

(1920) 02 PAT CK 0008
In the Patna High Court

Suraj Pal Pandey and Another

APPELLANT

Vs

Utim Pandey and Others

RESPONDENT

Date of Decision : 02-02-1920

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 148, 149
Limitation Act, 1963 — Section 5

Citation : 56 Ind. Cas. 47

Hon'ble Judges : Sultan Ahmed, J

Bench : Single Bench

Judgement

Sultan Ahmed, J.—The plaintiffs brought the suit as the nearest reversioners of the deceased son of defendant No. 1 and sought for a declaration that certain sale-deeds executed by defendant No. 1 in favour of the other defendants were without legal necessity and not operative against the plaintiffs. The trial Court held that the plaintiffs had established that they were reversioners, but held that the sale-deeds were executed for legal necessity and were operative against the plaintiffs and dismissed the suit. The Appellate Court held that the sale-deeds in question were not genuine transactions and were not executed for legal necessity. They represented bogus transactions entered into with a view to enable the defendants Nos. 2, 3 and 4 to grab the widow's property from the plaintiffs.

2. A second appeal has been filed in this Court. The learned Vakil, appearing on behalf of the plaintiffs, has not challenged the findings of the lower Appellate Court, but he contends that the appeal filed before the learned District Judge was barred by limitation.

3. It appears that the Munsif decided the suit on the 16th of March 1917. The appeal was filed on the 2nd of April 1917 and allowing time for preparation of the decree and the certified copy of the judgment and decree, it is conceded that this appeal was filed in time. The last date on which the appeal could have been filed was the 14th of April 1917. But it has been pointed out that, though the appeal

was filed on the 2nd April 1917, it was filed with insufficient Court-fee. The office, having found this, reported the matter to the District Judge who allowed time till the 17th of April, but as nobody appeared on that date the appeal was dismissed for default. The order sheet shows that, on the 24th of April, an application was filed by the appellant in the Court below for the restoration of the appeal, on which the appeal was admitted and the deficit Court-fee was paid by him on that date. No objection was taken at any time by the respondents in the Court below, i. e., the appellants in this Court, on the ground that the appeal was filed after the period of limitation allowed by law, But it is contended before me that though this objection was not taken in the lower Appellate Court it could still be taken here and reliance has been placed on the case reported as Chaturbhui Sahay v. Muhammad Habib 54 Ind. Cas. 36. That case was, however, u/s 5 of the Limitation Act and has no bearing on the present case, Assuming, however, that it could be raised here, I have to see whether the objection itself is sustainable. It is obvious that the District Judge acted u/s 149, Civil Procedure Code, in giving time to the appellant for the payment of the deficit Court-fee till the 17th. True it is that there was no compliance with this order, but that the very fact that on the 24th April the learned Judge admitted the appeal implies that he acted u/s 148 of the CPC and enlarged the time for the payment of deficit Court-fee. I am confirmed in the view that I take of this matter, by a decision of this Court in Second Appeal No, 2210 of 1914 referred to in Gaya Loan Office Limited v. Awadh Behari Lal 37 Ind. Cas. 507 : 1 P.L.J. 420 : 3 P.L.W. 51, where the learned Chief Justice Chamier and Sharfuddin, J., held that the learned Judge, under similar circumstances, acted u/s 148, Civil Procedure Code,

4. It has been held in the case of Priya Nath Bachier v. Miajan Sardar 29 Ind. Cas. 571 : 24 C.L.J. 88 that a Judge, passing order u/s 149, Civil Procedure Code, for payment of deficit Court-fees must be taken, on the record as it stands, to have exercised his discretion as provided by the section, and an Appellate Court cannot go into the question as to whether he exercised his discretion in making the various orders of payment properly. Much less would, then, this Court go behind that order in second appeal when the point was not taken at any stage in the Court below.

5. The case reported as Golab Chand v. Bahuria Ram Murat Koer 10 Ind. Cas. 268 : 13 C.L.J. 432 shows that the order u/s 148 enlarging the time for the payment of deficit Court-fee was made by the Registrar, who had no power under the law to admit such applications. But in the present case the order admitting the appeal was made by the District Judge himself. Under these circumstances, I think the point that has been raised is untenable and I would dismiss this appeal with costs.