

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.441 of 2003

Sanju Kumar Singh, son of late Laldeo Singh, resident of Village-Sultanpur, Post Office-Sripur, Police Station Makhdumpur, District Jahanabad at present residing at Mohalla-Ram Sagar East, Post Office-Chand Chaura, Police Station-Civil Lines, District Gaya.

.... Appellant/s

Versus

1. Secretary, Secondary Education Bihar, New Secretariat, Patna.
2. Director-cum-Joint Secretary, Secondary Education Bihar, Patna.

.... Respondent/s

Appearance :

For the Appellant/s : Mr.Rajendra Sharma, Advocate.

For the Respondent/s : Mr. S. K. Mandal, SC 24

Mr. Arun Prasad, AC to SC 24

CORAM: HONOURABLE MR. JUSTICE SHIVAJI PANDEY

ORAL JUDGMENT

Date: 17-08-2015

Heard the parties.

2. In the present appeal the appellant is challenging the judgment and order dated 30.9.2002 passed by the Additional District Judge IV, Gaya in Misc. Appeal No.29 of 2001/1 of 2002 whereby he has set aside the order dated 6.6.2001 passed by the Munsif IInd, Gaya in Misc. Case No.1 of 2001 and remanded back the matter to decide the case afresh after giving opportunity to both sides to adduce evidence in support of their cases.

3. The plaintiff-respondent-appellant (hereinafter referred to as “the appellant”) filed a title suit vide T.S. No. 164 of 1997 against the defendant-appellant-respondent (hereinafter referred to as “the respondent”) for seeking the relief to declare him



Head-master of Janta High School, Makhdumpur since 16.9.1982 i.e. the date of taking over the said School by the Government. In the said suit the State of Bihar was not a party though entire relief was sought against the State of Bihar. The respondent had no knowledge of the said suit and not contested the same. Notice dated 29.11.2000 of Execution Case No.22 of 2000 from the Executing Court, Munsif, Gaya for execution of the decree in T.S. No.164 of 1997 was received, then could know the decree had been passed in exercise of power under Order 8 Rule 10 of the Code of Civil Procedure. The appellant after inspection of original record through Advocate, namely, Shri Anil Kumari Sinha on 13.2.2001, later on filed Misc. Case No. 1 of 2001 along with a petition for condonation of delay under Section 5 of the Limitation Act for setting aside the judgment and decree. The said Misc. Case was admitted. On appearance of the present appellant he raised objection as misc. case suffers from delay and cannot be admitted without hearing. The objection was accepted by the learned Munsif and directed him to address the objection with respect to limitation and after hearing the parties rejected the misc. case.

4. One important issue was raised by the present respondent that the appellant had obtained the decree by suppressing the material fact that another person one



Raghubansh Singh filed Title Suit No. 235 of 1989/12 of 1989 against the State of Bihar which was decreed on 8.1.1990 by the Additional Munsif, Gaya whereby and whereunder he was declared as Head-master of Janta High school, Makhdumpur since the date of taking over the School and the said judgment and decree was accepted by the State of Bihar, accordingly it was complied with. The decree dated 25.8.1999 passed in T.S. No.164 of 1997 has created anomalous position as the Munsif, with regard to one subject matter, has given contradictory judgment and decree and that too one decree passed earlier has already been complied with.

5. The present appellant submits that respondent had full knowledge about the judgment and decree dated 25.8.1999 from the fact that respondent had written a letter dated 26.2.2000 to the Government Pleader for filing the appeal against the said decree and the reply dated 27.11.2000 by the A.G.P. that the appeal was hopelessly time barred. It itself shows that the appellant had full knowledge much earlier from 29.11.2000 and as such the contention of the respondent that they got knowledge about the decree on 29.11.2000 on receipt of notice with respect to Execution Case No.22 of 2000 is completely incorrect and the trial court rightly rejected the misc. case, so much so even admittedly from the claim of



respondent that they got the knowledge of the judgment and decree passed in Title Suit No.164 of 1997 on 29.11.2000 but the Misc. Case No.1 of 2001 was filed on 28.2.2001 i.e. after three months from the date of knowledge whereas the limitation prescribed for filing of the application under Order 9 Rule 13 of the Code of Civil Procedure is 30 days and as such even from the admitted date of knowledge the misc. case was suffered from the delay and further claim has been made that in the Title Suit No.164 of 1997 they were made parties but when the written statement was not filed the trial court has passed the judgment and decree in exercise of power under Order 8 Rule 10 of the Code of Civil Procedure.

6. Learned counsel for the State-respondent submits that limitation is not pure question of law but mixed question of fact and law. The trial court on the basis of certain documents has arrived to a finding of suffering from limitation and lower appellate court has rightly remanded back the matter in view of the fact that limitation is mixed question of fact and law requires evidence from both the parties.

7. Having considered the rival contentions of the parties it appears from the record that one Raghubansh Singh had filed title suit in which identical declaration was sought and the same was decreed by the trial court and later on the present appellant

filed the suit, sought the identical relief without impleading the person on whose favour the trial court has passed the judgment and decree. It is also well known principle of law that point of limitation is not pure question of law but mixed question of fact and law. The trial court has based its judgment only on some documents whereas lower appellate court has remanded back the matter to the trial court to decide the issue of limitation after taking evidence from both parties.

8. This Court does not find any error in the order passed by the appellate court. However, the trial court is directed to expedite the matter and decide the misc. case within a period of six months from the date of receipt/production of a copy of this order after giving due notice to the parties to lead their evidence on the question of knowledge about the judgment and decree passed in Title Suit No.164 of 1997.

9. Accordingly this appeal is disposed of.

Vinay/-

(Shivaji Pandey, J)

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