

(2005) 08 PAT CK 0047
In the Patna High Court
Case No : Civil Revision No. 941 of 1999

Shree Thakur Radha Krishna Jee and Others	APPELLANT
Vs	
Rabi Shankar Pandey and Another	RESPONDENT

Date of Decision : 08-08-2005

Acts Referred:

Citation : (2005) 08 PAT CK 0047

Final Decision : Dismissed

Judgement

S. Nayer Hussain, J.—Petitioners were plaintiffs in Title Suit No. 177 of 1992 which they filed for declaration that late Harihar Pandey never adopted Defendant No. 1 (O.P. No. 1) and also to declare that the plaintiffs were sebaitis of the deities. The said suit was dismissed on 31.7.1996 due to default after rejecting the plaintiffs' petition for adjournment. Thereafter, Miscellaneous Case No. 12 of 1996 was filed by the plaintiffs under Order IX, Rule 9, CPC for restoration of the aforesaid suit, but the learned Subordinate Judge-IV, Sasaram, rejected the said Miscellaneous Case by order dated 4.7.1997. Against the said order the plaintiffs filed Miscellaneous Appeal No. 43 of 1997 which was also dismissed by the learned District Judge, Rohtas at Sasaram, on merits on 16.3.1999 which is under challenge in this Civil Revision.

2. Learned counsel for the petitioners vehemently challenged the aforesaid orders passed in the Miscellaneous Case as well as in the Miscellaneous Appeal submitting that the plaintiffs could not appeal in the suit on 31.7.1996 due to the death of one of the plaintiff's brother-in-law and hence on that date a petition for adjournment of the case was filed, but the same was rejected and within one week thereafter the Miscellaneous Case was filed which subsequently shows genuineness of the plaintiffs. Learned counsel for the plaintiffs-petitioners also avers that in the said Miscellaneous Case evidence was adduced and all the witnesses of the plaintiffs-petitioners specifically stated about the death of brother-in-law of one of the plaintiffs. Hence, he submits that the cause for delay was fully explained and moreover since the suit was for declaration, it should not

have been dismissed merely on technicalities, of law rather it should have been decided on the basis of equity and for sub-serving the ends of justice liberal approach should have been adopted as filing of fresh suit was clearly barred under the provision of Order IX, Rule 9, CPC.

3. In this connection, learned counsel for the plaintiffs petitioners relies upon two decisions; one of the Hon'ble Apex Court in case of Collector, Land Acquisition Anantnag and Anr. v. Mst. Katiji and Ors., reported in AIR 1997 SC 1353, and another of the Calcutta High Court in case of Dulal Chandra Ojha Vs. Banamali Guchait and Others, , in which it was held that the Court had to see whether there was sufficient cause and should not consider other extraneous matters. In this connection, he further submits that the learned Courts below have rejected the claim of the plaintiffs-petitioners on extraneous consideration which were not at all vital and important for the decision of the restoration case. It was at this stage that in a restoration petition the merit of the claims of the parties in the suit should not have been gone into. Learned counsel for the petitioners also submits that in a decision in case of United Commercial Bank v. Jugeshwar Nath and Anr., reported in 1987 BLJ 625, it was held that the Court had discretion to allow restoration in case of some negligence. Hence, he submits that the impugned orders of the learned Courts below are bad in law and erroneous and are fit to be set aside.

4. On the other hand, learned counsel for the Opposite Parties contests the claim of the learned counsel for the petitioners and submits that through out the proceeding of the Title Suit the plaintiffs used dilatory tactics and even after taking lenient attitude several adjournments were granted by the Court, when even then the plaintiffs or their lawyers did not appear to proceed with the suit, the Court had no option but to reject the prayer for adjournment made on behalf of the plaintiffs and dismiss the suit for non-prosecution..

5. Learned counsel for the Opposite Parties further submits that the impugned orders of the learned Courts below are legal and proper and do not warrant any interference.

6. After hearing the learned counsel for the parties and after perusing the materials on record, it is quite apparent that the suit was filed in the year 1992 whereafter the defendants appeared and issues were framed on 22.5.1993, but for three years thereafter the plaintiffs did not produce any evidence due to which the hearing of the suit did not proceed. It is also apparent that prior to the date of dismissal i.e 31.7.1996 the plaintiffs took adjournments in the suit on 1.6.1996, 14.6.1996, 20.6.1996, 10.7.1996 and 25.7.1996. On two of the occasions the ground taken for adjournment was ailment and on remaining occasions the ground was that they had gone out. However, adjournments were granted by the trial Court on the condition that the plaintiffs would deposit costs, but it is an admitted fact that no cost for any of the said dates were deposited by the plaintiffs and hence when on 31.7.1996 a prayer for adjournment was made on behalf of the plaintiffs, the trial Court had no option but to refuse the prayer

and dismiss the suit for non-prosecution.

7. Furthermore, the record of the case shows that the plea of death of brother-in-law of one of the plaintiffs was taken for the first time in the Miscellaneous Case, but neither the name of that brother-in-law nor his date of death and Sradh were disclosed. Furthermore, there were altogether three witnesses on behalf of the plaintiffs out of whom a plaintiff was one of the witnesses who also did not make any statement with respect to the death of brother-in-law of one of the plaintiffs. However, other witnesses of the plaintiffs mentioned about the death of brother-in-law of one of the plaintiffs, but they also did not disclose either the name of brother-in-law of the date of his death and Shradh. In the aforesaid circumstances, it was quite apparent that the plaintiffs-petitioners had absolutely failed to substantiate their claims by any valid materials or statements and hence there was no occasion left for the Courts below but to dismiss the Miscellaneous Case and Miscellaneous Appeal.

8. So far the case laws relied upon by the learned counsel for the petitioners are concerned, it was specifically held that if sufficient cause is shown, then a suit has to be restored. But here in the instant case neither sufficient cause has been shown nor the statements made by the plaintiffs-petitioners had been validly proved nor they were able to show that their failure to appear in the suit was not due to desired cause of delay but was a bona fide failure. Furthermore, if they sought adjournments on valid grounds they should have complied the order of the trial Court with regard to payment of costs. Hence, it is quite apparent that the fact of non-prosecution of the suit on 31.7.1996 was not a bona fide failure but it was merely an effect to cause delay in the proceeding in which issues were already framed more than three years back. In the aforesaid facts and circumstances, it appears that there was gross negligence and laches on the part of the plaintiffs-petitioners and hence the aforesaid case laws qited by the learned counsel for the petitioners were not applicable to the facts and circumstances of this case.

9. So far the consideration of other matters are concerned, it is quite apparent that since the facts of the case clearly show gross intentional laches and negligence on the part of the plaintiffs, there was no occasion for the Courts below to go into the merits of the claims of the parties in the Title Suit. But it appears that the learned Courts below considered the other matters only to satisfy themselves that even otherwise the plaintiffs had no valid claim. These questions can not be considered and decided in the Miscellaneous case and if has got no meaning or value at all in the eye of law and in any view of the matter it can not legally affect the other parts of the said orders, regarding the merit of the Miscellaneous Case and Appeal.

10. In the said circumstances, I do not find any illegality or jurisdictional errors in the impugned orders of the Courts below and hence this Civil Revision is dismissed.