

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.94 of 2014

IN

First Appeal No. 186 of 1978

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1. Ratneshwari Nandan Prasad Verma S/O Late Sri Singheshwar Prasad Verma
Resident Of Village- Hira Kanhauli, P.S- Belsand (Now Persauni), District-
Muzaffarpur (Now Sitamarhi)
 2. Shakuntala Daughter Of Late Sri Singheshwar Prasad Verma And W/O Radha
Kant Sinha Resident Of Village + P.O- Kanhauli, P.S. Belsand, District-
Muzaffarpur. Petitioner/s

Versus

1. Laliteshwar Prasad Verma S/O Sri Rameshwar Prasad Verma Resident Of New
Area Kadamkuan, P.S- Kadamkuan, District- Patna Presently Saraswati Press,
Chitragupta Near Munna Chak, Patna- 20.
2. Bina Verma Daughter Of Late Sri Rameshwar Prasad Verma And Wife Of
Durgeshwari Sharan Verma Resident Of Village- Koily, P.S- Pupri, District-
Muzaffarpur (Now Sitamarhi), At Present Chitragupta Nagar, South Of
Kendriya Vidyalaya, Patna- 800020. Respondent/s

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Appearance :

For the Petitioner/s : Mr. Amrendra Narayan, Adv.

For the Respondent/s : Mr. Ram Suresh Rai, Sr. Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 04-05-2016

Heard Mr. Amrendra Narayan, learned counsel for the
petitioners and Mr. Ram Suresh Rai, learned senior counsel for the
respondents.

This civil review application has been filed for seeking review
of the judgment dated 30.10.2013 passed in F.A. No. 186 of 1978.

From the perusal of the judgment under review, it is
apparent that the F.A. No. 186 of 1978 arose out of a judgment and



decree in a suit for partition whereby the claim of the plaintiff for partition of half share in the suit properties was allowed. The defendant no. 2 in the said suit, who had contested the suit by filing written statement, had preferred the said appeal and at the time of hearing, the appeal was pressed only with regard to the properties which had been claimed in the written statement as the self acquired properties of the defendants and the decree for partition of the same was resisted on the said basis. After hearing the parties, the first appeal was allowed in part refusing the relief for partition with regard to the properties mentioned in the last paragraph of the judgment under review.

Learned counsel for the petitioners has submitted that the main plank of objection or the ground for review is based upon the contention that the appellant of the first appeal was estopped from pursuing the said appeal any further after passing of the final decree in the suit. Elaborating his submission, learned counsel has drawn the attention of this Court to the order dated 07.05.2004 passed in the first appeal whereby a direction was issued, after hearing the parties, to the learned court below for preparation of the final decree. It has been submitted that the final decree was prepared on 25.01.2006 and as such, the first appeal thereafter became redundant or infructuous and could not have been pursued further. It has been also submitted

that as the appellant in the first appeal pressed the appeal only against the part of the impugned judgment and decree and therefore he had lost his entitlement or right to pursue the appeal with regard to the remaining part. It has however been accepted by the learned counsel for the review petitioners that the review petitioners were heard in the first appeal and the judgment under review has been passed after considering the submissions made on behalf of the parties to the appeal including the review petitioners. It has also been accepted that the fact that the final decree was prepared on 25.01.2006 was not brought to the notice of this Court at any point of time upto the disposal of the first appeal. No other submission has been made on behalf of the petitioners.

Mr. Rai, learned senior counsel for the respondents has submitted that the submission is simply preposterous as there is no statutory provision or precedent to sustain the view that preparation of final decree in a suit for partition during the pendency of the first appeal against preliminary decree would extinguish the right of the aggrieved party to pursue the said appeal further. It has also been submitted that the review petitioners as well as the present respondents were fully heard in the first appeal and thereafter judgment under review has been passed on merits.

After considering the submissions and the materials on



record, it is evident that the judgment under review was passed after hearing the review petitioners as well as other parties in the first appeal. It is not the case of the review petitioner that any of the contentions raised in the appeal has been overlooked and not considered by the court while passing the judgment under review. The submission that the proceeding of the first appeal against the preliminary decree would become infructuous or redundant after the preparation of the final decree is not supported either in principle or by any precedent. The further submission that the appellant in the first appeal would be barred by the principle of estoppel to pursue the appeal after the preparation of the final decree is clearly misconceived and is rejected, as such. Moreover, all these submissions were admittedly not made on behalf of the review petitioners during the course of hearing of the first appeal.

The principle is also well settled by the Apex Court in the case of **Haridas Das Vs. Usha Rani Banik, A.I.R. 2006 S.C. 1634** as well as in the case of **Kamlesh Verma Vs. Mayawati, A.I.R. 2013 S.C. 3301** that the jurisdiction in review is not a jurisdiction in appeal and the scope and ambit of a review jurisdiction is circumscribed by the provision of Order 47 Rule 1 C.P.C. This Court concludes that there is no error apparent on the face of the record or any sufficient reason warranting the prayer for review as made.

As such, it is held that there is no merit in this review application and the same is, accordingly, dismissed.

(V. Nath, J)

Devendra/-

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