
(2008) 02 PAT CK 0041
In the Patna High Court
Case No : C.R. No. 1290 of 2005

Sri Morr @ Shri Maurya Singh and Others	APPELLANT
Vs	
Smt. Sushila Devi and Others	RESPONDENT

Date of Decision : 29-02-2008

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151, 152

Citation : (2008) 4 PLJR 789

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

Bench : Single Bench

Final Decision : Dismissed

Judgement

S.N. Hussain, J.—This Civil Revision has been filed by the defendant-petitioners challenging order dated 26.4.2005, by which the learned Subordinate Judge-VI, Patna, rejected their petition dated 11.1.2005 (Annexure-5) under the provisions of Sections 151 and 152 of the CPC (hereinafter referred to as "the Code" for the sake of brevity) for review of the earlier order of the learned court below dated 27.12.2004, by which the plaintiff's amendment petition dated 23.9.2004 was allowed in part in Title Suit No. 42 of 1997. The aforesaid title suit was filed by one Balmati Devi, wife of Shri Maurya Singh against her husband Shri Maurya Singh and his second wife Chandrawati Devi for a decree of partition of her share in the suit properties. It transpires that the defendants appeared and contested the suit and its hearing commenced on 20.2.2002 when the issues were framed. It also transpires that on 29.11.2003, an Advocate Commissioner was appointed for examination of the sole plaintiff as a witness on commission due to her ailment, but she died before her deposition, whereafter her six daughters (opposite parties no. 1 to 6) were substituted in her place as plaintiffs. It further appears that immediately thereafter on 23.9.2004, the substituted plaintiffs filed a petition for amendment of paragraphs no. 4, 6, 8, 16 and 21 as well as Relief No. 1 and Schedule-2 of the plaint and also for adding paragraphs No. 7A, 8A and Relief No. 3 of the plaint.

2. The defendants contested the said amendment petition and filed their rejoinder on 8.10.2004, whereafter by order dated 27.12.2004 the learned court below allowed all the amendment sought by the substituted plaintiffs, except the amendments sought in paragraphs no. 6 and 8 of the plaint and also except addition of paragraphs no. 7A (part) and 8A of the plaint.

3. However, on 11.1.2005 the defendant-petitioners filed a petition (Annexure 5) under the provisions of sections 151 and 152 of the Code against that part of order dated 27.12.2004, by which amendments sought by the plaintiffs in paragraphs no. 4, 16, 21 as well as Relief No. 1 and Schedule 2 of the plaint and also addition of Relief No. 3 in the plaint were allowed. In paragraph no. 7 of the said petition, the defendant-petitioners had stated as follows:-

But from the order dated 27.12.2004 passed by this learned court it appears that the learned court has not considered the nature of amendment and settled principle of law which appears to occur error by accidental slip or omission which is in the interest of justice required to be reviewed in the light of the proposition and settled principle of law.

4. The plaintiffs filed a rejoinder to the said petition on 10.2.2005 and stated that neither there was any clerical or arithmetical mistake in the order nor there was any error or omission by accidental slip in the order of the said court dated 27.12.2004 and also that the defendants could not pray for review of the said order by aforesaid petition filed by them. The plaintiffs were daughters of defendant no, 1, who was not performing his legal and religious duty in respect of the plaintiffs nor he is taking any step for marriage of his unmarried daughters and in the said circumstances, the amendment sought was the requirement of law, for which the substituted plaintiffs filed a petition immediately after their impleadment in the suit. Considering the facts and circumstances of the case, the learned court below rejected the petition of the defendants by impugned order dated 26.4.2005 against which the instant Civil Revision has been filed by the defendants.

5. The defendant-petitioners have challenged the aforesaid order on the ground that the facts and relief for challenging the deeds of gift dated 30.7.1979 and 8.2.1980 executed by defendant no.1 were void and for marital expenses of plaintiff no. 6, who is an unmarried daughter, from the share of defendant no.1 cannot be claimed by way of amendment petition filed in 2004. The petitioners have further submitted that the said deeds of gift are dated 30.7.1979 and 8.2.1980, whereas, the aforesaid suit was filed in the year 1997 and amendment was sought with respect thereto in 2004. The said amendment, if allowed, would defeat the right of the defendants, which he had acquired due to bar of limitation. In this connection, he relies upon a decision of the Hon"ble Apex Court in case of Radhika Devi Vs. Bajrangi Singh and others, and also upon a decision of this Court in case of Haku Murmur Vs. Sufal Manjhi alias Sufal Murmur and Others . Learned Counsel for the petitioners has also stated that the deeds in question were registered documents and hence the knowledge of the said

documents would be deemed to be from the respective dates of their registration as per the decision of this Court in case of Chhathu Paswan & Anr. vs. Salim Mian and Ors. reported in 1996 (1) P.L.J.R. 372.

