
(2011) 02 PAT CK 0095
In the Patna High Court
Case No : C.R. No. 522 of 2010

Vishwa Mohan Kumar Choudhary and Others	APPELLANT
Vs	
Yatindra Narayan Choudhary and Others	RESPONDENT

Date of Decision : 25-02-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (2012) 1 PLJR 460

Hon'ble Judges : Birendra Pd. Verma, J

Bench : Single Bench

Judgement

Birendra Pd. Verma, J.

Order I.A. No. 6031 of 2010

1. Heard the parties. The present Interlocutory Application has been filed by the defendants 1st party-petitioners herein with a prayer for staying the further proceeding in Title Suit No. 103 of 1991 pending in the Court of learned Sub-Judge-IV, Darbhanga.

2. While notices were issued upon the opposite parties by a Bench of this Court by order dated 27.8.2010, interim order of stay was passed till final disposal of the present interlocutory application. In view of aforesaid order dated 27.8.2010, the plaintiff-Opposite Party No. 1 herein, has entered appearance and has filed a counter affidavit in the present interlocutory application praying therein that the interim order of stay granted by a Bench of this Court by order dated 27.8.2010, be vacated. In the counter-affidavit, it has been specifically pointed out that one Ram Udar Choudhary-petitioner no. 3 herein had earlier filed C.R. No. 905 of 1992 before this Court raising a grievance with respect to an order dated 23.7.1992 passed in the aforesaid Title Suit No. 103 of 1991. The aforesaid Civil Revision No. 905 of 1992 was disposed of by a Bench of this Court by order dated 12.11.1992 with a direction to the trial court that the suit itself be decided expeditiously, preferably within a period of six months from that date. Operative

part of the order dated 12.11.1992 passed in C.R. No. 905 of 1992 is reproduced hereinbelow:-

.....Therefore, without deciding the question on merit or expressing any opinion on the merit of the case, this order dated 23.7.92 be set aside and the matter is remitted back to the court below for deciding it afresh after giving due opportunity to the parties concerned and only then pass the order on the application filed by the defendants. However, the suit itself should be decided as expeditiously as possible and preferably within a period of six months from today.

3. Learned counsel for the petitioners submits that since the suit itself was not maintainable, therefore, petition filed on their behalf on 5.9.2009 under Order 7 Rule 11(d) of the CPC should have been allowed by the learned Trial Court but erroneously same has been rejected by an order dated 23.4.2010 by the learned trial court, against which the present civil revision has been filed. Learned counsel for the petitioners in support of his contention has placed reliance on a judgment of this Court in the case of *Guru Charan Singh and Others Vs. Mahatam Singh and Another*, .

4. Learned counsel for the plaintiff-opposite party no.1 submits that the suit having been filed in the year 1991 and the issues having been settled by learned Trial Court as far back as on 2.1.1997 and evidence of the plaintiff having been started in the court below, coupled with the fact of the earlier direction issued by this Court in C.R. No. 905 of 1992, as referred to above, directing to dispose of the suit within six months, the petition filed on behalf of the defendants-petitioners herein under Order 7 Rule 11(d) C.P.C., after almost 18 years of the filing of the suit, was completely misconceived and has rightly been rejected by the learned Trial Court.

5. After having heard the parties at length and after considering the materials on record, this Court finds that the suit was filed in the year 1991, i.e., almost 20 years ago wherein several reliefs have been sought for on behalf of the plaintiff including the relief for declaration of compromise decree dated 12.2.1948 as illegal and void. The written statement on behalf of the defendants in the present suit was filed in the year 1992. A Bench of this Court by an order dated 12.11.1992 directed for disposal of the title suit itself within a period of six months. The issues have been settled in the year 1997, and thereafter evidence on behalf of the plaintiff has also started. After lapse of more /than 18 years, the defendants-petitioners herein filed a petition under Order 7 Rule 11(d) of the CPC for rejection of the plaint, which has been rejected by the impugned order passed by the learned trial court with an observation that this issue raised on behalf of the defendants shall be taken up and decided at the time of disposal of the suit itself.

6. The scheme and scope of Order 7 Rule 11(d) of the CPC came up for consideration before the Apex Court on several occasions. Recently in the case of *Kamala and Others Vs. K.T. Eshwara Sa and Others*, , the Apex Court has been

pleased to hold that for considering the plea raised under Order 7 Rule 11(d) of the Code of Civil Procedure, the court is required to see only the averments made in the plaint to find out as to whether the suit is maintainable or plaint should be rejected at the threshold? No amount of evidence can be looked into at that stage. If the suit proceeds further, then no objection can be raised by the defendants and considered by the learned trial court, by looking into other materials, in terms of Order 7 Rule 11(d) of the Code of Civil Procedure.

7. Apparently, in the present case, the order passed by the learned Single Judge on 12.11.1992 in C.R. No. 905 of 1992 has attained its finality. Learned Trial Court was obliged to decide the suit within a period of six months, but due to delaying tactics of the parties, it appears that the suit has remained pending till date. In the aforesaid facts and circumstances of the case, this Court does not find any merit in the present interlocutory application for grant of stay. It is accordingly, rejected. The interim order of stay passed on 27.8.2010 stands automatically vacated. The learned court below is directed to proceed further expeditiously for disposal of the suit in the light of the earlier order dated 12.11.1992 passed in C.R. No. 905 of 1992.