

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.34 of 2014

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1. Shiromani Devi W/O Late Pramod Das Resident Of Village Mirjapur
Makdampur, P.S. Korha, District Katihar.

1(a). Uttam Kumar

1(b). pritam Kumar

2. Binod Kumar Das, son of Late Pramod Kumar Das

3. Ahilaya Devi, wife of Pramod Kumar Das

4. Usha Devi, Daughter of Pramod Kumar Das, W/o Shailendra Kumar Singh

5. Asha Devi, D/o Pramod Kumar Das, wife of Shyamanand Mehta, all residents
of Village Devandih, P.S. Korha, District Katihar Defendants
Appellants

.... Appellants

Versus

1. Most. Bhosana Banu W/O Late Md. Chabhu Patewa

2. Md. Yunus S/O Late Chabhu Patewa Both Residents Of Village Mirjapur
Makdampur, P.S. Korha, District Katihar.

3. Bhagwan Tatma S/O Hitu Tatma Resident Of Village Mirjapur Makdampur, P.S.
Korha, District Katihar.

4. Manjeeta Khatoon W/O Md. Rajban At Resident Of Village Mirki, P.S. Bihpur,
District Bhagalpur.

5. Jumiran Khatoon W/O Abid Alam Of Village Mirjapur Makhadampur, P.S.
Korha, District Katihar.

6. Sumiran Khatoon W/O Md. Kare At Resident Of Village Musapur, P.S. Khora,
District Katihar.

.... Respondents

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Appearance :

For the Appellant/s : Mr. DIN BANDHU MISHRA

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 25-04-2016

Heard learned Counsel appearing on behalf of the appellants.

2. Some of the defendants in the suit are the appellants in this
appeal against the judgment and decree of affirmance.

3. The plaintiffs filed the suit for declaration of title and recovery
of possession over the property described in detail in the schedule of the
plaint. After service of summon the defendants appeared and filed their
written statement. However, they left appearing in the suit thereafter and



the trial court granted the decree to the plaintiffs as prayed by judgment and decree dated 22.7.2008. The defendants filed appeal against the said judgment and decree, but the appellate court below has also concurred with the findings of the trial court after coming to the conclusion that the judgment and decree by the court below was not passed against a dead person and the failure on behalf of the defendants to establish sufficient cause for non appearance during trial, the appeal has been dismissed by the impugned judgment and decree.

4. Learned Counsel appearing on behalf of the appellants has submitted that the appellants were prevented from appearing in the suit as they earlier relied upon defendant No. 1 Polo Das alias Indra Narayan Das for making pairvi in the suit, but he fell ill and later on succumbed to his illness and therefore no pairvi in the suit on behalf of the defendants could be made. It has also been submitted that the appellate court below has wrongly come to the conclusion that the decree passed by the court below is not a nullity as the same has been passed against a dead person. It has been canvassed that the appellants were bonafide purchasers of the suit property and there was no deliberate laches on their part in not participating in the proceeding of the suit. The learned Counsel has also contended that this Court has got wide powers for directing the learned trial court to rehear the suit after granting opportunity to the defendants to participate in the hearing. No other submission has been made on behalf of the appellants.

5. After perusal of the judgments of both the courts below and considering the submissions, it is pellucid that the defendant – appellants have appeared in the suit after service of summons upon them and filed



their written statement. It, however, transpires from the judgment of the trial court that the defendant-appellants thereafter never turned up either to cross examine the witnesses adduced on behalf of the plaintiffs or to adduce their own evidence. It also appears from the submissions that the evidence of the plaintiffs was closed on 18.2.2008 in the suit and the evidence of the defendants was closed on 2.6.2008. The death of defendant No. 1, according to the appellants, took place on 13.6.2008. The judgment and decree was passed by the trial court on 22.7.2008. Evidently, the defendant-appellants have accepted that defendant No. 1 was their pairvikar in the suit and he fell ill and so no evidence in the suit could be led on behalf of the defendants. However, there is nothing on record nor any cogent explanation has been furnished on behalf of the appellants regarding the steps taken by the appellants after 13.6.2008 up to 22.7.2008 when they admittedly became aware that their pairvikar was dead and therefore there was no one to make pairvi on their behalf in the suit. The conclusions are inevitable that the defendants have deliberately left making pairvi in the suit and did not take appropriate steps even after the death of their pairvikar on 13.6.2008 on which date the suit was pending. The appellate court below has also taken into notice the aforesaid facts and has come to the conclusion that the only submission made before the court on behalf of the appellants was that the decree passed by the trial court was a nullity in view of having been passed against a dead person. The appellate court below has rightly come to the conclusion that the death of a party in a suit after conclusion of hearing but before the delivery of judgment could not be a nullity. This Court has not been persuaded to align with the submission made on

behalf of the appellants that the matter may be remanded back to the trial court for rehearing. The defendants cannot escape the blame for getting a decree against them after their failure to take appropriate steps in the suit in accordance with law.

6. In the result, this Court does not find any substantial question of law arising for consideration in this appeal. This second appeal is, accordingly, dismissed.

(V. Nath, J.)

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