

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.21 of 2015

IN

SA 310 of 1986

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1. Sk. Noor Hassan
2. Md. Zamil
3. Md. Wakil sons of late Md. Sk. Nasiruddin All, Resident of Mohalla- Koiri Tola, Ward No. 16, P.O. and P.S. Bettiah, District- West Champaran.
4. Nazma Khatoon @ Nazma Begum
5. Parvin Khatoon @ Parveen Begum @ Pramin Khatoon
6. Nazrin Khatoon
7. Yasmin Khatoon all daughters of late Md. Sk. Nasiruddin, All, Resident of Mohalla- Koiri Tola, Ward No. 16, P.O. and P.S. Bettiah, District- West Champaran.

.... Defendants/Appellants/ Petitioner/s
Versus

1. Nazra Khatoon wife of Late Ajam
2. Md. Firoz
3. Md. Parwez sons of Late Md. Ajam Resident of Mohalla- Koiri Tola, Ward No. 16, P.O. and P.S. Bettiah, District- West Champaran.
4. Sabnam Khatoon wife of Md. Sheru Resident of Bankey Sah Chowk Chandwara, P.O., P.S. and District- Muzaffarpur.
5. Rukhsana Khatoon wife of Md. Angoor Khan, Resident of Naya Tola, P.S. and P.O. Chanpatia, District- West Champaran.
6. Md. Azim
7. Amna Khatoon wife of Md. Azim and D/o late Sk. Nasiruddin
8. Md. Asim all sons of Late Arif, All resident of Mohalla- Koiri Tola, Ward No. 16, P.O. and P.S. Bettiah, District- West Champaran.

.... Plaintiffs/ Respondents/ Appellants

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Appearance :

For the Petitioner/s : Mr. Asif Kalim, Advocate

For the Opp. parties : Mr. Ganpati Trivedi, Sr. Advocate.

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CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date: 09-11-2016

Heard Mr. Raghieb Ahsan, Sr. Advocate, in support of the review application as well as Mr. Ganpati Trivedi, Sr. Advocate, appearing for the opposite parties (plaintiffs of S.A. No. 310 of 1986).

The application seeks review of the judgment and order dated 27.11.2014 passed in Second Appeal no. 310 of 1986. The Second Appeal was



filed by diverse plaintiffs. The appeal was dismissed for non-prosecution on 13.11.2013. One of the appellants (Md Alam) thereafter died on 26.11.2013. An Interlocutory Application being I.A. No. 8932 of 2013 was filed on 11.12.2013 for substitution of the deceased appellant wherein his heirs had appeared through 'vakalatnama' when it came to the notice of the appellants that the appeal itself was dismissed for want of prosecution a restoration application being MJC No. 6156 of 2013 was filed within time on 12.12.2013 for restoration of the Second Appeal. Upon hearing the parties, the said restoration application was allowed and the Second Appeal was restored to its original file and number. The Court thereafter took up the appeal for consideration and by judgment and order dated 27.11.2014 disposed of the same on merit.

It is submitted on behalf of the review petitioners that as Md. Sk. Nasiruddin, the sole respondent (defendant of the suit) had died and his substitution by the heirs was allowed by the Court and subsequently one of them being the widow of Md. Sk. Nasiruddin also died on 01.01.2014 , and as such, the suit/appeal abated.

Mr. Trivedi conversely submits that under order 41 Rule 4 of the Code of Civil Procedure the appeal would not abate as the Court has requisite jurisdiction to pass an order on merit. Order 41, Rule 4 of the CPC provides as under:-

“4. One of several plaintiffs of defendants may obtain reversal of whole decree where it proceeds on ground common to all.-Where there are more plaintiffs or more defendants than one in a suit, and the decree appealed from proceeds on any ground common to all the plaintiffs or to all the defendants, any one of the plaintiffs or of the defendants may appeal from the whole decree, and thereupon the Appellate Court may reverse or vary the decree in favour of all the plaintiffs or defendants, as the case may be.”

It is submitted that the defendants of the suit has common ground in the case. In support of his contention Mr. Trivedi, relied on **AIR 1971 SC 742 (Mahabir Prasad v. Jage Ram & Ors)**.

Mr. Ahsan, on the other hand, submits that as all the plaintiffs had filed the appeal the case would not be covered by Order 41 Rule 4 of the CPC. This is an error which crept in the order which merits review of the judgment dated 27.11.2014. It is also submitted that the advocate representing the respondents had in the meantime died in 2003 and the same was not brought to the notice of the Court.

If the party to the appeal is dissatisfied with the judgment passed on merit then it is open to the aggrieved party to file appeal thereagainst in accordance with law. The respondents (review petitioners) instead of doing so have filed the present review application and prays for rehearing of the case on merit which would not be permissible in law. Considering the narrow confines of the jurisdiction invoked, I am not inclined to allow the present review application. The review application is dismissed.

(Kishore Kumar Mandal, J)

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