

(2000) 01 PAT CK 0099
In the Patna High Court
Case No : Civil Review No. 295 of 1997

Sri Basudeo Jha and Others

APPELLANT

Vs

Baidya Nath Mishra and Others

RESPONDENT

Date of Decision : 31-01-2000

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 9

Citation : (2000) 4 PLJR 207

Hon'ble Judges : S.N. Jha, J

Bench : Single Bench

Advocate : Indu Shekhar Prasad Sinha and Shashi Nath Jha, for the Appellant;

Judgement

S.N. Jha, J.—The defendant first party of Title Suit No. 131 of 1978 of the court of subordinate Judge, Madhubani are the petitioners. They filed civil revision no. 1593 of 1997 challenging the order dated 28.8.97 passed by the 4th Subordinate Judge, Madhubani in Miscellaneous Case No. 5 of 1987 by which the said Miscellaneous case was allowed and the Title Suit was restored. The said Miscellaneous case under Order 9 Rule 9 CPC had been filed for restoration of the suit which had stood dismissed in default. The Civil Revision was dismissed on 22.10.97 observing that no ground for interference had been made out. It may be mentioned here that on 22.10.97 none had appeared on behalf of the petitioners and the revision was thus dismissed without hearing the counsel. This civil review petition was filed on 17.11.97 taking the plea that on account of the death of plaintiff-applicant no. 12 Jagdish Jha, during the pendency of the Miscellaneous case in the court below, the entire proceeding in the miscellaneous case had abated on account of non-substitution of his heirs and therefore, the restoration of the suit was not in accordance with law. It has been stated that after the factum of death was brought to the notice of the court through an application to hold the miscellaneous case to have abated the plaintiffs filed application for substitution of his heirs. The court also fixed the miscellaneous case for hearing in the abatement matter. It is said that there was a dispute

regarding the date of death and reports had been called for from the local Block Development Officer in view of the conflicting reports submitted by the Panchayat Sewak. It is not necessary to go into these aspects of the case. It is undisputed position that the miscellaneous case was disposed of without passing any order in the abatement matter, that is to say, without setting aside the abatement and/or substituting the heirs of deceased Jagdish Jha. In the above view of the matter, notice of the review petition was issued to the opposite party on 13.2.98. It would not be out of place to mention here that notwithstanding the petitioners' case regarding abatement on account of non-substitution of the heirs of deceased Jagdish Jha they impleaded not only late Jagdish Jha but also his heirs, namely, widow and children, to avoid any complication in future. Notice thus, went to the said heirs as well. It is unfortunate that neither they nor any other opposite party has appeared in this case. The review petition, in the circumstances, was taken up for ex parte hearing.

2. Shri Indu Shekhar Prasad Sinha, learned counsel for the petitioners submitted that suit or, for that matter, the miscellaneous case under Order 9 Rule 9 CPC, abates as a matter of course by efflux of time, and where no step is taken to set aside the abatement in accordance with law, the court has no jurisdiction to restore the suit. The court below accordingly committed error of jurisdiction in restoring the suit.

3. In order to find out the effect of the non-substitution of the heirs of the deceased plaintiff Jagdish Jha as to whether it results in abatement of the whole suit or only part of it, I looked into the plaint of the title suit, According to the plaintiffs' case, the suit lands belong to defendant 2nd and 3rd parties who either settled or sold the lands in favour of the plaintiffs. The plaintiffs are as many as 45 and they claim specific lands by virtue of settlement of purchase. So far as the deceased Jagdish Jha is concerned, he claims to have purchased, along with his brother plaintiff no. 11 Sushil Jha, 1 Bigha and 17 Dhurs of land of plot no. 1060 of Khata no. 134 of Mauja Harlakhi under registered sale deed dated 31.3.64. Prima facie, it thus appears that the interest of the deceased plaintiff along with his brother in the suit land is defined, limited to the extent of the land purchased under the particular suit. Therefore, that being so, the effect of non-substitution would not result in the abatement of the suit as a whole.)f the court had allowed the prayer for substitution that would have been end of the matter. Even if it did not, the order of restoration of the suit as a whole cannot be said to be erroneous or without jurisdiction. However, I do not wish to pass final order in the case in the absence of the opposite party particularly, the heirs of deceased plaintiff. In my opinion, it would be appropriate to leave the matter open to be decided by the court below in their presence.

4. Accordingly, without disturbing the order of restoration dated 28.8.97, I would direct the court below to consider as to whether the said order requires any modification. In the event it is found that the interest of deceased Jagdish Jha (and Sushil Jha) in the suit lands was defined limited to one Bigha 17 Dhurs of

land of plot no. 1060, obviously, the suit would be held to have abated only to that extent and restoration of the suit as regards the other lands would not be illegal. Depending upon the conclusion which the court would arrive at, the order dated 28.8.97 passed in Miscellaneous case No. 5/89 impugned in the civil revision, would stand modified. This order is being passed on the assumption that the suit is still pending and no order in the substitution/abatement matter has already been passed in the suit, after restoration. In other words, if the suit has already been disposed of because, there was no stay order by this Court, or any order in the substitution matter has been passed, this order will not be given effect to. This civil review is accordingly disposed of.