

Court No. - 19

Case :- FIRST APPEAL FROM ORDER No. - 161 of 2000

Appellant :- Smt. Rajpati

Respondent :- Shiv Baran

Counsel for Appellant :-

H.S.Sahai,G.P.Mishra,Ganga Prasad Mishra,Shri Prakash Pandey,Shyam Mohan Pradhan,Y. Singh

Counsel for Respondent :- R.K. Singh,Ambrish Tripathi

Hon'ble Jaspreet Singh,J.

Heard Shyam Mohan Pradhan, learned counsel for the appellant and Shri Ambrish Tripathi, learned counsel for the respondent.

The instant appeal has been filed under Order 41 Rule 1 (u) CPC read with Section 104 against the judgment and order dated 22.11.1999 passed by the 9th Additional District Judge, Gonda in Civil Appeal No.36 of 1997 whereby the lower appellate court allowed the appeal and remanded the matter to the trial court for a decision afresh.

Learned counsel for the respondent has pointed out that nothing survives in the instant appeal for the reason that even though the instant appeal was admitted on 04.04.2000, however, the appeal was dismissed as withdrawn by means of order dated 22.01.2001. Even though an application for recall has been filed but no orders have been passed and the appeal has not been restored as yet despite 23 years have been passed. It has also been submitted that during pendency of the instant appeal after the order dated 22.01.2001 was passed, the parties filed a compromise before the trial court and in terms whereof the suit came to be decided on the basis of compromise.

In the aforesaid circumstances where the order of compromise has yet not been challenged and the compromise subsists and the suit itself stand decided. This appeal under Section 104 read with

Order 43 Rule 1 (u) does not survive.

A specific query was put to the learned counsel for the appellant who does not dispute the aforesaid fact. In the aforesaid circumstances where in a suit for Specific Performance of Contract the parties have already entered into a compromise and the suit has been decided in terms thereof and there are no proceedings pending either challenging the said compromise decree or seeking recall in terms of Order 23 Rule 3-A CPC, hence the instant appeal which is an offshoot of the said suit itself does not survive.

There is another way to look at the aforesaid situation since the order under challenge is the order whereby the matter has been remanded and the suit has been decided. In the aforesaid circumstances, nothing can be decided in this appeal.

Since the appeal was withdrawn vide order dated 22.01.2001 and an application for recall has been moved by the appellant seeking recall of the order dated 21.01.2001, apparently even in light thereof no substantive relief can be granted to the appellant.

In view of the aforesaid, nothing survives in the aforesaid appeal which is accordingly dismissed. There shall be no order as to costs.

Order Date :- 6.12.2023

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