

(1998) 04 PAT CK 0028
In the Patna High Court
Case No : M.A. No. 451 of 1997

Yamuna Sah @ Jamuna Prasad Sah

APPELLANT

Vs

Shashi Mahto and Others

RESPONDENT

Date of Decision : 27-04-1998

Acts Referred:

Bihar Bhoodan Yagna Act, 1954 — Section 17(4)
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11

Citation : (1999) 1 BLJR 110 : (1998) 2 PLJR 507

Hon'ble Judges : Gurusharan Sharma, J

Bench : Single Bench

Judgement

Gurusharan Sharma, J.—Title Suit No. 33 of 1993 was filed by the plaintiff-respondent for declaration of title and for further declaration that the proceeding before the Deputy Collector Land Reforms, Godda vide Bhudan Confirmation Case No. 1 of 1986-87 as vitiated by fraud and nullity. The plaintiff claimed himself to be the defendant of the related tenant and in possession of the suit land which consisted two rooms let out to the defendant-tenant.

2. During pendency of the suit on 27.9.1993, a petition was filed under Regulation 5 of the Santhal Pargana Regulations, 1872 (hereinafter referred to as "the Regulation) claiming that the Civil Court had no jurisdiction to entertain and try the suit. They also claimed that the suit was barred u/s 17(4) of the Bihar Bhudhan Yajana Act, 1954 (hereinafter referred to as "the Act").

3. The trial Court by judgment dated 8.12.1993 dismissed the suit without framing any issue and holding that the suit was barred both under Regulation 5 of the Regulation and Section 17(4) of the Act. The plaintiff preferred Title Appeal No. 1 of 1994, which was allowed by the Second Additional District Judge, Godda on 12.8.1997 and the case was remanded to the trial Court for fresh decision according to law.

4. Mr. Dwivedi, Senior Counsel for the appellant submitted that, in fact, the plaint of Title Suit No. 33 of 1993 was rejected under Order VII. Rule 11 of the CPC

(hereinafter referred to as "the Code) for the reason that there were statutory bars to the jurisdiction of the Civil Court to entertain the same. But inadvertently, operative part of the judgment it was mentioned that the suit was dismissed on contest and the first appellate Court took the suit to have been disposed of under Order XIV, Rule 2 of the Code. I find that the admitted position is that the defendants had not filed any written statement and raised only questions of statutory bar under Order VII, Rule 11(d) of the Code and as such, in fact, according to assessment of the trial Court on the averment in the plaint, the same was rejected under the said provision and, in my opinion, the first appellate Court has erred in holding that the suit was disposed of under Order XIV, Rule 2. In such situation, I set aside the impugned order dated 12.8.1997 passed by the Second Additional Sessions Judge, Godda in Title Appeal No. 1 of 1994 and direct that the appeal may be decided on its own merit and in accordance with law treating the impugned trial Court's decision dated 8.12.1993 to have been given Order VII, Rule 11 of the Code.

5. This appeal is, accordingly, disposed of with consent of parties at the stage of hearing under Order XLI, Rule 11 of the Code itself.