
(2007) 10 PAT CK 0004
In the Patna High Court
Case No : C.R. No. 1456 of 2007

Shashi Shekhar Gupta

APPELLANT

Vs

Bibhuti Bhushan Jha and Others

RESPONDENT

Date of Decision : 08-10-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 17A, 151

Citation : (2008) 3 PLJR 527

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Advocate : Harshwardhan Sahay, for the Appellant; Uday Bhanu Roy and Ambrish Kumar Jha for Opp. Party No. 1, for the Respondent

Judgement

Ramesh Kr. Datta, J.—Heard learned counsel for the petitioner and learned counsel for opposite party no. 1 who is the only contesting opposite party so far as the present revision application is concerned since his petition dated 24.11.2003 has been allowed by the impugned order dated 18.6.2007 which has been challenged by the plaintiff-petitioner in this revision. The aforesaid title suit was filed originally as a suit for eviction but on defence having been taken by the defendants that they had acquired title over the property by way of an oral gift and the subsequent Yaddast executed on 16.2.1964 and alternatively, having acquired title by adverse possession the same was converted into a regular title suit on 7.3.1989. Subsequently, the evidence was led by the plaintiffs and defendants and on 22.9.2003 the evidence of the defendants was closed and on the prayer made by the defendants and their learned counsel in the court below the matter was fixed for hearing by the order on the said date. On 24.11.2003 a petition was filed on behalf of the defendants praying for recall of two witnesses, namely, defendant nos. 5 and 6 in order to prove certain documents whose original or photocopy had been filed earlier but they¹ have not been proved in the proper manner in accordance with law. The said petition has been allowed by the impugned order dated 18.6.2007. Challenging the same the petitioner has filed the present revision application.

2. Learned counsel for the petitioner submits that a consent order cannot be reviewed or recalled and the order dated 22.9.2003 being in the nature of a consent order, hence the Court below had no jurisdiction to pass the impugned order dated 18.6.2007 for reopening the evidence of the defendants. It is further submitted by the learned counsel that the suit being of the year 1975 has been dragged on indefinitely for nearly 32 years and the petition itself has been filed mala fide for the purpose of delaying the conclusion of the trial of the suit. It is thus, submitted that by virtue of provisions of Section 151 of the Code of Civil Procedure, the said petition being an abuse of the process of Court, the court below ought not to have allowed the said petition.

3. In support of the aforesaid propositions learned counsel for the petitioner relies upon a decision of the Supreme Court in the case of Salem Advocate Bar Association, Tamil Nadu Vs. Union of India (UOI), , in para-14 of which it has been held as follows:-

"In Salem Advocates Bar Association's case, it has been clarified that on deletion of Order XVIII Rule 17-A which provided for leading of additional evidence, the law existing before the -introduction of the amendment i.e. 1st, July, 2002, would stand restored. The Rule was deleted by Amendment Act of 2002. Even before insertion of Order XVIII Rule 17-A, the Court had inbuilt power to permit parties to produce evidence not known to them earlier or which could not be produced in spite of due diligence. Order XVIII Rule 17-A did not create any new right but only clarified the position. Therefore, deletion of Order XVIII Rule 17-A does not disentitle production of evidence at a later stage. On a party satisfying the Court that after exercise of due diligence that evidence was not within his knowledge or could not be produced at the time the party was leading evidence, the Court may permit leading of such evidence at a later stage on such terms as may appear to be just."

4. It is submitted by the learned counsel that in view of what has been laid down in the said judgment the opposite parties being defendants not having exercised due diligence in the matter, their document cannot be permitted to be produced at a later stage. Learned counsel also relies upon a decision of the Supreme Court in the case of Municipal Corporation of Delhi Vs. Kamla Devi and another, , for the proposition that if the suit is filed which amounts to abuse of the process of law and misuse of the legal system, then the Court is entitled to act to prevent such abuse and misuse and may award heavy cost.

5. Learned counsel for the defendant-opposite party no. 1 on the other hand submits that it is not a case where fresh documents were sought to be produced rather the documents had been duly filed on 6.8.1988 itself but due to inadvertence they had not been exhibited in the case in accordance with the prescribed procedure and when the mistake was detected, the application was filed within two months of the evidence of the defence being closed. It is further submitted that the said application is thus prima facie bona fide and cannot be held to be an abuse of the process of the Court.

6. On a consideration of the entire facts and circumstances, this Court does not find any force in the submission of the learned counsel for the petitioner. The order dated 22.9.2003 cannot be called a consent order in the sense the said term is used. On the prayer made on behalf of the defendants to close the evidence since they had no further evidence to lead, the prayer having been granted, the evidence of the defendants stood closed and the matter came up for hearing. It appears that while preparing for arguments, learned counsel for the defendants noticed the fact that the document which was sheet-anchor of the defendants' case, had not been exhibited in the proper manner and therefore, after re-opening of the evidence and recalling of the two defence witnesses they were required to be duly exhibited. Such an application cannot be called mala fide and abuse of the process of the Court. At best in such circumstances, the Court while allowing such an application shall consider the fact of inconvenience and harassment caused to the other side on account of any delay that has occurred and impose costs upon the party applying for the re-opening of the evidence. In the present matter, the court below while allowing the application has imposed a cost of Rs. 400/- for the said purpose which appears to be reasonable considering the fact that the application had been filed within two months of the closing of the evidence. The fact that the order itself on the application has come after a period of more than three and a half years, cannot go against the defendants.

7. So far as the reliance by learned counsel for the petitioner on Salem Advocates Bar Association case (supra) is concerned, the same as a matter of fact, goes against him. It has always been the law that the Court must ensure that all matters are decided on merits and even documents which had not been earlier produced are permitted to be produced at later stage provided the party satisfies the Court that after exercising due diligence that was not in their knowledge when the party was leading evidence. In the present matter, the defendants, as a matter of fact, had produced photocopy of the document as early as on 6.8.1988 and thus it is not a case where the plaintiff had been taken by surprise by the application filed on 24.11.2003.

8. Thus, on a consideration of the entire facts and circumstances, this Court does not consider it to be a fit case for interference in its revisional jurisdiction. The application for revision is accordingly rejected. However, as alleged by the learned counsel for the petitioner that the matter has been delayed at the behest of the opposite party no. 1, who is a very influential person of the area and there appears to be some justification in the said allegation as the suit has been dragged on for nearly 32 years, this Court directs that the court below must dispose of the suit within a period of four months from today.