of action for the suit?
- III. Is the suit barred by limitation?
- IV. Is the suit barred by acquiescence, waiver and estoppel?
- V. Is the suit barred u/s 34 of the Specific Relief Act?
- VI. Is the plaintiff entitled to a decree as claimed for?
- VII. To what other relief or reliefs the plaintiff is entitled to?

7. The plaintiff has examined 16 witnesses in support of his case and proved documents in support of his case marked Exhibit 1 series to Exhibit 16.

8. The defendants examined 17 witnesses in support of their case. They brought on record documents marked Exhibit A to Exhibit L in support of their case:

9. On a consideration of the materials on record, the learned trial court dismissed the suit. It has been held that the partition had taken place and the six sons of Sita Ram Mahto had separated by metes and bounds, way back in 1950, and they were living separately. Sita Ram Mahto had not taken share for himself and was given about a little more than 13 Kathas of land for his maintenance and had only life-time interest. He has further held that the unregistered memo of partition dated 26.4.1972 (Ext.3), the sheet-anchor of the plaintiff's case, is a bogus and fabricated document for the purpose of the case. There was no occasion and indeed no property left for partition for the second time after the family properties had been partitioned way back in 1950. He has further held that the six sons had separate source of income and had purchased separate properties with their own income after the partition. He has further found that six sons had received the amount by way of compensation under the Land Acquisition Act. In that view of the matter, the suit was decreed. The plaintiff's appeal has been dismissed by the impugned judgment, and the findings of fact recorded by the learned trial court have been affirmed.

10. While assailing the validity of the impugned judgment, learned Counsel for

the plaintiff (appellant) submits that the learned court of appeal below has recorded half-baked findings of facts. He has not considered vital pieces of evidence which, if considered, will lead to opposite conclusions. He raises a particular grievance as to non-consideration of the expert's opinion (Ext.7) brought on record by the plaintiff, and the expert's opinion brought on record by the defendants marked Ext.E. In his submission, a clear finding on the correctness of one or the other expert's opinion was indispensable for adjudication of the genuineness of Ext.3, which has been discarded without a critical scrutiny of the two opinions. He further submits that Ext.14/A and Ext.15 have also been over-looked. In other words, in his submission the learned court of appeal below has completely failed to assess the evidentiary value of the opinion of the experts. He relies on the judgment in the case of Ishwar Dass Jain (Dead) Thr. Lrs. Vs. Sohan Lal (Dead) By Lrs., . He lastly submits that the entire range of evidence available on record with respect to the minority or otherwise of the plaintiff, particularly the evidence of P.Ws. 3 and 4, have not been considered.

11. Learned Counsel for the defendants has supported the impugned judgment. He submits that Exts. 11, 12, I, I/I, F/4, as well as the depositions of P.Ws. 3 and 7, conclusively establish that partition between the six brothers and the parents had taken place way back in 1950, and had separated by metes and bounds. This has to be read with the other findings on record. He next submits that refusal, not failure, to discuss in detail a particular piece of evidence was in the realm of appreciation of evidence and can not in second appellate jurisdiction, be a ground to reverse the findings of facts in a situation where the same have been concurrently arrived at. He relies on the following reported judgments:

(i) AIR 1959 S.C. 57 (Deity Pattabhiramaswamy v. Hanymayya and Ors.) (Paragraph 13).

(ii) Madamanchi Ramappa and Another Vs. Muthalur Bojjappa,

(iii) Bhimsen Gupta Vs. Bishwanath Prasad Gupta

(iv) AIR 2001 S.C. 965 (Santosh Hazari v. Purushottam Tiwari).

12. Learned Counsel for the plaintiff in reply has submitted that Ext.14/A, a vital document on behalf of the plaintiff, has been completely ignored. It was an order of the Patna Municipal Corporation permitting the plaintiff and defendant No. 1 for construction of a house jointly at Kazipur, Patna, Ext.3 has also been discarded on an untenable ground.

