

(2019) 07 PAT CK 0172
In the Patna High Court
Case No : Civil Revision No. 231 Of 2016

Tarzen Kumar @ Umesh Ravidas And Ors	APPELLANT
Vs	
Mostt. Manti Devi And Ors	RESPONDENT

Date of Decision : 11-07-2019

Acts Referred:

Citation : (2019) 07 PAT CK 0172

Hon'ble Judges : S. Kumar, J

Bench : Single Bench

Advocate : Pravin Chandra Prasad, Dr. Anshuman

Final Decision : Dismissed

Judgement

1. Heard the parties.
2. This civil revision has been filed for setting aside the order dated 29.07.2016 passed by the learned Sub-Judge-II Katihar in Miscellaneous Case No. 1 of 2016 by which the learned court below has rejected the review petition dated 25.02.2016 filed by plaintiff/petitioner.
3. Title Suit No. 80/2002 was filed on 30.07.2002 by the plaintiffs/petitioners through their natural guardian Manti Devi (mother) for partition of suit land for declaring their share in the suit property as detailed in schedule-II of the plaint and carving out their separate share through survey knowing Pleader Commissioner.
4. Suit land as detailed in Schedule II of plaint is ancestral land recorded in the name of Moti Ram Ravidas who had purchased it and who died in 1993 leaving behind his two sons Uttam Ravidas and Rupchand Ravidas and two daughters Bhagiya Devi and Gujra Devi.
5. Father of plaintiffs/petitioners was made defendant No. 1 and uncle was made defendant No. 2 in said suit. Father of plaintiffs/petitioners was acting against the interest of plaintiffs/petitioners who had acquired right, title and interest in the

ancestral property which was sought to be alienated by defendant No. 1 under influence of Alcohol in favour of defendant No. 2, as such suit for partition was filed. However, during pendency of suit defendant No. 1 died and thereafter plaintiff/petitioner claimed half share in the ancestral property.

6. Written statement was filed on behalf of defendant No. 2 Rupchand Das in which it was contended that suit suffers from defect of parties as daughters of Moti Ram Ravidas who are necessary parties have not been impleaded in this partition suit. Defendant No. 1 Uttam Ravidas father of plaintiff/petitioner had relinquished his share in favour of defendant No. 1 through a Panchnama dated 21.07.1991 in which their father Moti Ram Ravidas was a witness. Defendant No. 1 had separated and was residing separately with his family and there is no joint title and possession over the suit land which is exclusive property of defendant No. 2.

7. On the basis of pleadings of parties, seven issues were framed by the trial court. The trial court by its judgment and decree dated 12.09.2013 and 30.09.2013 dismissed the suit on contest holding that plaintiffs/petitioners are not entitled to any share in the suit property as they have failed to prove joint title and possession over the suit property as well as suit was dismissed for non-joinder of necessary parties against which plaintiff/petitioner filed a review petition for review of judgment and decree dated 12.09.2013 and 30.09.2013 which was registered as Miscellaneous Case No. 01/2016 without any application for condonation of delay which was dismissed by the trial court vide order dated 29.07.2016 against which present Civil Revision has been filed.

8. The trial court dismissed the miscellaneous Case No. 01 of 2016 which was filed for review of Judgment and Decree passed in Title Partition Suit as same was filed after three years of passing of judgment and decree without an application for condonation of delay in filing review petition. Even on merit the application for review of judgment and decree was liable to be dismissed as the trial court had dismissed the suit of plaintiff/petitioner holding that suit land is not a joint family property between plaintiff and defendants, as such not liable for partition and also on non-joinder of parties as daughters of Late Moti Ram Ravidas were not made party in partition suit. As such, the review petition filed only on the ground against dismissal of suit against non-joinder of parties was not maintainable, even otherwise review of judgment and decree has very limited scope and judgment and decree can be reviewed only if there is any error apparent on face of record, which is lacking in present case. Petitioner, if aggrieved by the judgment and decree passed against him by the trial court on all issues ought to have filed first appeal and appellate court could have re appreciated and reconsider the evidence on record.

9. This Court does not find any jurisdictional error or irregularity in the order as impugned accordingly, the Civil Revision is dismissed.