

IN THE HIGH COURT OF JUDICATURE AT PATNA

First Appeal No.902 of 1978

(Against the order and decree passed by Sub Judge, Hajipur dated 17.08.1978 in Partition Suit No.18 of 1977).

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Vijay Kumar Pd. Singh & Ors.

.... Defendants-Appellants

Versus

Awdhesh Prasad Singh & Ors.

.... Plaintiffs-Respondents

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Appearance :

For the Appellant/s : Mr. Shree Nandan Prasad Singh, Advocate
Mr. Manoj Kumar No.1, Advocate

For the Respondent/s : Mr. Jawahardhari Singh, Advocate
Mr. Shambhu Nath, Advocate

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR SAHOO
ORAL JUDGMENT

Date: 01-07-2015

1. It appears that the original defendant No.16 has filed this First Appeal against the judgment/order dated 17.08.1978 passed by the learned Subordinate Judge, Hajipur in Partition Suit No.18 of 1977 whereby the plaintiff-respondent's suit for partition was decreed ex parte under Order 8 Rule 10 C.P.C.

2. It appears that plaintiffs-respondents filed the aforesaid suit for partition on 17.02.1977. The minor defendants filed written statement and challenged the maintainability of the suit and prayed for dismissal of the partition suit. The defendant No.16 appeared and filed an application for recall of the order fixing ex parte hearing of the suit and also prayed for time for filing written statement on 17.08.1978. From perusal of the impugned judgment/order, it



appears that on 17.08.1978 itself, the court below without assigning any reason rejected the application filed by the defendant No.16 and examined the plaintiff as P.W.1 and closed the case of the plaintiff. The court below did not even granted time to the minors for adducing any evidence in support of their written statement and on the same day, heard the plaintiff and observed that the claim of the plaintiff has not been disputed by the defendants, as such, decreed the plaintiff's suit.

3. The learned counsel for the appellants submitted that on 17.08.1978, the defendant No.16 who is the appellant appeared and prayed for time for filing written statement after recalling the ex parte order but the court below without assigning any reason rejected the application and on the same day passed the impugned judgment and decree without giving opportunity to the petitioner for preferring even revision application against the order of rejection. The learned counsel further submitted that there was no such urgency and the court below did not consider the reason for which defendant No.16 could not file the written statement within the period granted by the Court. The learned counsel further submitted that although, the suit was filed on 17.02.1977, the case was disposed of on 17.08.1978 hastily without giving opportunity to the minor respondents. On these grounds, the learned counsel submitted that the

impugned judgment/order and decree are liable to be set aside and the matter may be remanded to the court below giving opportunity to the appellants for filing written statement and contesting the plaintiff's suit.

4. The learned counsel further submitted that in the court below, the appellants had already filed an application under Section 4 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act for passing an order of abatement but the court below without disposing of the said application either separately or in the order has passed the impugned judgment/order.

5. On the other hand, the learned counsel appearing on behalf of the respondents submitted that since the defendants-appellants were not obeying the order of the Court and did not file the written statement within the period granted by the court below, the court below has rightly proceeded to dispose of the suit according to the provision as contained in Order 8 Rule 10 of the C.P.C., therefore, the order impugned cannot be interfered with. The learned counsel submitted that now if the impugned order is set aside after such a long period, the plaintiffs-respondents, in whose favour the decree has been passed, shall suffer serious loss and will be harassed unnecessarily.

6. In view of the above contentions of the parties, the point arises for consideration in this appeal is as to "whether the

impugned order/judgment passed by the court below is in consonance with the provision as contained in Order 8 Rule 10 C.P.C.” and “whether the impugned judgment/order is sustainable in the eye of law?”

7. From perusal of the impugned judgment/order, it appears that the court below in the first part of the order has only stated that there is no merit in the petition hence they are rejected. That was the application filed by the appellants for recall of the ex parte order and application for time to file written statement. No reason has been assigned at all as to why the applications were rejected. From perusal of paragraph 3 of the said impugned order/judgment, it appears that the minor defendants have filed contesting written statement. Admittedly, no opportunity was granted to the said respondents for adducing any evidence.

8. The Hon’ble Supreme Court in the case of **Shantilal Gulabchand Mutha v. Tata Engineering and Locomotive Company Limited and Another, (2013) 4 Supreme Court Cases 396** at paragraph 9 has held as follows:

“9. In view of the above, it appears to be a settled legal proposition that the relief under Order 8 Rule 10 CPC is discretionary, and court has to be more cautious while exercising such power where the defendant fails to file the written statement. Even in such circumstances, the court must be satisfied that there is no fact which needs to be proved in spite of deemed

admission by the defendant, and the court must give reasons for passing such judgment, however, short it be, but by reading the judgment, a party must understand what were the facts and circumstances on the basis of which the court must proceed, and under what reasoning the suit has been decreed.”

9. As discussed above, in the present case, the court below has not complied this settled principle of law and without assigning any reason arbitrarily has rejected the application filed by the appellants praying for time to file written statement and also application filed for setting aside ex parte order. Why and under what circumstances, the court below observed that those applications have got no merit, is not apparent from the order impugned.

10. Further, it appears that admittedly an application under Section 4(c) of the Consolidation Act was also filed by the appellants. The court below after passing the order mentioned in the last portion that later on the application has been filed after passing the ex parte order. It is not clear as to when the order was passed and whether it was passed in presence of the parties by dictating in open Court. Admittedly, one witness was examined on behalf of the appellants and the parties were heard and then the order was passed. There is no mention as to at what time the said application was filed. In such circumstances, it appears that the court below has disposed of the suit filed by the plaintiff hastily without assigning any reason and,

therefore, the order is nothing but arbitrary order and cannot be termed as a judicial order/judgment.

11. In the result, this First Appeal is allowed. The impugned judgment/order is hereby set aside. The matter is remanded to the court concerned for proceeding according to law after giving opportunity to the appellants for filing written statement and adducing evidence to the parties. The learned counsel for the appellants submitted that the appellants shall obtain the certified copy of this judgment within one week and thereafter within one month, the written statement shall be filed in the court below along with a copy of the judgment. The respondents are also present, therefore, no notice be issued again to them. The court below is directed to proceed considering the age of the suit and without giving adjournment unnecessarily to the parties shall try to dispose of the suit expeditiously.

(Mungeshwar Sahoo, J)

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