13. We have perused the materials on record and considered the submissions of learned Counsel for the parties. The plaintiff's case is that the partition had taken place between the four sons of the first wife by metes and bounds, and they had started living separately since 1950. His further case is that the two sons from the second wife continued to live together. There was no partition in 1950, and the partition had really taken place in the year 1972 as is evident from Ext.3. This part of the plaintiff's case has been completely rejected by both the

courts below. It has been concurrently found that all the six brothers and the parents had separated by metes and bounds way back in 1950. They had started living separately, and their father had been given a little more than 13 Kathas of land for maintenance, being life-time interest. It has also been concurrently found that in view of the previous partition, there was no occasion for partition on 26.4.1972, and Ext. 3 is a sham document. The entire joint family properties had been partitioned in 1950, and there was nothing left for a second partition. It appears to me that these findings have been recorded after an exhaustive discussion of all the relevant documents on record, particularly Exts. 11, 12, I, I/ I, F/4. The evidence of P.Ws. 3 and 7, being witnesses of the plaintiff, have also supported the case of defendants. In fact, P.Ws. 3 and 7 are step brothers of the parties. Furthermore, Ext.3 has been discarded out of hand as a sham document for various reasons discussed in the judgment. It is incorrect to state that the opinions of the experts, namely, Ext. 7 and Ext.E, have been completely ignored. There is clear reference about the two documents in both the judgments. It is another matter that the two courts, being court of facts, have not found enough of evidentiary value in the same and, therefore, did not feel the necessity of discussing the two documents at length for the reasons indicated hereinabove, namely, the partition has already taken place way back in 1950, there being no occasion nor the property left for repartition in 1972, apart from the reasons indicated in the judgment as to the validity of Ext.3.

14. I must notice Ext.14/A and Ext.15 relied on by the learned Counsel for the plaintiff. Ext.14/A seems to be a notice from the Patna Municipal Corporation in the joint names of the plaintiff and defendant No. 1 regarding construction of a house. Ext.15 is dated 29.9.1989, being an order under the land acquisition proceedings in L.A. No. 26/88, and perhaps has some reference to jointness of the family. The same can never be documents of title and seem to be a burden on the mass of evidence on record. Its evidentiary value, to my mind, is little. It appears to me that the entire range of relevant evidence on record has been considered by the two courts below. It is another matter that they have on thoughtful consideration of the relevant materials found against the plaintiff. The grievance lies there, and not in inadequate appreciation of evidence on record.

15. Learned Counsel for the plaintiff has relied on the following portion of judgment of Ishwar Dass Jain (supra):

9. Ordinarily, this Court does not go into findings of fact in exercise of its jurisdiction under Article 136 of the Constitution of India, particularly in appeals against judgment in Second Appeals decided by the High Courts u/s 100 of the Code of Civil Procedure. But, in certain exceptional cases, this Court will not hesitate to interfere, if interference is called for and if the High Court has failed to interfere u/s 100. After hearing the appellants in person and the learned Counsel for the respondent, we are of the view that this is one of those exceptional cases in which interference is called for even within the narrow parameters of Section 100 C.P.C.

10. Now u/s 100, CPC, after the 1976 amendment, it is essential for the High Court to formulate a substantial question of law and it is not permissible to reverse the judgment of the first appellate Court without doing so.

11. There are two situations in which interference with findings of fact is permissible. The first one is when material or relevant evidence is not considered which, if considered would have led to an opposite conclusion. This principle has been laid down in a series of judgments of this Court in relation to Section 100, CPC after the 1976 amendment. In *Dilbagrai Punjabi Vs. Sharad Chandra*, , while dealing with a Second Appeal of 1978 decided by the Madhya Pradesh High Court on 20.8.81, L.M. Sharma, J. (as he then was) observed that:

The Court (the first appellate Court) is under a duty to examine the entire relevant evidence on record and if it refuses to consider important evidence having direct bearing on the disputed issue and the error which arises as of a magnitude that it gives birth to a substantial question of law, the High Court is fully authorized to set aside the finding. This is the situation in the present case.

