

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.212 of 1985

Mata Raj Rajeshwari Devi, through the Sevait Murlidhar Mishra, son of Gore Lal Mishra, resident of Mohalla Bari Daulatpur, P.S. Jamalpur, District Munger
Opposite party Respondent 1st party

.... Appellant

Versus

- 1 (a). Dr. Kusheshwar Prasad
- 1 (b). Dr. Sidheshwari Prasad, sons of Late Jageshwar Prasad
- 1 (c). Kaushalya Devi, daughter of Late Jageshwar Prasad
- 1 (d). Smt. Aurna Singh, wife of Prof Radha Raman Sinha ...
Petitioners..Appellants
- 2 Udit Narain Singh, son of Late Bacha Singh
3. Awadh Kishore Lal
4. Nawal Kishore Prasad, sons of Karu Lal
5. Usha Sinha, wife of Shamsher Jang Bahadur
6. Rajib Sinha
7. Pushpa Sinha
8. Manju Sinha
9. Gita Sinha, minor sons and daughter of Late Shamsher Jang Bahadur
10. Kedar Prasad Singh
11. Aditya Prasad Sinha, sons of Late Kare Lal
12. Sumitra Devi (name expunged).
13. Radhika Devi
14. Rukmini Devi
15. Shanti Devi
16. Malti Devi, daughters of Late Kare Lal
17. Rupkala Devi, wife of Late Madan Mohan Lal
18. Dr. Ratneshwar Prasad Sinha, son of Late Madan Mohan
19. Ranjan Prasad Sinha, son of Late Madan Mohan Lal
20. Shanti Kumari Devi, daughter of Late Madan Mohan Lal
21. Meena Devi
22. Rani Devi
23. Madhu Devi, daughters of Late Madan Mohan Lal
24. Deep Narain Singh, son of Bechu Singh
25. Krishna Prasad Singh, son of Laxman Pd. Singh
26. Kedar Prasad Singh, son of Late Kare Lal
27. Badri Mandal, son of Chamru Mandal
28. Kharagdhari Missir, son of name not known
29. Gobind Prasad, son of Laxman Mandal
30. Awadh Kishore Prasad, son of name not known

Member of the Temple Committee, Daulatpur, Munger
..... Opposite parties Respondent 3rd set

.... Respondents

Appearance :

For the Appellant/s : Mr. Ganpati Trivedi, Sr. Advocate
Mr. KRISHNA MOHAN
Mr. Naresh Kumar Sinha
Mr. Manohar Prasad Singh

For the Respondent/s : None

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 13-05-2016

Heard Mr. Ganpati Trivedi, learned Senior Counsel appearing for the appellants. Nobody has appeared on behalf of the respondents.

2. This second appeal has been filed against the judgment and decree dated 16.2.1985 passed in Misc. L.A. Appeal No. 19 of 1982 by the 2nd Additional Sessions Judge, Munger, setting aside the judgment and decree dated 4.3.1982 by the 2nd Subordinate Judge, Munger in L.A. Misc. Case No. 93 of 1960.

3. The facts relevant in the present context are that in L.A. Case No. 219 of 1957, the part of Plot No. 3089 was acquired and an award was prepared in the name of the present appellant deity Mata Raj Rajeshwari Devi through the Sevait Gore Lal mishra. In another L.A. Case No. 348 of 1958-59, the part of Plot No. 3092 was involved and in that case also the award was prepared in the name of the deity Mata Raj Rajeshwari Devi through the Sevait Gore Lal Mishra. The Misc. Case No. 93 of 1960 was filed by the two persons namely Karu Lal and Jageshwar Prasad claiming their own entitlement to the compensation as awarded. Another Misc. Case No. 96 of 1960 was filed by Bechu Yadav wherein the challenge was confined to the entitlement of Gore Lal Mishra to receive the award as Sevait of the deity Mata Raj Rajeshwari Devi.

4. Mr. Trivedi, learned Senior Counsel has submitted that both the miscellaneous cases were heard analogously, but it has also been pointed out that the present appeal is not concerned with the claim made by the objector Bechu Yadav in Misc. Case No. 96 of 1960.



5. By order dated 26.2.1965 the Misc. Case No. 93 of 1960 was dismissed rejecting the claim of Karu Lal and Jageshwar Prasad. Jageshwar Prasad alone filed Misc. Case No. 73 of 1966 which was purported to have been filed under Order 9 Rule 13 and the same was allowed by order dated 27.5.1970 and the order passed in the Misc. Case No. 93 of 1960 was set aside to the extent of the interest of Jageshwar Prasad. This order was not challenged by any of the parties to the proceeding. As a consequence of the order dated 27.5.1970 the proceeding of Misc. Case No. 93 of 1960, after revival, was taken up and was renumbered as L.A. Misc. Case No. 93 of 1960/201 of 1979. After hearing the parties by judgment and order dated 4.3.1982 the learned Sub Judge again dismissed the said miscellaneous Case. The respondent Jageshwar Prasad thereafter filed Misc. L.A. Appeal No. 19 of 1982 which was eventually taken up for hearing by the Court of 2nd Additional District Judge, Munger and by the impugned judgment and decree the appellate court has allowed the appeal and set aside the judgment and decree dated 4.3.1982 passed in Misc. Case No. 93 of 1960/201 of 1979 holding the appellant Jageshwar Prasad to be entitled to the entire amount of compensation with respect to Plot No. 3089. The present second appeal has been filed against this judgment and decree passed in Misc. L.A. Appeal No. 19 of 1982.

