
(1985) 08 PAT CK 0026
In the Patna High Court
Case No : S.A. No. 22 of 1983

Ram Lal

APPELLANT

Vs

Mahadeo Sah and Others

RESPONDENT

Date of Decision : 09-08-1985

Acts Referred:

Limitation Act, 1963 — Section 5

Citation : (1986) 34 BLJR 14

Hon'ble Judges : M.P. Varma, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.P. Varma, J.—The present appeal is against the appellate order disposing of the appeal on a preliminary point namely, that of limitation, holding that the appeal was time barred by 12 days and thus dismissing Section 5 Limitation Act application, as also the appeal.

2. The defendant, who was the appellant in the court below is appellant before this Court.

3. The main contention of the appellant is that the trial court judgment was dated 27-4-1982 and the decree was originally signed on 8-5-82, which was subsequently amended, and the amended decree was signed on 27-5-82. The appellant assails the impugned judgment both on merit; i.e. not filing the appeal before 5-7-82 on the ground of illness and also on the ground that meaning of the amended decree on 27-5-82 gave a fresh period of limitation to run from the date of the signing of the amended decree.

4. It is to be noted that after the judgment was passed by the trial court on 27-4-82, and the follow-up decree on 8-5-82 the decree was amended by substituting the heirs of Shivadulari on the strength of the orders passed by this Court in Civil Revision No. 132/79 and the orders of substitution was passed on 1-7-82. The substituted persons were having direct interest in the suit property

and the decree, in their absence was not capable of execution. In this situation, I am first inclined to hold that the amendment was not of a formal or ministerial character but was of substance. Contention of the plaintiff based on the provisions contained in order 22 of the code as amended by Act 104 of 1976 does not seem to help him because in the instant case the death had occurred much before the decision in the suit, i.e., to say Mahabir had died in 1978; and his widow Shivadulari and her son Ganpat Sao were substituted in his place. Later Shivadulari died on 28-8-1979 and in whose place Dina Nath Gupta and Ram Chabila Gupta were substituted as defendants by order dated 1-7-1982.

5. Thus, the amendment of the decree is of substantial character and will give a fresh start, so far limitation is concerned. In that view of the matter, the appeal before the court below was well within time, and the order dismissing the appeal on the ground of the same being time barred; is not tenable.

6. The appeal, therefore, succeeds. The judgment and decree of the court below are set aside and the case is remanded to the lower appellate court for disposing of the appeal on merits after hearing the parties. No order as to costs.