In that case, an admission by the defendant-tenant in the reply notice in regard to the plaintiff's title and the description of the plaintiff as "owner" of the property signed by the defendant were not considered by the first appellate Court while holding that the plaintiff had not proved his title. The High Court interfered with the finding on the ground of non-consideration of vital evidence and this Court affirmed the said decision. That was upheld. In *Jagdish Singh Vs. Natthu Singh*, , with reference to a Second Appeal of 1978 disposed of on 5.4.1991. Venkatachaliaha, J. (as he then was) held:

Where the findings by the Court of facts is vitiated by non-consideration of relevant evidence or by an essentially erroneous approach to the matter, the High Court is not precluded from recording proper findings." Again in *Sundra Naicka Vadiyar (dead) by LRs. and another Vs. Ramaswami Ayyar (dead) by his LRs.*, , it was held that where certain vital documents for deciding the question of possession were ignored such as a compromise, an order of the revenue Court reliance on oral evidence was unjustified. In yet another case in *Mehrunnisa (Smt) and Others Vs. Visham Kumari (Smt) and Another*, arising out of Second appeal of 1988 decided on 15.1.1996, it was held by Venkataswami, J. that a finding arrived at by ignoring the second notice issued by the landlady and without noticing that the suit was not based on earlier notices, was vitiated and the High Court could interfere with such a finding. This was in second Appeal of 1988 decided on 15.1.1996.

12. The second situation in which inference with findings of fact is permissible is where a finding has been arrived at by the appellate court by placing reliance on inadmissible evidence which if it was omitted as opposite conclusion was possible. In *Sri Chand Gupta Vs. Gulzar Singh and another*, , it was held that the High Court was right in interfering in Second Appeal where the lower appellate Court relied upon an admission of a third party treating it as binding on the

defendant. The admission was inadmissible as against the defendant. This was also a Second appeal of 1981 disposed of on 24.9.1985.

13. In either of the above situations, a substantial question of law can arise. The substantial question of law that arises for consideration in this appeal is : "whether the Courts below had failed to consider vital pieces of evidence and whether the Courts relied upon inadmissible evidence while arriving at the conclusion that the mortgage was sham and that there was no relationship between the plaintiff and the defendant as mortgagor and mortgagee but the real relationship was as landlord and tenant? Point 1 is decided accordingly.

16. The facts of that case stood on a fundamentally different footing. The Supreme Court on facts held that the High Court ought to have re-appreciated the evidence on record in view of the extremely unsatisfactory discussion of evidence by the court of facts. Law is well settled, as has been reiterated by the Supreme Court, that there is no lack of power in the High Court in exercise of second appellate jurisdiction to re-appreciate the evidence if an appropriate case is made out, but that could be in the rarest of rare cases. The High Court in exercise of second appellate jurisdiction should not normally reconsider the findings of fact recorded by the first appellate court, particularly in a situation like the present one where both the courts have concurrently found to the same effect. As stated hereinabove, I am convinced on a perusal of the two judgments that two courts have appreciated the entire range of relevant evidence on record and come to the findings with which this Court agrees.

17. Learned Counsel for the defendants has rightly relied on the case of Deity Pattabhiramswamy (supra). Paragraph 13 of the aforesaid judgment is reproduced hereinbelow for the facility of quick reference:

13. The finding on the title was arrived at by the learned District Judge not on the basis of any document of title but on a consideration of relevant documentary and oral evidence adduced by the parties. The learned Judge therefore, in our opinion, clearly exceeded his jurisdiction in setting aside the said finding. The provisions of Section 100 are clear and unambiguous. As early as 1891, the Judicial Committee in Durga Chowdhani v. Jawahir Singh 17 Ind App 122 (PC), stated thus:

There is no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact, however gross the error may seem to be.

The principle laid down in this decision has been followed in innumerable cases by the Privy Council as well as by different High Courts in this country. Again the Judicial Committee in AIR 1923 187 (Privy Council) , further elucidated the principle by pointing out:

If the question to be decided is one of fact it does not involve an issue of law merely because documents which are not instruments of title or otherwise the direct foundation of rights but are merely historical documents, have to be

construed.

