

(1988) 04 PAT CK 0034

In the Patna High Court

Case No : Civil Revision No. 1554 of 1985

Sri Bhrigunath Singh and Others

APPELLANT

Vs

Sri Harbansh Roy and Others

RESPONDENT

Date of Decision : 28-04-1988

Acts Referred:

Citation : (1990) 1 PLJR 477

Hon'ble Judges : S.B. Sinha, J

Bench : Single Bench

Advocate : Kamla Prasad Roy, for the Appellant; S. Asghar Hussain, for the Respondent

Final Decision : Allowed

Judgement

S.B. Sinha, J.—This civil revision application is directed against the order dated 16.7. 1985 passed by Sri Madhvendra Saran, 4th Additional Subordinate Judge, Patna in Misc. Case No. 19 of 1984 whereby and whereunder he held that the decree passed in favour of the Petitioners is a nullity as during the pendency of the suit one of the Defendants namely Defendant No. 7 (Bishwanath Singh) died and in his place his heirs and legal representatives were not brought on the record.

2. According to the learned court below the original Defendant No. 7 died some times in March, 1982. The decree was passed in title suit No. 190/59 of 1980/1983 on 30.12 1983 Admittedly, the heirs of aforementioned deceased Defendant No. 7 (Bishwanath Singh) were not brought on the record by the decree holder by filing a substitution application. However, the other Defendants did not raise any objection with regard to the same during the pendency of the suit. After the decree was passed one of the judgment debtors sold away a portion of the property in suit by a sale deed dated 5.3.1984 thereafter the decree was put under execution.

3. In the said execution case an objection was taken on behalf of the judgment

debors to the effect that the decree was become inexecutable being a nullity for the reason that Bishwanath Singh died leaving behind him four daughters who inherited the interest of Bishwanath Singh but they were not added as party to the suit. Apart from the other pleas the decree holder contended that in the suit the Defendant No. 7 was added as a Defendant third party and, no relief was claimed against him and as such the suit did not abate by reason of death of said Defendant No. 7. Learned Counsel appearing on behalf of the Petitioners submitted that the court below had committed a material irregularity in exercise of its jurisdiction inasmuch, as he had failed to take into consideration as to whether the Defendant No. 7 was a proforma Defendant or not. In this connection learned Counsel for the Petitioners has drawn ray attention to the following findings of the learned court below:

The decree shows that Defendant No. 7 Bishwanath Singh is Defendant 3rd party. The decree does not show that the Defendant No. 7 is a proforma Defendant and that no relief has been claimed against him

At this stage we cannot look into the plaint to decide the status of the Defendant No. 7. Therefore, now it cannot be said that Defendant No. 7 was an unnecessary party and that no relief was sought against him.

4. Mr. S.S. Asghar Hussain learned Counsel appearing on behalf of the opposite party" has submitted that from the record it appears that there has been a prayer for a decree of injunction as against Defendant No. 7 but in this case, according to the Petitioner, the main relief was against the Petitioner Ist set and Defendant No. 7 was merely a formal party. It is now well settled that for the purpose of construction of a decree parsed in suit, the executing court may look into the pleadings of the parties and other relevant documents which are available on the record of that suit. Plainly enough the learned court below has committed Material irregularity in exercise of its jurisdiction in refusing to see the pleadings of the parties for the purpose of coming to the conclusion as to whether the decree passed in the aforementioned title suit was a nullity or not.

5. The learned court below, in the circumstances of this case, should have been done better if he had seen the record of the aforementioned title suit and come to the conclusion as to whether the suit had abated as a whole by reason of non-substitution of the Defendant No. 7 during the pendency of the suit or not. This vital aspect of the matter has not been considered by the learned court below. In this situation the impugned order cannot be sustained and the same is as such hereby set aside.

6. In the result, this civil revision application is allowed and the court below is directed to consider the matter afresh after looking into the pleading of the parties and other relevant documents. In the facts and circumstances of this case there will be no order as to costs.