

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.75 of 2013

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1. Manoj Kumar Verma Son Of Late Yogendra Prasad Resident Of Village- Chhapian, P.S.- Masrak, P.O.- Chhapian, District- Saran At Chapra
 2. Anit Kumar Verma Son Of Late Yogendra Prasad Resident Of Village- Chhapian, P.S.- Masrak, P.O.- Chhapian, District- Saran At Chapra
 3. Anup Kumar Verma Son Of Late Yogendra Prasad Resident Of Village- Chhapian, P.S.- Masrak, P.O.- Chhapian, District- Saran At Chapra
 4. Tarun Kumar Verma Son Of Late Yogendra Prasad Resident Of Village- Chhapian, P.S.- Masrak, P.O.- Chhapian, District- Saran At Chapra
 5. Buddha Kishore Devi Wife Of Late Yogendra Prasad Resident Of Village- Chhapian, P.S.- Masrak, P.O.- Chhapian, District- Saran At Chapra

.... Petitioners.

Versus

Shreekant Prasad Srivastava Son Of Late Gaya Prasad Resident Of Village- Chhapian, P.S.- Masrak, District- Saran At Chapra

.... Opposite Party.

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Appearance :

For the Petitioner/s : Mr. K.K.Mishra, Adv.

For the Respondent/s : Mr. Rohan P.Sahay, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL JUDGMENT

10 09-09-2015

Heard the learned counsel for the petitioners and also the learned counsel for the opposite parties.

Earlier the notice was issued to the opposite party in the admission matter. After service of notice the sole opposite party has appeared.

Calling in question, the legal acceptability of the order dated 06.02.2013 whereby the court below has directed the suit to be transferred to the appropriate court, the present revision application has been filed.

Originally the suit was filed before the court of



Munsif. However, after the objection was raised by the defendant with regard to the jurisdiction of the said court, the order dated 29.01.2013 was passed directing for the return of the plaint to the plaintiff for presentation before the competent court as provided under Order 7 Rule 10 C.P.C. Subsequently, a petition was filed by the plaintiff praying that instead of returning the plaint, the suit itself be transferred to the court of competent jurisdiction. By the order dated 06.02.2013 the order has been passed by the court below to transfer the suit before appropriate court and the direction was issued to place the records before the competent court before 05.04.2013.

It has been submitted by the learned counsel for the petitioners that the provision of Order 7 Rule 10 C.P.C. does not envisage the transfer of the suit by the court itself to another court of competent jurisdiction once after the conclusion has been recorded that the court before which it has been filed has no jurisdiction to entertain the suit. It has thus been submitted that the impugned order passed by the learned court below is definitely without jurisdiction.

The learned counsel appearing for the plaintiff-opposite party has submitted that though the court has no jurisdiction under the provision of Order 7 Rule 10 C.P.C. to



transfer the case to the court of competent jurisdiction and it has only the jurisdiction to return the plaint for presentation before the competent court but by relying on the provision as contained in Section 24(5) of the C.P.C. , the learned counsel has submitted that this Court has the jurisdiction to transfer the said matter to appropriate court. It has been propounded that this Court should exercise its jurisdiction in order to avoid further delay as sufficient delay has already occurred. The learned counsel has also placed reliance on a decision by the Delhi High Court in ***Rail Chand Vs Alal Chand, 13(1977) DLT 153.***

After perusal of the impugned order and considering the submissions, it is manifest that the power under Order 7 Rule 10 C.P.C. does not confer the jurisdiction upon the court where the suit has been instituted to transfer the suit before the court of competent jurisdiction, after coming to the conclusion that it has no jurisdiction (pecuniary, territorial or for any other valid reason) to entertain the suit. Even under the provision of Order 7 Rule 10 A C.P.C. where the plaintiff files the application as envisaged therein specifying the court where the plaint is proposed to be presented, the court has to return the plaint for presentation before the specified court. In the present case, admittedly the objection to the jurisdiction of the court to

entertain the suit was raised by the defendant at the initial stage. By order dated 29.01.2013, the learned Munsif , on the basis of the materials on record came to the conclusion that the suit was beyond pecuniary jurisdiction of the court and therefore directed for return of the plaint to the plaintiff for presentation before the competent court.

Subsequently, however, a petition was filed on behalf of the plaintiff that the order for return of the plaint came to be passed due to clerical error and the prayer was made to transfer the suit before the competent court after rectifying the clerical error.

By the impugned order, the learned Munsif allowed the prayer of the plaintiff and directed for transfer of the records to competent court. This order has been purportedly passed rectifying the mistake of the office but without specifying the said mistake. This becomes more prominent after the perusal of the earlier order dated 29.01.2013 when the order for return of the plaint was expressly passed after taking into notice the report of the pleader commissioner regarding valuation of the suit property. During the course of submission in the present revision application, the learned counsel for the plaintiff-opposite party also could not satisfactorily point out any clerical mistake

existing in the previous order dated 29.01.2013. It is also apparent that the procedure prescribed under Order 7 Rule 10(A) C.P.C. was also not followed. In this backdrop, the conclusion is inevitable that the court below has committed gross error of jurisdiction in passing the impugned order which deserves to be overturned.

This court is also not persuaded to align with the submission on behalf of the plaintiff-opposite party to pass order for transfer of the suit by exercising the power under Section 24(5) C.P.C. and is not impressed with the contention that such power may be exercised in the interest of justice as much delay has already occurred. It is glaring that the delay has demonstrably been caused by the plaintiff himself who filed the petition raising the plea of the pretended clerical mistake in the previous order dated 29.01.2013. The principle is well settled by the three Judge Bench of the apex court in ***Amar Chand Inani Vs Union of India, AIR 1973 SC 313*** , that the suit, instituted by the presentation of the plaint after the order for return of the plaint passed under Order 7 Rule 10 C.P.C., cannot be said to be continuation of the suit as instituted in the court which had no jurisdiction to entertain it and cannot be deemed to have been instituted in a proper court on the date when the plaint was

presented in the wrong court. The same principle has been reiterated in ***Oil and Natural Gas Corporation Ltd Vs. Modern Construction and Company 2014 (1) SCC 648*** where their lordships have laid down, though in a different context, that the plaintiff cannot be permitted to take advantage of its own mistake by instituting the suit before a wrong court. There is thus no cavil that for all purposes, the suit would be deemed to be instituted only when the plaint, after the return, is presented before the proper court. The reliance placed upon the decision in the case of ***Rail Chand*** (Supra) is also misplaced as the same has been rendered in entirely different setting of facts where the entire evidence was complete and the suit was posted for arguments. In those facts, the learned Single Judge has decided to exercise the power under Section 24(5) C.P.C. The facts are predominantly different in the present case and this Court finds no reason to exercise the power under Section 24(5) C.P.C. as prayed on behalf of the plaintiff-opposite party.

For the aforesaid reasons and discussions, this revision application succeeds and the impugned order is accordingly set aside.

(V. Nath, J)

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