Nor does the fact that the finding of the first appellate Court is based upon some documentary evidence make it any the less a finding of fact (See AIR 1930 91 (Privy Council) . But, notwithstanding such clear & authoritative pronouncements on the scope of the provisions of Section 100, Civil Procedure Code, some learned Judges of the High Courts are disposing of Second Appeals as if they were first appeals. This introduces, apart from the fact that the High Court assumes & exercises a jurisdiction which it does not possess a gambling element in the litigation & confusion in the mind of the litigant public. This case affords a typical illustration of such interference by a judge of the High Court in excess of his jurisdiction u/s 100, Civil Procedure Code. We have, therefore, no alternative but to set aside the decree of the High Court on the simple ground that the learned Judge of the High Court had no jurisdiction to interfere in second appeal with the findings of fact given by the first appellate Court based upon an appreciation of the relevant evidence. In the result, the decree of the High Court is set aside and the appeal is allowed with costs throughout.

18. Paragraph 12 of the judgment of the Supreme Court reported in *Madamanchi Raamappa* (supra) is also relevant in the present context and is reproduced hereinbelow for the facility of quick reference:

The admissibility of evidence is no doubt a point of law, but once it is shown that the evidence on which Courts of fact have acted was admissible and relevant, it is not open to a party feeling aggrieved by the findings recorded by the Courts of fact to contend before the High Court in second appeal that the said evidence is not sufficient to justify the findings of fact in question. It has been always recognized that the sufficiency or adequacy of evidence to support a finding of fact is a matter for decision of the Court of facts and cannot be agitated in a second appeal. Sometimes, this position is expressed by saying that like all questions of fact, sufficiency or adequacy of evidence in support of a case is also left to the jury for its verdict. This position has always been accepted without dissent and it can be stated without any doubt that it enunciates what can be properly characterized as an elementary proposition. Therefore, whenever this Court is satisfied that in dealing with a second appeal, the High Court has, either unwittingly and in a casual manner, or deliberately as in this case, contravened the limits prescribed by Section 100, it becomes the duty of this Court to intervene and give effect to the said provisions. It may be that in some cases, the High Court dealing with the second appeal is inclined to take the view that what it regards to be justice or equity of the case has not been served by the findings of fact recorded by Courts of fact; but on such occasions it is necessary to remember that what is administered in Courts is justice according to law and considerations of fair play and equity however important they may be, must yield to clear and express provisions of the law. If in reaching its decisions in second appeals, the High Court contravenes the express provisions of Section 100, it would inevitably introduce in such decisions an element of disconcerting

unpredictability which is usually associated with gambling; and that is a reproach which judicial process must constantly and scrupulously endeavour to avoid.

19. Reference may also be made to the judgment of the Supreme Court reported in AIR 1981 707 (SC) paragraph Nos. 10 to 12 of which reads as follows:

On a perusal of the first judgment of the High Court we are satisfied that the High Court clearly exceeded its jurisdiction u/s 100 in reversing pure concurrent findings of fact given by the trial Court and the then Appellate Court both on the question of title and that of Adverse possession. In the case of Mst. Kharbuja Kuer Vs. Jangbahadur Rai, this Court held that the High Court had no jurisdiction to entertain second appeal on findings of fact even if it was erroneous. In this connection this Court observed as follows:

It is settled law that the High Court has no jurisdiction to entertain a second appeal on the ground of erroneous finding of fact.

As the two Courts approached the evidence from a correct perspective and gave a concurrent finding of fact, the High Court had no jurisdiction to interfere with the said finding.

To the same effect is another decision of this Court in the case of R. Ramachandran Ayyar Vs. Ramalingam Chettiar, where the Court observed as follows:

But the High Court cannot interfere with the conclusions of fact recorded by the lower Appellate Court, however erroneous the said conclusions may appear to be to the High Court, because, as the Privy Council observed, however, gross or inexcusable the error may seem to be there is no jurisdiction u/s 100 to correct that error.

11. The same view was taken in two earlier decisions of this Court in the cases of D. Pattabhiramaswamy v. Hanymayya AIR 1959 SC 57 and Raruha Singh v. Achal Singh AIR 1961 SC 1097.

12. Thus, the High Court in this case had no jurisdiction after reversing the concurrent findings of fact of the Courts below on the question of adverse possession to remand the case to the Additional Judicial Commissioner on the question of title which also was concluded by the concurrent findings of fact arrived at by the two Courts as indicated above.

