

IN THE HIGH COURT OF JUDICATURE AT PATNA

Second Appeal No.145 of 2015

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1. Vakil Sahani, son of Late Desai Sahani Resident of Village- Bardahatola, Maniari, (Heir of appellant No.1 Late Desai Sahani), P.S. Nutan P.O. Jhakhara, District West Champaran.

2. Dhanai Mahto, son of Bhole Mahto Resident of Village- Marushantola Chhote Tola, P.S. Nutan, P.O.- Jhakhare, Dist- West Champaran.

.... Appellants

Versus

1. Most. Mouli, wife of Late Shyam Lall Sah, deceased Resident of Village- Mauza Mauaha, P.S. Nutan, District- West Champaran.

2. Sri Madan Sah, son of Desai Sah

3. Hari Shankar Sah @ Abhilakh Sah

4. Dinesh Sah @ Umesh Sah All sons of Madan Sah Guardan and well wisher of the Minors. All residents of Village- Maruaha, P.S. Nutan, P.O.- Jhakhara, District- West Champaran.

.... Respondents

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Appearance :

For the Appellant/s : Mr. Usha Rai

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 05-12-2016

Heard Mr. Uma Shankar Singh, learned counsel
appearing for the appellants.

This matter has been placed today in view of the defect pointed out by the office pertaining to the maintainability of this appeal on the ground that earlier a Second Appeal No. 320/2001 was filed before this Court but the said appeal was dismissed on 16.05.2002. It has been also pointed out that subsequently M.J.C. (Restoration) No.4997/2013 was filed but the same was also dismissed. The office has also pointed out that this appeal is barred by



limitation of 14 years 10 months and 3 days.

The learned counsel for the appellants has submitted that as there is no bar in the C.P.C. against an appellant whose appeal has been dismissed for default to file another appeal and therefore the office report regarding maintainability of this appeal, as pointed out by the stamp reporter is not legally tenable. Elaborating his submissions, Mr. Singh, has contended that a litigant has right to approach the higher forum in appeal and the said right can be taken up only by express statutory provision in that regard, which is not so in the present case. It has, therefore, been prayed that the report pertaining to the maintainability of this appeal by the stamp reporter be not sustained and this appeal be held to be maintainable.

After considering the submissions and the materials on record, it is manifest that the appellants had earlier preferred a Second Appeal No.320/2001 against the same judgment and decree, which has been impugned in the present second appeal. The said fact has not been disputed. It has also been accepted and apparent from the records that the appellants preferred M.J.C. (Restoration) No. 4997/2013 praying for restoration of the said second appeal but the said restoration petition was also dismissed.

The provisions of appeal as contained in Sections 96,100 as well as Section 104 C.P.C. envisage only one appeal. It



would be fruitful here to notice the relevant parts of the said provisions hereunder:

“96. Appeal from original decree.- (1) Save where otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie from every decree passed by any court exercising original jurisdiction to the court authorized to hear appeals from the decisions of such court.

(2) An appeal may lie from an original decree passed ex parte.

*(3) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.*

*1(4) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX*

(Emphasis supplied)

“100. Second appeal.-(1) Save as otherwise expressly provided in the body of this Code or by any other law for the time being in force, an appeal shall lie to the High Court from every



decree passed in appeal by any Court subordinate to the High Court, if the High Court is satisfied that the case involves a substantial question of law.

(2) An appeal may lie under this section from an appellate decree passed ex parte.

(3) In an appeal under this section, the memorandum of appeal shall precisely state the substantial question of law involved in the appeal.

*(4) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX.*

*(5) XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX*

(Emphasis supplied).

104. Orders from which appeal lies.- *(1) An appeal shall lie from the following orders, and save as otherwise expressly provided in the body of this Code or by any law for the time being in force, from no other orders:—*



XXXXXXXXXXXXXXXXXXXXXXXXXXXX ”

(Emphasis supplied)

It is demonstrably clear from the aforesaid provisions that the Code has provided for only one appeal in the circumstances and on conditions mentioned therein and the corresponding rules. It is also no longer res integra that a right of appeal inheres in no one and such a right is always the creature of statute. The submission on behalf of the appellants in support of the maintainability of the present appeal on the base of the contention that there is no express bar in the Civil Procedure Code in this regard is thus misconceived for the reason that an appeal, in order to be maintainable, must have clear authority of law and mere absence of bar would not suffice

The intention of legislature to provide the right of one appeal alone is further fortified by Order 41 Rule 19 C.P.C. providing for readmission of the appeal dismissed for default. Further unlike Order 9 Rule 4 relating to a suit, there is no corresponding provision in the Code entitling the appellants to file a fresh appeal. The right to file successive appeals against the same decree, so ardently pressed on behalf of the appellants is neither supported on principle nor by precedent.

For the aforesaid reasons, this Court comes to the



conclusion that the present appeal is not maintainable and is dismissed
as such.

(V. Nath, J)

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