
(1971) 01 PAT CK 0005

In the Patna High Court

Case No : Letters Patent Appeal No. 25 of 1967

Ramnaresh Singh and Others

APPELLANT

Vs

Ramlal Rai and Others

RESPONDENT

Date of Decision : 05-01-1971

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 4

Citation : AIR 1971 Patna 431

Hon'ble Judges : U.N. Sinha, C.J; K.B.N. Singh, J

Bench : Division Bench

Advocate : Kailash Roy and Kamla Pd. Roy, for the Appellant; Lalnarain Sinha, J.C. Sinha, Prem Shankar Sahay, Parmanand Sharan Sinha and S.K. Sharan, for the Respondent

Judgement

1. This appeal has been filed by some of the defendants in the circumstances mentioned below. The plaintiffs had filed Title suit No. 55 of 1960 and by judgment and decree dated the 24th September 1962, the suit was dismissed. Thereafter the plaintiffs had filed an appeal in the Court of appeal below which was numbered as Title Appeal No. 235/96 of the year 1962/63. This appeal was allowed by judgment and decree passed on the 15th December 1964. It appears that in the meantime defendant No. 3 of the suit had died on 24th September 1964. After the suit was decreed by the Court of appeal below, a second appeal was filed in this Court, numbered as Second Appeal No. 91 of 1965, by the present appellants. In that appeal an application had been filed stating that defendant No. 3 had died as stated above and praying that the heir of the deceased (Ram Kailash Singh) may be brought on the record. As it happens, without a consideration of this matter the second appeal was dismissed in limine on 1st May 1967, under the provisions of Order 41, Rule 11 of the CPC by a learned single Judge of this Court. Thereafter the appellants filed an application under Clause 10 of the Letters Patent of this Court mentioning about the death of defendant No. 3 and the matter was considered by the learned single Judge on the 28th September 1967, and leave to appeal under the Letters Patent was

granted. The order of the learned single Judge mentioned that by oversight the question of the death of defendant No. 3 during the pendency of the appeal in the Court below had not been argued. In such circumstances, the appeal has come before this Bench and the plaintiffs have filed an application praying that the heirs of deceased, Ram Kailash Singh, may be brought on record after condonation of delay. This application was filed under the provisions of Order 41, Rule 4 of the Code of Civil Procedure and Section 5 of the Limitation Act on the 12th November 1968. The only question that arises in this case is the effect of the death of defendant No. 3 during the pendency of the appeal in the Court of appeal below. We are satisfied on the decision of this Court, in the case of. Ram Saran Ahir and Others Vs. Prithvi Nath Singh and Another, , that the case should now be remanded to the Court of appeal below for disposal according to law. The plaintiffs' suit having been dismissed by the trial Court, the court of appeal below could not have decreed the suit after the death of defendant No. 3, without substituting on the record the heirs and legal representatives of the deceased defendant. The suit was for a declaration and confirmation of possession and in the alternative for recovery of possession of certain lands and contradictory decrees have come into existence by the Court of appeal below decreeing the suit in the absence of the heirs and legal representatives of defendant No. 3, when the suit had been dismissed by the trial Court. In such circumstances, following the decision of this Court mentioned above, the only course to be followed now is to set aside the order passed by the learned single Judge of this Court on the 1st May 1967, dismissing Second Appeal No. 91 of 1965 and to set aside the judgment and decree passed by the Court of appeal below on the 15th December 1964. The records of the case should be remitted to the Court of appeal below, along with the application for substitution filed by the plaintiffs in the letters patent appeal, mentioned above, for consideration by the Court of appeal below and thereafter for disposal of the appeal in accordance with law. In the circumstances of the case, parties are directed to bear their own costs.