

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Revision No.37 of 2010

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Md. Gheyasuddin @ Md. Gayasuddin S/O Late Gul Mohammad R/O
Bairia, Tola Sarbajia, P.S. And Distt.- Purnea

.... Petitioner.

Versus

1. Md. Riyajuddin S/O Late Gul Mohammad R/O Vill.- Bairia, Tola Sarjajia, P.S. Baisi, Distt.- Purnea
2. Sk. Ashab Alam S/O Late Gul Mohammad R/O Vill.- Amna, P.S.- Sadar, Distt.- Purnea
3. Bibi Momina Khatoon W/O Sk. Kafil, D/O Late Gul Mohammad R/O Vill.- Bairia, Tola Sarbajia, P.S. Baisi, Distt.- Purnea
4. Bibi Jamila Khatoon W/O Sk. Jalil, D/O Late Gul Mohammad R/O Parbaili, P.S. Kadwa, Distt.- Katihar
5. Bibo Somna Khatoon W/O Sk. Rajjak, D/O Late Gul Mohammad R/O Vill.- Farkia, P.S. Sadar, Distt.- Purnea
6. Bibi Nargis W/O Sk. Isha, D/O Late Gul Mohammad R/O Vill.- Gaibuwa, P.S. Baisi, Distt.- Purnea

.... Respondents.

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Appearance :

For the Petitioner/s : Mr. Sanjay Sinha
Mr. Deepak Kr. Singh
Mr. Saba Ashfaque

For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE V. NATH
ORAL ORDER

9 23-06-2016 Heard Mr. Raghbir Ahsan, learned senior
counsel appearing on behalf of the petitioner.

This revision application has been filed against
the judgment and order dated 30.11.2009 whereby the
Miscellaneous Appeal No.34/1998 filed by the appellant has been
dismissed affirming the order dated 17.04.1998 passed by the
learned court below.

The solitary submission made on behalf of the

petitioner is that the learned appellate court below has no jurisdiction to pass the impugned judgment and order and therefore the same cannot be sustained in law.

From the facts apparent from the impugned order passed by the learned appellate court below as well as the submissions on behalf of the petitioner, it is manifest that the compromise decree passed in T.S.No.646/1993 was set aside by the trial court on a petition filed by the opposite parties giving rise to Miscellaneous Case No.124/1993. The learned court below by the said order has restored the suit to its original file. It transpires that thereafter a revision application was filed by the petitioner before this Court. However, by order dated 12.10.1998 after hearing the learned counsel for the petitioner the direction was given to the petitioner to convert the said revision application into a miscellaneous appeal. Accordingly, the M.A.No.478/1998 came to be instituted at the instance of the present petitioner. By order dated 03.11.1998, when the learned counsel appearing for the petitioner in the said M.A.No.478/1998 accepted the office report questioning the maintainability of the appeal before this Court in view of the valuation of the appeal being Rs.11,000/-only, the direction was issued to return the memo of appeal to the appellant for the purpose of re-filing before the appropriate court. The

appellant thereafter filed Miscellaneous Appeal No.34/1998 which was eventually heard by the court of learned Additional District Judge, (F.T.C. No.1), Purnea. After hearing the parties, the learned court below by the impugned order has dismissed the appeal.

In the backdrop of aforesaid facts and circumstances, this Court does not find any merit in the submission on behalf of the petitioner who was the appellant in the learned appellate court below that the appellate court below has no jurisdiction to pass the impugned order. It does not appear from the impugned order nor it is the case of the petitioner that any objection to the jurisdiction of the court below to entertain the appeal, was ever raised, rather from the materials on record it appears that the petitioner after accepting the stamp report has received the memo of appeal from this Court and filed the same before the appellate court below. It is trite that even an erroneous decision on a question of law by a competent court operates as res judicata. It is thus clear like crystal that in view of the earlier order of this Court the appellant cannot be allowed to raise an objection to the jurisdiction of the appellate court below. This Court, therefore, does not find substance in the solitary submission of the petitioner.

The revision application is, accordingly,

dismissed.

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(V. Nath, J)