6. On the other hand, Learned Counsel for opposite parties has claimed that the petitioners have challenged only the order in review and not the original order, by which the amendment petition was allowed and hence this Civil Revision is not maintainable. In this regard, he relies upon a decision of the Hon"ble Apex Court in case of Shiv Charan Singh vs. State of Punjab and Ors., reported in 2007 (1) P.L.J.R. (S.C.) 82. He has also submitted that the plaintiff-opposite parties had no right, title or interest in the life time of their mother and only when she died and they were substituted in the year 2004 in the suit, they learnt about the said deeds of gift and immediately after their substitution they filed the amendment petition on 23.9.2004.

7. From the averments made by Learned Counsel for the parties and the materials on record, it is quite apparent that by order dated 27.12.2004 (Annexure-4) the amendment petition filed by the plaintiffs was allowed, whereafter, on 11.1.2005 a petition (Annexure-5) was filed on behalf of the defendants under the provisions of Sections 151 and 152 of the Code stating that there were errors in the order dated 27.12.2004, which were by accidental slip and omission, which required to be corrected. It was also stated in the said petition that the nature of the amendment as well as the settled principle of law were not considered in the said order dated 27.12.2004, which, thus, required review.

8. From a perusal of the said petition and the orders of the learned court below, it is quite apparent that there was no accidental slip, omission, clerical, typographical or arithmetical error in order dated 27.12.2004 and hence the provision of Section 152 of the Code was not applicable to the facts and circumstances of the case. Furthermore, Section 151 of the Code is also not applicable to the facts and circumstances of the case as the jurisdiction of review cannot be termed as an inherent power and review can be sought only under the specific provision provided in law for review. Reference in this regard may be made to a decision of the Hon"ble Apex Court in case of Patel Narshi Thakershi and Others Vs. Shri Pradyumansinghji Arjunsinghji, as well as to a decision of this Court in case of Tetar Mandal and Others Vs. Executive Officer and Others, . Furthermore, the said petition not having been filed under the specific provision made in the Code for review, the petition filed by the defendants was not maintainable and the learned court below had rightly rejected the same.

9. So far question of maintainability of this Civil Revision against the order passed in review without any Civil Revision having been filed against original order dated 27.12.2004 by the defendants is concerned, Learned Counsel for the petitioners has relied upon a decision of the Hon"ble Apex Court in case of Smt. Vidya Vati Vs. Shri Devi Das, , but in the said decision the matter was different as in that case the review petition filed against the original order was allowed

and the original order was set aside. Hence, in the aforesaid case the petitioner had no grievance against the original order, rather he had grievance against the subsequent order, by which the original order was reviewed/set aside. But in the instant case order dated 27.12.2004 was sought to be reviewed, but the said review petition was dismissed and hence the petitioners were aggrieved by both the orders, namely, original order dated 27.12.2004 as well as order dated 26.4.2005, by which review petition was dismissed.

10. In the said circumstances, this Civil Revision is incompetent as it is against order dated 26.4.2005 of- the learned court below rejecting the petition for review of the earlier order of that court dated 27.12.2004 and no revision or appeal has been filed by the defendants against the said order dated 27.12.2004. Reference in this regard may be made to a decision of the Hon''ble Apex Court in case of Shiv Charan Singh vs. State of Punjab and Others, reported in 2007 (1) P.L.J.R. (SC) 82.

11. In any view of the matter, admittedly, the deeds in question are of 1979 and 1980 when the substituted plaintiffs were either minor or unborn. Furthermore, they had no right to sue in the life time of their mother Balmati Devi, who had filed the suit. It is also not in dispute that immediately after the death of their mother, the plaintiffs were substituted in the year 2004 and within a few months i.e. on 23.9.2004 they filed a petition for amendment, which was allowed by the learned court below on 27.12.2004. It is also not in dispute that the substituted plaintiff-opposite parties are the daughters of defendant-petitioner no. 1 and they had specifically claimed that he is not performing his legal and moral duties with respect to them and had also not taken any step for marriage of his daughters, which include still unmarried daughters also. In the facts and circumstances discussed above, this Court does not find any illegality or jurisdictional error in the impugned order of the learned Court below. Hence, this civil revision is dismissed.