20. I am convinced on a perusal of the materials on record that the plaintiff has not been able to make out a case of non-consideration of any relevant piece of evidence which, if considered in the manner suggested by the plaintiff, would lead to opposite result. On the contrary, both the judgments appear to be thoughtfully prepared and have led to correct conclusions with which this Court agrees.

21. By order dated 27.1.2005, this Court had formulated the following substantial questions of law:

(i) Whether or not the learned court of appeal below has failed to consider important pieces of evidence, for example, Ext. 7 and Ext. E (Expert's evidence) which have vital bearing on the question of genuineness of the memorandum of partition inter-parties (Ext. 3)?

ii) It will be open to the parties to frame further question(s) of law at the time of disposal of this appeal.

Learned Counsel for the defendants rightly submits that in view of the foregoing discussion, the aforesaid formulation does not really constitute a substantial question of law fit for adjudication in second appellate jurisdiction. Non-consideration of a stray piece of evidence or inconsequential piece of evidence can not constitute a substantial question of law. Once it is found that the appeal does not raise a substantial question of law, the High Court loses jurisdiction to deal with the same. The Supreme Court has observed as follows in the case of *Kondiba Dagadu Kadam Vs. Savitribai Sopan Gujar and Others*, :

If the question of law termed as substantial question stands already decided by a larger bench of the High Court concerned or by the Privy Council or by the Federal Court or by the Supreme Court, its merely wrong application on facts of the case would not be termed to be a substantial question of law. Where a point of law has not been pleaded or is found to be arising between the parties in the absence of any factual format, a litigant should not be allowed to raise that question as substantial question of law in second appeal. The mere appreciation of the facts, the documentary evidence or the meaning of entries and the contents of the document cannot be held to be raising a substantial question of law. But where it is found that the first appellate Court has assumed jurisdiction which did not vest in it, the same can be adjudicated in the second appeal, treating it as substantial question of law. Where the first appellate Court is shown to have exercised its discretion in a judicial manner, it cannot be termed to be an error either of law or of procedure requiring interference in second appeal. This Court in *Reserve Bank of India and Another Vs. Ramkrishna Govind Morey*, held that whether trial Court should not have exercised its jurisdiction differently is not a question of law justifying interference.

Paragraph 15 of the judgment of this Court reported in the case of *Ram Jiwan Rai and Others Vs. Deoki Nandan Rai and Others*, is reproduced hereinbelow for the facility of quick reference:

15. It is manifest from the foregoing discussion that no substantial question of law arises in this appeal. The issues which may be taken to be a substantial question of law in second appellate jurisdiction fell for the consideration of the Supreme Court in its judgment report in AIR 2001 S.C. 965 (*Santosh Hazari v. Purushottam Tiwari*), the relevant portion of which is set out hereinbelow for the facility of quick reference:

A point of law which admits of no two opinions may be proposition of law but cannot be a substantial question of law. To be "substantial" a question of law

must be debatable, not previously settled by law of the land or a binding precedent, and must have a material bearing on the decision of the case, if answered either way, in so far as the rights of the parties before it are concerned. To be a question of law "involving in the case", there must be first a foundation for it laid in the pleadings and the question should emerge from the sustainable findings of fact arrived at by Court of facts and it must be necessary to decide that question of law for a just and proper decision of the case. An entirely new point raised for the first time before the High Court is not a question involved in the case unless it goes to the root of the matter. It will, therefore, depend on the facts and circumstance of each case whether a question of law is a substantial one and involved in the case, or not, the paramount overall consideration being the need for striking a judicious balance between the indispensable obligation to do justice at all stages and impelling necessity of avoiding prolongation in the life of any list.

22. I had the occasion to apply the same in my judgments in the following cases:

- (i) Mastan Khan Vs. Mohammad Islam, .
- (ii) Ram Jiwan Rai and Others Vs. Deoki Nandan Rai and Others .
- (iii) Sheo Chand Chaudhary alias Sheochan Chaudhary Vs. Adalat Hussain and Others .
- (iv) Mahesh Ram and Others Vs. Ganga Rai and Others .

23. In the result, I do not find any merit in this appeal. It is accordingly dismissed with costs throughout.