

(2012) 12 PAT CK 0008
In the Patna High Court
Case No : CWJC No. 9987 of 2012

Sushma Devi and Others

APPELLANT

Vs

Most. Sona Devi and Others

RESPONDENT

Date of Decision : 04-12-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 23 Rule 3A, Order 7 Rule 11, Order 9 Rule 13, Order 9 Rule 7, 151
Constitution of India, 1950 — Article 227

Citation : (2013) 2 PLJR 109

Hon'ble Judges : Jyoti Saran, J

Bench : Single Bench

Advocate : Shashi Shekhar Dwivedi, for the Appellant; Dhruv Narain, for the Respondent

Final Decision : Dismissed

Judgement

Jyoti Saran, J.—Heard Mr. Shashi Shekhar Dwivedi, learned senior counsel appearing on behalf of the petitioners and Mr. Dhruv Narain, learned senior counsel appearing for the plaintiff respondent no. 1. This application under Article 227 of the Constitution of India has been filed questioning the order dated 30.4.2012 passed by the learned Sub-Judge-V, Patna City, district-Patna in Title Suit No. 184 of 2000, whereby the learned court below has been pleased to allow the application dated 26.4.2012 filed by respondent no. 1 who is the plaintiff in the court below u/s 151 of the CPC (hereinafter referred to as "the Code"), seeking permission of the court to convert the title suit into a miscellaneous case.

2. The facts of the matter in brief is that the plaintiff-respondent no. 1 had filed the title suit in question seeking a declaration that she is the title-holder of Schedule-1 property of the suit and that the defendants have no right, title and possession over the same. A further declaration was sought for holding the judgment and decree passed in Title Suit No. 55 of 1996 as collusive, illegal decree and not binding upon the plaintiff.

3. It is not in contest that the evidence in the suit was completed and the suit was fixed for judgment on 30.4.2012. Prior to the date of judgment the plaintiff-respondent no. 1 filed the application in question on 26.3.2012 u/s 151 of the Code seeking permission of the court to convert the suit into a miscellaneous case. The learned court below on the date fixed for judgment, i.e. 30.4.2012 by the order impugned taking note of a judicial pronouncement of this Court reported in 2010 (1) P.L.J.R. 560 (Smt. Prabhawati Sinha vs. Heera Rai) permitted the plaintiff-respondent no. 1 to convert the title suit into a miscellaneous case and by the same order allowed the parties to move the learned District Judge for transfer of the proceedings to the court which had passed the compromise decree in Title Suit No. 55 of 1996. The petitioner is defendant in the court below and is aggrieved by the order and hence the present application.

4. Mr. Dwivedi, learned senior counsel appearing for the petitioners on the strength of a judicial pronouncement of the Supreme Court reported in Arjun Singh Vs. Mohindra Kumar and Others, has submitted that once the judgment is reserved in a suit, the learned trial court is precluded to entertain any application much less an application filed u/s 151 of the Code and thus the order impugned is wholly without jurisdiction and contrary to the judicial pronouncement. It is submitted that the Supreme Court in the judgment has held that there is no hiatus between the date on which the judgment is reserved and the date on which the judgment is pronounced rather it is only a postponement of the pronouncement for the purpose of convenience of the court to deliver the same but this does not vest any right in any party, to file any application nor does it vest any jurisdiction in the court, to entertain the same. It is submitted that the only course thus open to the learned trial court was to deliver the judgment in the case but in no circumstances he could have entertained the application filed u/s 151 of the Code and allowed the conversion of the title suit into a miscellaneous case specialty when it is not the court which had passed the compromise decree. Mr. Dwivedi in support of his contention has also relied upon a judgment of the Supreme Court reported in Banwari Lal Vs. Smt. Chando Devi (through L.R.) and another, .

5. The contentions advanced by Mr. Dwivedi have been contested by Mr. Narain, learned counsel appearing for the plaintiff-respondent no. 1. In support of the order impugned Mr. Narain has submitted that inherent powers are vested in a court u/s 151 of the Code for passing such order and in view of the pronouncement of this Court in Smt. Prabhawati Sinha (supra) no infirmity could be found in the order of the learned court below, which does not warrant any interference.

6. I have heard learned counsel for the parties and have perused the materials on record. The only issue which falls for consideration before this Court is whether or not the learned trial court after reserving the judgment in the case could have entertained the application and permitted the plaintiff to convert the

title suit into a miscellaneous case.

