

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.527 of 2005

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1. Vidya Tatwa
 2. Binod Kumar Tatwa
 3. Ashok Kumar Tatwa

All are son of late Sumeshwar Tatwa

4. Kailashi Devi
5. Most Hemanti Kuer
6. Panpati Devi

4 to 6 are Daughters of late Sumeshwar Tatwa

7. Suresh Das H/o of late Sun Kumari Devi
8. Sunita Kumari, minor daughter of late Sun Kumari Devi and Suresh Das under the guardianship of her father.

All resident of village – Sisai, P.O. Safiabab via Bishunpura, P.S.
– Baikunthpur, District – Gopalganj.

.... Appellants

Versus

1. Ghaghia Devi, wife of Raj Nath Das, daughter of Nageshwar Tatwa, resident of village – Maharani, presently resident of village – Sisai, P.O. Safiabab via Bishunpura, P.S. – Baikunthpur, District – Gopalganj.
2. Sunarpatia Devi wife of Dharm Nath Tatwa, daughter of Dwarika Tatwa
3. (a) Mangal Tatwa son of late Amchand Tatwa, husband of late Bachia Devi
3. (b) Bikam Tatwa
3. (c) Birbalak Tatwa
Both sons of late Bachia Devi
3. (d) Bindu Devi, wife of Kapil Deo Tatwa, daughter of Buchia Devi, resident of Tandanpur, P.S.- Mohamadpur, District – Gopalganj.
At present resident of village – Sisai, P.O. Safiabab via Bishunpura, P.S. – Baikunthpur, District – Gopalganj.

.... Respondents

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Appearance :

For the Appellants : Mr. Sashi Shekhar Dwivedi, Sr. Advocate
Mr. Ranjan Kumar Dubey, Advocate

For the Respondents : Mr. Abhimanyu Sharma, Advocate
Mr. Vijay Prakash Singh, Advocate

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CORAM: HONOURABLE MR. JUSTICE AKHILESH CHANDRA
ORAL JUDGMENT

Date: 03-02-2015

Heard learned counsel for the parties.

2. As prayed for with consent name of respondent no. 1(H) be expunged. Accordingly, Interlocutory Application No. 846/2015 is allowed.

3. This is an appeal preferred against order passed by learned 2nd Additional District Judge, Gopalganj, dated 27th October, 2005, in Title Appeal No. 31/94/80/05 arising out of Judgment and decree of the trial court, remanding the matter before the trial court in exercise of power under Section 151 of the Code of Civil Procedure (hereinafter referred to as the 'Code') read with Section 96 of the Code.

4. The brief relevant facts are that the plaintiff appellant here filed Title Suit No. 110/86 seeking partition, subsequently, finding some inadequacy in the pleading. One petition seeking certain amendments was filed on 26th June, 1997, no order could be passed for more than two years due to absence of the Presiding Officer for major period. However, two petitions were filed on 8th September, 1989, one seeking disposal of earlier petition dated 26th June, 1987, as not pressed, another seeking some



amendments in the plaint, but since, 8th September, 1989 was the date fixed for injunction matters, both the petitions were kept pending hearing on the date fixed in the main suit. Ultimately, on 19th September, 1989, petition for amendment filed earlier i.e. dated 25th June, 1987, was dismissed as not pressed. But, the petitions seeking amendment afresh by filing petition dated 8th September, 1989, continued pending till 24th March, 1990, when it was allowed subject to cost of Rs. 100/- No doubt, the order gives impression that the substitution petition is allowed. But, the amendments, as prayed for, were incorporated in the plaint on payment of the cost so awarded.

5. Again, on 18th March, 1991, further amendment was sought by filing a petition and defendants were given opportunity to file rejoinder. At this stage, it continued for long. However, on 19th November, 1992, hearing appears made on the amendment petition and accepted at the cost of Rs. 100/- which too has been paid and received by the counsel representing defendants.

6. The main problem before us appeared emerging from the order dated 19th November, 1992, which apparently gives impression that the Presiding Officer heard and allowed the earliest application dated 26th June, 1987, whereas the said petition as stated above was not in existence since dismissed earlier as withdrawn on 19th September, 1989, And on payment of cost amendments as

proposed through only pending petition dated 18th March, 1991, have also been incorporated in the plaint without any objection from any corner. Thereafter, hearing the parties, issues were also settled on 18th March, 1993, and the rival parties led their oral and documentary evidence as per amended pleadings. And the trial court also decided the suit on 31st January, 1994, and decree was sealed and signed, accordingly, on 11th February, 1994, giving rise to Title Appeal No. 31/1994 preferred by defendant respondent.

7. The Memorandum of Appeal lacks mentioning anything about the errors, as indicated above, and the parties appears acting upon as if no such wrong was committed. But, only when appeal was taken up for hearing, it appears that learned counsel representing defendant appellant before Lower Appellate Court on becoming aware of such error, as indicated above, filed additional Memorandum of Appeal and ultimately the Lower Appellate Court by order impugned set aside the entire judgment of the court below and remanded the matter for fresh decision after hearing on the amendment petition etc.

8. It is contended by learned counsel for the appellant that neither any petition filed on 25.06.1987, disposal/consideration before the trial court at the time of passing order in the year 1992 nor it was pressed, but



somehow or other learned Court treating that petition pending appears passing order, whereas both the sides treating the petition actually pending and pressed at the relevant time and treating the same allowed, acted upon accordingly. Even, after incorporation of the proposed amendment in the plaint for settlement of the issues and both the sides subsequently led evidence without raising any objection, in fact, no one could imagine such error, but taking the amendment proposed, allowed and proceeded.

9. Learned counsel for the defendant respondent though tried his level best but could not be able to point out how and why any objection at any time earlier was raised, even the evidences were undisputedly led in the light of the amended pleading.

10. True it is, errors appears have been committed by the court as well the learned counsel representing the parties who are also officers of the court. It is well settled principle of law that for any laches or negligence committed by the court or its officers, innocent litigants could not suffer. The principle enunciated in a case ***Jhauri Paswan and Ors. Vs. Lobhi Paswan and Ors reported in 1979 BBCJ 68***; wherein reliance is placed on Supreme Court decision in a case ***Mahanth Ram Das Vs. Ganga Das reported in AIR 1961 SC 882***.

11. The facts and circumstances indicated above, none of the sides is prejudiced by the error

apparently unintentional committed as indicated above. Thus, there is nothing to exercise jurisdiction as contemplated under Section 96 read with Section 151 of the Civil Procedure Code. It was incumbent upon the Lower Appellate Court to examine the matters and pass appropriate order determining the issues involved instead of remitting the issues for fresh decision by the trial court. Consequently, order impugned is not sustainable. Accordingly, it is set aside. Lower Appellate Court is directed to decide the appeal on its own merit within three months on the basis of materials available.

12. Learned counsel representing the parties are directed to appear before the court below or its successor in office on 9th March, 2015.

13. With the above observation, this appeal is hereby allowed. Appeal is remitted for hearing on merit. Parties shall bear their own cost. In the meantime, Registry of the Court is directed to send the record at once before Lower Appellate Court.

(Akhilesh Chandra, J.)

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