

(1925) 05 PAT CK 0021
In the Patna High Court

S.N. Mullick

APPELLANT

Vs

Ganga Gope and Others

RESPONDENT

Date of Decision : 20-05-1925

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 105

Citation : 91 Ind. Cas. 167

Hon'ble Judges : Ross, J;Kulwant Sahay, J

Bench : Division Bench

Judgement

Ross, J.—These are appeals against the decrees of the District Judge of Gaya in certain rent suits which were decreed ex parte by the Additional Munsif of Gaya, and there are also applications in revision in certain of the cases. It appears that on the 19th of July 1923 the cases were fixed for trial on the 3rd of August 1923. In the meantime on the 31st of July they were transferred from the Court of the Third Munsif where they had been instituted to the Court of the Additional Munsif. On the 3rd of August the defendants applied for time on the ground that they were not aware of the transfer and were not ready to go on with the case. This application was refused and the cases were heard on the 3rd of August ex parte and decided on the 7th of August. On the 5th of September the defendants filed petitions under Order IX, Rule 13, to set aside the ex parte decrees and on the 29th of September 1923 they also filed appeals against the decrees themselves. On the 3rd of October the Munsif rejected the petitions under Order IX, Rule 13, and no appeal was presented against that Order. On the 13th of February 1924, the District Judge decreed the appeals and remanded the suits for hearing on the merits.

2. It is contended on behalf of the plaintiff-appellant that it was not competent to the District Judge in appeal from the ex parte decrees to enter into questions which fell within the scope of the applications under Order IX, Rule 13, and that even if he could do so, he was not entitled to do so in these cases where the applications under Order IX, Rule 13 had been rejected, The learned Counsel for

the respondents relies, on Section 105 of the C.P.C. and contends that where a decree is appealed from, any error, defect or irregularity in any order affecting the decision of the case may be set forth as a ground of objection in the memorandum of appeal and that he is entitled to question the propriety of the order of the 3rd of August refusing an adjournment as well as the propriety of the order of the 3rd of October dismissing the application for re-hearing under Order IX, Rule 13. The latter contention raises a question of some difficulty and there is a decision of the Madras High Court in *Badvel Chinna Asethu v. Vattipalli Kesavayya* 60 Ind. Cas. 215 : 39 M.L.J. 697 : 12 L.W. 507 : (1920) M.W.N. 780 : 29 M.L.T. 63 which is against the respondents. It is not necessary, however, to decide that question in these appeals because it is, in my opinion, clear that the respondents may question the propriety of the order of the 3rd of August refusing an adjournment. The learned District Judge has found that the defendants were not informed of the order transferring the case from the Court, of the Third Munsif to the Court of the Additional Munsif. In my opinion, therefore, the application for adjournment made on the 3rd of August ought to have been granted. As the improper refusal to grant time on that date affected the decision of the case, the respondents were entitled to have the decrees set aside and the cases re-heard, apart altogether from any question raised in any application under Order IX, Rule 13, as to whether they had sufficient cause for nonappearance on the 7th of August when the decrees were passed.

3. There was a further defect in the proceedings in the Court below in that the suits were consolidated after evidence for the plaintiff had been taken.

4. On these grounds I think that the decision of the learned District Judge was right and that these appeals must be dismissed with costs. The applications in revision are also dismissed with costs. There will be one set of costs in the appeals and one set of costs in the revision applications. Hearing fee one gold mohur.

Kulwant Sahay, J.

5. I agree.