
(2002) 07 PAT CK 0144

In the Patna High Court

Case No : L.P.A. No's. 810 and 811 of 2002

Subodh Kumar Prasad

APPELLANT

Vs

The State of Bihar and Others

RESPONDENT

Date of Decision : 30-07-2002

Acts Referred:

Citation : (2002) 4 PLJR 66

Hon'ble Judges : Ravi S. Dhavan, C.J;R.N. Prasad, J

Bench : Division Bench

Advocate : Party in Person, for the Appellant; S.S. Naiyar Hussain, for State, for the Respondent

Final Decision : Dismissed

Judgement

1. It is unfortunate that in this matter in which the Appellant argues in person, he virtually initiated his argument straightaway that he will take the High Court to the Supreme Court. This is an unusual argument which no conventional lawyer will adopt to present his case. Notwithstanding, the Court heard the Appellant in person.

2. The issue plainly is very simple on the two writ petitions which were connected and were before a division of the Court presided over by a learned Judge. The two petitions were C.W.J.C. No. 1678 of 2000: Phool Mohammad Khan and Anr. v. The State of Bihar and Ors. and C.W.J.C. No. 1977 of 2000: Phool Mohammad Khan and Another Vs. The State of Bihar and Others, . In the one writ petition the Appellant is Respondent No. 5 and in other writ petition the Appellant is Respondent No. 6. The net result of the order on the writ petitions is that the learned Judge declined to interfere on the ground that a suit has been filed by no other person than the Appellant and this suit is pending. Reference of the suit has been given by learned Judge at page 7 of the order. This is Title Suit No. 252 of 2002.

3. Apparently arguments were raised on behalf of the Appellant-Respondent and

it would be best to reproduce the arguments as were made before the learned Judge where the petitions were pending. The arguments as noticed were:

On behalf of the Respondent No. 6, who appeared in person, it was strongly urged that this Court should not interfere with the impugned order without examining the documents of the parties relating to title and possession and it was further submitted that the claim of the Petitioners is based upon forged and fraudulent documents etc.

4. Even before this Court, the submission on behalf of the Appellant was that this Court may see the record to arrive at a satisfaction and return a finding that the documents on the basis of which the mutation was made were not bonafide and the mutation has been forged.

5. The Court indicated to the Appellant, arguing in person, that the effect of the order on the writ petitions is to the extent that while the suit will go on and the result of the suit will determine the rights of the parties whatever they might be, the High Court plainly declined to interfere to reflect on any aspect of title and possession. Further, the Court indicated to the Appellant that if forgery be the plea then the law, the Indian Evidence Act, 1872, permits any party to avoid an order or a judgment by establishing that such an order or judgment has been obtained by fraud or collusion.

6. In the circumstances, the Court had indicated that should the Appellant desire, he may withdraw the appeal and the Court would then pass an order that no observation of the Court would affect the proceedings in the suit.

7. But, apparently the Appellant pursued the appeal repeating that the learned Judge had recorded a wrong order otherwise than his submissions which were not noticed and this Court will also be in error if it did not return a finding on title and possession of the Appellant. This appeal is no different than the writ petitions before the learned Judge and the writ jurisdiction of the High Court continues. This Court cannot return a finding on title or possession when a suit filed by no other person than the Appellant is pending.

8. The impertinence of the Appellant apart which this Court has ignored, suffice it to say that the Court does not find any error in the order of the learned Judge on the writ petition in relegating the Appellant to the suit proceedings.

9. Consigned.

10. Dismissed.