

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.909 of 2014

Arising out of

Civil Writ Jurisdiction Case No. 7351 of 2010

1. (i) Manju Devi widow of late lallan Prasad

(ii) Ranjit Kumar

(iii) Ranvijay Kumar

(iv) Sachin kumar

(v) Anup kumar

All (ii) to (v) are sons of late Lallan Prasad

All residents of Mauza Raja Bazar, P.O. and Anchal Bihia, District Bhojpur.

2. Durga Prasad, Son late Bishwanth Prasad. Both residents of Mauza- Raja Bazar Bihia, P.O. and Anchal- Bihia, District- Bhojpur

.... Appellant/s

Versus

1. Most. Girija Devi, wife of Late Surya Narain Singh, resident of Balihar, P.O.- Dulhapur, P.S.- Simri, District- Buxar

2. Amrita Kumari D/o Late Surya Narain Singh, resident of Balihar, P.O.- Dulhapur, P.S.- Simri, District- Buxar

3. Lovely Kumari, Minor D/o Late Surya Narain Singh, to be represented through the Natural Guardian Mother namely Most. Girija Devi, resident of Balihar, P.O.- Dulhapur, P.S.- Simri, District- Buxar

4. Prince Kumar Singh, Minor son of Late Surya Narain Singh, to be represented through the Natural Guardian Mother namely Most. Girija Devi, resident of Balihar, P.O.- Dulhapur, P.S.- Simri, District- Buxar

5. Deepak Kumar Singh, Minor son of Late Surya Narain Singh, to be represented through the Natural Guardian Mother namely Most. Girija Devi, resident of Balihar, P.O.- Dulhapur, P.S.- Simri, District- Buxar

6. Sunil Kumar Singh son of Ram Singh, resident of Balihar, P.O.- Dulhapur, P.S.- Simri, District- Buxar

7. Anil Kumar Singh, son of Ram Singh, resident of Balihar, P.O.- Dulhapur, P.S.- Simri, District- Buxar

8. Dharmendra Kumar Singh, Ram Singh, resident of Balihar, P.O.- Dulhapur, P.S.- Simri, District- Buxar

9. Most. Dhanik Raj Devi, wife of Ram Singh, resident of Balihar, P.O.- Dulhapur, P.S.- Simri, District- Buxar

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Kumar Mritunjay Narain, Advocate

For the Respondent/s :

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CORAM: HONOURABLE MR. JUSTICE HEMANT GUPTA

and

HONOURABLE MR. JUSTICE AHSANUDDIN AMANULLAH

ORAL JUDGMENT

(Per: HONOURABLE MR. JUSTICE HEMANT GUPTA)

Date: 21-10-2016

The challenge in the present Letters Patent Appeal is to an order passed by the learned Single Bench on 26th August, 2013 whereby an order passed by the Civil Court on 12th March, 2010 rejecting an application filed by the appellants for rejection of plaint remained unsuccessful.

The present appeal came up for hearing before this Court on 6th October, 2016, when the learned counsel for the appellants sought some time to examine the judgment of the Hon'ble Supreme Court in the case of Jogendrasinhji Vijaysinghji v. State of Gujarat & Ors. reported as (2015) 9 SCC 1, wherein it has been held that the Letters Patent Appeal is not maintainable against an order passed by the learned Single Bench against an order by the Civil Court.

Today, learned counsel for the appellants contends that though the aforesaid judgment lays down that the judicial orders of



the Civil Court are not amenable to the writ jurisdiction under Article 226 of the Constitution but since the appellants have invoked that jurisdiction under Article 226 of the Constitution, therefore, the Letters Patent Appeal would be maintainable. In any case, leave to appeal to the Hon'ble Supreme Court be granted against the order passed by the learned Single Bench on 26th August, 2013.

We do not find any merit in the arguments raised. Mere fact that the petition was titled as the one under Article 226 of the Constitution will not make a petition under Article 226 of the Constitution. An order of the Civil Court as held by the Hon'ble Supreme Court in the case of Radhey Shyam v. Chhabi Nath reported as (2015) 5 SCC 423 cannot be challenged under Article 226 of the Constitution. The relevant extract from the judgment is reproduced here-in-below:

“29. Accordingly, we answer the question referred as follows:

29.1. Judicial orders of the civil court are not amenable to writ jurisdiction under Article 226 of the Constitution.

29.2. Jurisdiction under Article 227 is distinct from jurisdiction under Article 226.

29.3. Contrary view in Surya Dev Rai is overruled.”

Considering the said judgment in Jogendrasinhji Vijaysinghji (supra) the Court has held to the following effect:

“18. The aforesaid authoritative pronouncement makes it clear as day that an order passed by a civil court can only

be assailed under Article 227 of the Constitution of India and the parameters of challenge have been clearly laid down by this Court in series of decisions which have been referred to by a three-Judge Bench in Radhey Shyam; (2015) 5 SCC 423, which is a binding precedent. Needless to emphasise that once it is exclusively assailable under Article 227 of the Constitution of India, no intra-court appeal is maintainable.”

In view of the said fact, even though the appellants have titled his petition before the learned Single Bench against an order dismissing the application for rejection of the plaint as the one under Article 226 of the Constitution, but still it has to be treated as an order in exercise of the jurisdiction of this Court under Article 227 of the Constitution. Consequently, no intra-court appeal is maintainable against an order dismissing the petition under Article 227 of the Constitution. Therefore, the present appeal is dismissed as not maintainable.

In respect of the argument that the appellants should be granted liberty to file an appeal against the order passed by the learned Single Bench on 26th August, 2013, we find that no such prayer can be entertained at this stage when the intra-court appeal is not maintainable. Still further, since the issue has been decided by an elaborate judgment in Jogendrasinhji Vijaysinghji (supra), we do not find any question of law requires consideration by the Hon'ble Supreme Court.

Consequently, the present Letters Patent Appeal is dismissed.

(Hemant Gupta, J)

(Ahsanuddin Amanullah, J)

Anjani/P.Kumar

AFR/NAFR	AFR
CAV DATE	N/A
Uploading Date	28.10.2013
Transmission Date	