

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.580 of 2006

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Radha Devi @ Rekha Devi, wife of Prof. Brahma Deo Narayan Mahto, resident of
Madhubani Town, Mohalla- Suratganj, Ward No. 15 P.O.- Madhubani, Police
Station- Madhubani, District- Madhubani

.... Petitioners

Versus

Punay Pratap Mandal, son of Late Shiv Pratap Mandal, resident of Madhubani
Town, MOhalla- Suratganj, Ward No. 15 P.O.- Madhubani, Police Station-
Madhubani, District- Madhubani.

.... Opp. Party

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Appearance :

For the Petitioners : Mr. Shashi Shekhar Dwivedi, Sr. Advocate
Mr. Prabhas Ranjan, Advocate
For the Respondent : Mr. B.N.P.Singh, Advocate

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CORAM: HONOURABLE THE CHIEF JUSTICE
C.A.V. JUDGMENT

Date: 07.05.2015

This revision under section 115 of the Code of
Civil Procedure is filed against the order dated
07.01.2006 passed by the Court of Additional District
Judge, Fast Track Court I, Madhubani in Civil Misc.
Appeal No. 16 of 2003, (which was later on renumbered
as 26 of 2005). The Civil Misc. Appeal, in turn, was filed
against the order dated 24.07.2003 passed by the Court
of 1st Munsif, Madhubani in Title Suit No. 8 of 1998.

The sole defendant in the suit, who is none other than sister of the sole plaintiff, is the petitioner herein.

The respondent filed the suit for the relief of declaration of title, confirmation of possession in respect of some portion and recovery of possession, of the remaining part of the suit/schedule Property. Alternative prayer is made for recovery of possession of the property, if dispossessed during the pendency of the suit; was also made.

The respondent pleaded that he purchased the suit property being 2 kathas 1 dhur and 6 ¼ dhurki through a sale deed dated 06.04.1963 from one Yamuna Mandal whereas the petitioner herein purchased almost equal extent from the same vendor from the same Khata number. According to him 1 katha of land remained with the vendor Yamuna Mandal and he later on purchased it in the year 1966, but the petitioner started laying claim over the said land. He pleaded that on earlier occasion he filed Title Suit No. 7 of 1995 and one Sri Brahmadeo Narayan Choudhary, advocate was appointed arbitrator therein and that the suit was dismissed on 23.12.1995, in view of the award

dated 27.11.1995.



In the present suit i.e. Title Suit No. 8 of 1998 he pleaded that the award passed by Brahmadeo Narayan Choudhary was illegal and void, and the same deserves to be ignored. During the pendency of the suit, the trial Court appointed Sri Surendra Ranjan Das and Sri Deo Nandan Jha, Advocates to resolve the dispute, obviously with the consent of the parties. The said Advocates, in turn, passed an award dated 02.11.2002 and submitted to the Court. The respondent filed an application with a prayer to set aside the award dated 02.11.2002. It was pleaded that the arbitrators did not give opportunity to both the parties and the award suffers from various infirmities, and the same deserves to be set aside under section 34 of the Arbitration and Conciliation Act, 1996 (hereinafter referred to as 'the Act of 1996').

The application was opposed by the petitioner by raising several grounds including one of lack of jurisdiction. It was pleaded that the respondent is in the habit of contesting everything which is not to his liking, and once the same issue was the subject matter of an

earlier suit and an award passed therein, the question of filing subsequent suit does not arise. It was also urged that the application for setting aside the award, if at all, can be filed only before a Court of highest civil jurisdiction in the district, and not in the Munsif Court.

Learned Munsif allowed the application and has set aside the award, through order dated 24.07.2003. The miscellaneous appeal filed under Order I Rule 43 of the Code of Civil Procedure was dismissed by the lower appellate Court on 07.11.2006. Hence, this revision.

Heard Shri Shashi Shekhar Dwivedi, learned Senior Counsel appearing for the petitioner and Shri B.N.P. Singh, learned counsel appearing for the respondent.

It is rather unfortunate that the dispute in respect of a small piece of land between a brother and sister remained unresolved for the past several decades.

The respondent on one hand and the petitioner on the other purchased almost equal extents of land from the same vendor. According to the respondent, an extent of 1 katha of land remained with

the common vendor and later on he purchased that. Title Suit No. 7 of 1995 filed by him, in relation to that land, on earlier occasion led to appointment of arbitrator Sri Brahmadeo Narayan Choudhary. An award was passed therein and taking that into account, the suit was dismissed on 23.12.1995.

In case the respondent felt aggrieved by the award, it was open to him to institute proceeding under the Arbitration Act, 1940 or the Act of 1996, as the case may be. However, he has chosen to file a fresh suit almost for the same relief. On the face of it, the subsequent suit was barred by the principle of *res-judicata*. However, the suit was entertained. Obviously because the parties agreed to, the trial Court appointed two arbitrators this time. With that, the suit was to be terminated. The arbitrators passed an award on 30.01.2002.

If the respondent was not satisfied with the award, the only course open to him was to file an application under section 34 of the Act of 1996. The Act is clear to the effect that any application under section 34 of the Act must be filed in a Court of highest civil



jurisdiction in the district. In the State of Bihar a Court of Civil Judge happens to be one of highest civil jurisdiction. The respondent, however, filed an interlocutory application in the suit, with a prayer to set aside the award. The procedure adopted by the respondent was totally untenable and contrary to the provisions of the Act of 1996. It is just unimaginable as to how the learned Munsif thought it fit to interfere with the award.

Firstly, with the appointment of arbitrator the suit itself stood disposed of, and thereby he became *functus officio*. Secondly, he is not competent to entertain the proceedings for setting aside the award. Thirdly, it is an original petition and not interlocutory application that is required to be filed under section 34 of the Act of 1996 before a Court of highest civil jurisdiction.

Unfortunately, the trial Court as well as the lower appellate Court went mostly by the alleged commissions and omissions on the part of the arbitrators; totally ignoring the question of jurisdiction.

Therefore, the revision is allowed and the

order dated 07.01.2006 passed by the Court of Additional District Judge, Fast Track Court I, Madhubani in Civil Misc. Appeal No. 16 of 2003 which was later on renumbered as 26 of 2005 and the order dated 24.07.2003 passed by the Court of 1st Munsif, Madhubani in Title Suit No. 8 of 1998, are set aside. It is also directed that Title Suit No. 8 of 1998 shall stand terminated, in view of appointment of Arbitrators.

(L. Narasimha Reddy,CJ)

A.F.R.
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