
(1957) 03 PAT CK 0025
In the Patna High Court
Case No : Civil Revision No. 949 of 1954

Smt. Parvati Devi and Another	Vs	APPELLANT
Dhodhi Lal Mahto and Another		RESPONDENT

Date of Decision : 29-03-1957

Acts Referred:

Citation : AIR 1957 Patna 533 : (1957) 5 BLJR 396

Hon'ble Judges : Sinha, J;Dayal, J

Bench : Division Bench

Advocate : Krishna Prakash Sinha, for the Appellant; Govt. Pleader, for the Respondent

Final Decision : Allowed

Judgement

1. This is an application against a very peculiar order of Mr. M. A. Rahman, Additional Subordinate Judge of Darbhanga, by which, after he had dismissed the appeal, he has directed recovery of the deficit court-fees on the plaint as also on the memorandum of the appeal through the collector if the same was not paid by a certain date.

2. In this case, the plaint was filed for a declaration that certain sale deeds were not binding upon the plaintiffs and for sending the sale deeds to the Sub-Registrar for cancellation. The plaint was rejected on the 19th December, 1952. Against the aforesaid order, an appeal was preferred and the appeal itself was dismissed on the 9th April, 1954. On the 6th July, 1954, however, the learned Subordinate Judge has passed the following order:--

"Seen report of the Serishtadar, Plaintiff applt. must pay deficit court-fee of Rs. 264/11/- towards plaint of the suit and of Rs. 287/6/-towards the memo of appeal by 26-7-54 failing which the amount would be realised through the Collector, Inform."

This order to say the least, is absolutely misconceived and unwarranted by any provision of law. So long as the appeal was pending, the Court below was

entitled to ask for the deficit court fee on the memorandum of appeal or in the plaint and the consequence of non-payment was either that the appeal was dismissed or the plaint was rejected or both. After the appeal was decided, one way or the other, the Court below had become functus officio and had no right to pass the order which it did. We do not suppose any authority is needed for this, but if one was needed, we would refer to the case of Radhika Raman Prasad Singh v. Mt. Janki Kuer 4 Pat LJ 472: (AIR 1919 Pat 9) (FB) (A) which held that once the appeal had been dismissed the court was functus officio and that the Court was powerless to make any order which could oblige or compel the respondent under the order of the Court to pay whatever deficiency might be due by him in respect of Court-fees payable in the lower court.

3. The application, therefore, must be allowed and the order of the Court below set aside but there will be no order for costs.