

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.5716 of 2014

=====

Kameshwar Jha & Ors

.... Petitioner/s

Versus

Sanjay Kumar Yadav & Ors

.... Respondent/s

=====

Appearance :

For the Petitioner/s : Mr. Anjani Kumar

For the Respondent/s : Mr.

=====

CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

2 04-02-2016

Heard the learned counsel Mr. Jitendra Kishore
Verma for the petitioners.

This application under Article 227 of the Constitution of India has been filed by the petitioners for setting aside the order dated 20.12.2013 passed by the District Judge, Saharsa in Title Appeal No. 34 of 2013, whereby the Court below dismissed Title Appeal being barred by law of limitation.

The Division Bench of this Court in the case of *Ravneswar Thakur & ors. Vrs. Neeraj Kumar Thakur & ors. 1996 (1) PLJR 494* has held that if the trial Court Judgment is on merit and the appeal is dismissed being barred by law of limitation, the dismissal order of the appellate Court will amount to confirming the judgment and decree of the trial Court, therefore, it is a decree. The Supreme Court also in the case of

Shyam Sunder Sarma Vrs. Pannalal Jaiswal and others AIR 2005 SCC 226 has held that if the appeal is dismissed on the ground of limitation then it is a decree.

Now, therefore, admittedly this order dated 20.12.2013 is a decree which is under challenged in this application under Article 227 of the Constitution of India.

The learned counsel for the petitioners submitted that the alternative remedy which is available to the petitioners i.e. to file second appeal is not efficacious and speedy remedy. As, if second appeal will be admitted, it will take at least 20 years for disposal and, therefore, on the ground of alternative remedy, the writ application under Article 227 of the Constitution of India should not be refused to be entertained. The learned counsel further submitted that the order passed by the Court below is also only finding of one Court and there is no finding of the trial Court.

So the submissions of the learned counsel are concerned, it is not denied that the impugned order is a decree. The question is on this ground if the procedure has been prescribed in CPC, application under Article 227 of the Constitution of India will be entertained or not. So far the submission of the learned counsel that the second appeal will take 20 years is concerned, it has got no basis.



The Hon'ble Supreme Court in the Case of *Shalini Shyam Shetty and Another Vrs. Rajendra Shankar Patil (2010) 8 SCC 329* has held that Article 226 and 227 stand on substantially different footing and operate in different fields. A writ under Article 226, is a proceeding under the original jurisdiction of the High Court. The jurisdiction under Article 227 on the other hand is not original nor is it appellate. This jurisdiction of superintendence under Article 227 is for both administrative and judicial superintendence. A proceeding under Article 227 can never be governed under the Original Side Rules of the High Court. In certain cases where there is infringement of fundamental right, the relief under Article 226 of the Constitution can be claimed *ex debito justitiae* or as a matter of right. But in cases where the High Court exercises its jurisdiction under Article 227, such exercise is entirely discretionary and no person can claim it as a matter of right. From an order of a Single Judge passed under Article 226, a letters patent appeal or an intra-court appeal is maintainable. But no such appeal is maintainable from an order passed by a Single Judge of a High Court in exercise of power under Article 227.

In *Radhe Shyam Vrs. Chhabinath (2015) 5 SCC 423* the Supreme Court has held that "Order against which neither

appeal is provided nor revision is provided can be examined under Article 227 of Constitution. Therefore, the decree cannot be examined under Article 227 as forum of appeal is there.”

In view of the above settled proposition of law, since the order is deemed decree as has been held by Division Bench of this Court as well as the Supreme court only on the ground that the second appellate jurisdiction is not efficacious or is illusory or is meaningless, the decree cannot be allowed to be challenged in jurisdiction under article 227 of the Constitution of India.

Thus it is held that this application under Article 227 is not maintainable, in view of the binding President of Division Bench decision as well as the Supreme Court decision. Therefore, if so advised the petitioners may convert this writ application to second appeal within one month from today and if it is not convert, this writ application shall stand dismissed as not maintainable.

(Mungeshwar Sahoo, J)

ravi/-

U		T	
---	--	---	--