
(1972) 09 PAT CK 0028
In the Patna High Court
Case No : Civil Revision No. 881 of 1971

Shri Thakurjee

APPELLANT

Vs

Kalpu Chamar and Others

RESPONDENT

Date of Decision : 13-09-1972

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115

Citation : AIR 1973 Patna 58

Hon'ble Judges : U.N. Sinha, C.J

Bench : Single Bench

Advocate : Keshri Singh, for the Appellant; Vinod Chandra, Ramji Sharan and Ramanand Kumar, for the Respondent

Final Decision : Dismissed

Judgement

U.N. Sinha, C.J.—This application has been filed by a deity through one Sitaram Das, calling himself the Mutawlli of the deity and the application is directed against an order dated the 14th May, 1971, by which the learned Munsif has allowed an application for restoration of Misc. Case No. 18 of 1968. This miscellaneous case had been filed by opposite parties Nos. 1 and 2 of this civil revisional application for setting aside a compromise decree. The miscellaneous case was dismissed for default on the 16th November, 1968. An application for restoration was filed on the 14th December, 1968, which was numbered as Miscellaneous Case No. 133 of 1968. The present order had been passed in Miscellaneous Case No. 133 of 1968. It appears from the judgment and order passed by the learned Munsif that he considered all the points which had been agitated before him fully, holding that the applicant had made out a good case for the restoration of Miscellaneous Case No. 18 of 1968.

2. Learned counsel for the petitioner deity has taken a new point in this Court It is argued that the deity was originally under the Mutawalliship of one Khedaru Das, who died on the 21st October, 1968, and thereafter Sitaram Das, son of Khedaru Das, became the Mutwalli and in Miscellaneous Case No. 133 of 1968,

the deity was not represented after the death of Khedaru Das, and, therefore, the impugned order ought to be set aside. Learned counsel for the contesting opposite parties has referred to a rejoinder which Sitaram Das had filed on the 24th January, 1970, in Miscellaneous Case No. 133 of 1968, and he has also submitted that this Sitaram Das had been examined in the Miscellaneous Case as opposite parties witness No. 5. Therefore, according to the learned counsel for the contesting opposite parties, the deity was fully represented, if it was under the Mutwalliship of Sitaram Das. Having heard learned counsel for the parties, I do not think that any case has been made out for interference. The deity was a party in Miscellaneous Case No. 133 of 1968, in which Sitaram Das had appeared as a witness having filed a written rejoinder. The said Sitaram Das was also examined as a witness and he had contested the case of the petitioner in Miscellaneous Case No. 133 of 1968. Therefore, if Sitaram Das was the Mutwalli of the deity, the latter's interest was sufficiently safeguarded by Sitaram Das. Therefore, I do not think any case has been made out for interference. The civil revision is, therefore, dismissed with costs payable to opposite parties Nos. 1 and 2. The order of stay stands vacated.

3. By a supplementary affidavit, Sri Sitaram Das has described himself as the Shebait of the Thakurjee although in the main civil revisional application he has been described as the Mutwalli of the Thakurjee. This matter can only be noted and nothing more can be done.