7. This Court would first refer to the judgment rendered in the case of Arjun Singh (*supra*) relied upon by Mr. Dwivedi in support of his submission. The judgment passed in the case of Arjun Singh (*supra*) is in an entirely distinct circumstances. It was a case in which the matter proceeded under Order 9 rule 7 of the Code. As the defendant had not chosen to appear the matter had been posted for judgment and it is after the matter was posted for judgment that the defendant chose to appear by filing an application for recalling the order by which the suit had been reserved for judgment. It is in the special circumstances where there is a remedy provided under the provisions of Order 9 rule 13 of the Code that the Supreme Court held that the power exercised u/s 151 of the Code was not in accordance with law as there was specific remedy available to the party concerned. The case in hand has totally different circumstance where both the parties have appeared, they have led their evidence and the pleadings are complete. It is not a case governed by the provisions of Order 9 rule 7 where the defendant is seeking reopening of the proceedings. It is also not a case that the defendant at any stage did raise any objection about the suit being hit by the provisions of Order 23 rule 3A or for rejection under Order 7 rule 11 of the Code or for deciding the maintainability of the case rather an ornamental objection has been taken regarding maintainability of the suit. The issue thus has to be considered in the backdrop of the circumstances governing the present case. As the judgment was reserved in the present case and prior to passing of the judgment the application in question was filed by the plaintiff-respondent no. 1 seeking permission of the court to convert the title suit into a miscellaneous case, the court below taking into consideration the pronouncement of this Court rendered in the case of Smt. Prabhawati Sinha (*supra*) permitted the conversion. The objection raised by Mr. Dwivedi that the permission so accorded would amount to assumption of jurisdiction by the court below, also does not hold substance for the simple reason that an assumption of jurisdiction by the learned trial would have occasioned, had the trial court proceeded with the hearing of the miscellaneous case after its conversion. On the contrary, the order impugned itself manifests that the learned trial court understanding his limitations in the matter has afforded opportunity to the parties to move the District Judge for transfer of the matter to the court which had passed the compromise decree. Thus no jurisdictional error has been committed by the learned trial court.

8. This brings us to the issue whether the court concerned could have entertained the application u/s 151 of the Code after having reserved the case for judgment. The powers vested in court u/s 151 of the Code has been summarized in a recent pronouncement of the Supreme Court reported in K.K. Velusamy Vs. N. Palanisamy, more particularly in paragraph 12 thereof and paragraph 15 of the same is a complete answer to the issue posed before this Court. I am tempted to refer to the said paragraphs which runs as follows:

15. The learned counsel for the respondent contended that once arguments are

commenced, there could be no reopening of evidence or recalling of any witness. This contention is raised by extending the convention that once arguments are concluded and the case is reserved for judgment, the court will not entertain any interlocutory application for any kind of relief. The need for the court to act in a manner to achieve the ends of justice (subject to the need to comply with the law) does not end when arguments are heard and judgment is reserved. If there is abuse of the process of the court, or if interests of justice require the court to do something or take note of something, the discretion to do those things does not disappear merely because the arguments are heard, either fully or partly. The convention that no application should be entertained once the trial or hearing is concluded and the case is reserved for judgment is a sound rule, but not a straitjacket formula. There can always be exceptions in exceptional or extraordinary circumstances, to meet the ends of justice and to prevent abuse of process of court, subject to the limitation recognized with reference to exercise of power u/s 151 of the Code. Be that as it may. In this case, the applications were made before the conclusion of the arguments.

9. The judgment rendered in the case of Arjun Singh (supra) came up for consideration in a subsequent judgment reported in Lal Devi and Another Vs. Vaneeta Jain and Others, and the Supreme Court while appreciating the restrictions in the court below of not entertaining any application after reserving the judgment, has held that the same would not prevent the High Court to grant indulgence in the matter.

10. For the reasons aforesaid, no jurisdictional error or material irregularity or any illegal infirmity can be found in the order impugned.

11. This application is accordingly dismissed. This Court, however, before paring with the order would like to clarify that any observation made by the learned trial court in the impugned order would not prejudice the case of either of the parties and the court to which the miscellaneous case would stand transferred, shall consider and dispose of the same on its own merits in accordance with law without being prejudiced by the observations made in the order impugned and after affording opportunity to the parties to lead evidence, if any, in the matter.