

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.504 of 1981

1. Krishna Prasad son of Late Shri Hari Lal R/O Village, Rampur Binda Lal, P.S. Ekma, Distt-Saran, at present residing at Mohalla Nai Bazar Town and PS and District-Siwan.

... Appellant/s

Versus

1. The State of Bihar through Collector, Siwan, Distt-Siwan
2. Circle Officer, Siwan P.S. & Distt-Siwan

.... Respondent/s

Appearance :

For the Appellant/s : Mr. Uma Shankar Prasad, Sr. Advocate

Mr. Deepak Kumar Sinha, Advocate

For the State : Mr. Neeraj Kumar, AC to SC-22.

CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL JUDGMENT

Date: 21-09-2015

Heard learned counsel for the appellant as well as learned AC to SC-22.

2. Because of the fact that after hearing learned respective counsels, it is apparent that respective learned counsels are of firm notion over nature of the order impugned being illegal and on account thereof, the detailed description is being avoided.

3. The instant appeal has been filed against order dated 12.09.1981 passed by Subordinate Judge, Siwan in Title Suit No. 233/1979 rejecting the plaint purported to be under Order 7 Rule 11 of the C.P.C. on the ground that the same has been filed in utter violation of mandate of Section 80 of the C.P.C.

4. Gone through the order impugned.

5. The learned lower court while passing the order impugned, virtually, failed to see the previous order-sheets, more particularly, order dated 09.08.1979 wherefrom it is apparent that

taking into account the nature of urgency, the compliance of Section 80 of the C.P.C. has been waived for which, the Court was competent in terms of (2) of Section 80 of the C.P.C. Once such privilege has been granted by the court itself, then in that event, it was to survive.

6. The learned lower court did not assign any cogent reason on that very score. That being so, the order impugned happens to be contrary to law and is, accordingly, set aside. Appeal is allowed. The matter is remitted to the learned lower court to proceed in accordance with law.

7. Furthermore, the Title Suit happens to be of the year 1979, on account thereof, the learned lower court will take special attention and conclude as well as decide the trial on priority basis within a period of six months without granting undue adjournment in the background of the fact that the State had already appeared and WS at its end is available on the record.

8. So far maintainability of Interlocutory Application No. 9353/2013 is concerned, its applicant is at liberty to pray before the learned lower court which, the learned lower court will decide in accordance with law. The said I.A. is found disposed of in terms thereof.

(Aditya Kumar Trivedi, J)

Patna High Court
September 21st 2015
Perwez/NAFR

U		T	
---	--	---	--