6. This appeal was admitted for hearing by order dated 2.1.1987 on the following substantial questions of law:-

- (i) Whether the judgment dated 26.2.1965 is operative since after passing of the judgment dated 26.5.1970?
- (ii) Whether the judgment dated 26.2.1965 will operate

as res judicata between the parties?

7. Nobody has appeared on behalf of the respondents when this appeal has been taken up for hearing.

8. During the course of submission on behalf of the appellant, the question of maintainability of this second appeal has crept up for consideration in view of the provision of Section 54 of the Land Acquisition Act, 1894 (hereinafter referred to as 'the Act'). For ready reference the provision of Section 54 of the Act is noticed herein below:-

“54. Appeals in proceedings before Court- Subject to the provisions of the Code of Civil Procedure, 1908, applicable to appeals from original decrees, and notwithstanding anything to the contrary in any enactment for the time being in force, an appeal shall only lie in any proceedings under this Act to the High Court from the award, or from any part of the award, of the Court and from any decree of the High Court passed on such appeal as aforesaid in appeal shall lie to the Supreme Court subject to the provisions contained in Section 110 of the Code of Civil Procedure, 1908, and in Order XLV thereof.”

9. It is evident that this second appeal has been filed against the judgment and decree passed in an appeal by the appellate court below i.e. the Court of 2nd Additional District Judge. The Apex Court, in a three Judge Bench decision in the case of **Sharada Devi v. State of Bihar, AIR 2002 SC 1356** has considered the issue pertaining to the forum of appeal as envisaged under Section 54 of the Act and it has been observed as follows:-

“14.
.....

The word “only” occurring immediately after the non-obstante clause in Section 54 refers to the forum of appeal. In other words, it provides that the appeal will be to the high Court and not any other Court e.g. the District Court.”

10. The aforesaid decision in Sharda Devi’s case was taken into notice by the Apex Court in the case of ***Fuerst Day Lawson Ltd. Vs. Jindal Export Ltf., AIR 2011 SC 2649***, while considering the provisions in special statutes excluding further appeal.

11. In view of the dictum of the Apex Court and also in view of the provision as contained in Section 54 of the Act, it is demonstrably clear that an appeal against the award has been provided only before the High Court and further appeal thereafter is to be preferred before the Supreme Court. It is by now well settled that where a special statute confers a right of appeal, such right is to be exercised in accordance with the term of the special statute which may limit or circumscribe the exercise of such a right. Even Section 4 C.P.C. also envisages that in case of inconsistency the provisions of the special statute shall prevail over the rules of the Code. The conclusion is, therefore, inevitable that the second appellate jurisdiction of the high court has been manifestly excluded under the scheme of the Act.

12. Examining the matter from another angle also, a right of appeal is a creature of statute and such a right can only be exercised where the statute expressly confers it. Such an express provision is contained in Section 100 CPC but at the same time it is restricted to a decree passed in appeal by a court subordinate to high court on the grounds mentioned therein. As noticed earlier, the provision of Section



54 of the Act does not visualize an appeal against the Award in any court subordinate to high court. The parties cannot confer a right of appeal upon themselves by agreement, consent or omission. The present appellant admittedly did not raise objection to the maintainability of the appeal in the court of appeal below rather had submitted to the jurisdiction of the court inviting the determination of the appeal on merit. In this backdrop the present appellant may have remedy against the judgment passed in appeal in other jurisdiction in accordance with law but definitely not by invoking the second appellate jurisdiction of the high court which stands expressly excluded by the Act.

13. Moreover in view of the limited nature and scope of an appeal under Section 100 CPC as explained by the Apex Court in the case of AIR 2016 Weekly (Supreme Court) 1589 a second appeal is conceivable only when substantial question of law arises for consideration which in turn presupposes existence of a judgment and decree in appeal by a court of competent jurisdiction subordinate to the high court. The distinction between a regular First Appeal and the Second Appeal has also been emphasised by their Lordships in this decision. The appellant has admittedly not raised objection to the jurisdiction of the Court hearing the appeal and before this Court also it is not the stand on behalf of the appellant that the appellate court below had no jurisdiction and therefore the judgment and decree which is impugned in this appeal is without jurisdiction. To the contrary, the learned Senior Counsel on behalf of the appellant has made all endeavours to persuade this Court to take the view that the appellate court below had the jurisdiction under Section 96 of the Code of Civil Procedure to entertain the appeal and therefore the

impugned judgment and decree can be assailed in the second appeal. In view of the authoritative pronouncement by the Apex Court as above, this Court is not inclined to accept this submission.

14. Ex consequenti, this Court comes to the conclusion that this second appeal is not maintainable. This appeal is, accordingly, dismissed.

(V. Nath, J.)

Snkumar/-

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CAV DATE	
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