

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Writ Jurisdiction Case No.21504 of 2012

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1. DR. ARUNA SINHA @ ARUNA SINHA W/O SRI GANGADHAR PRASAD SINHA
 RESIDENT OF MOHALLA- TILKAMANJHI, P.S- KOTWALI, DISTRICT-
 BHAGALPUR.

2. PUSHPA SINHA W/O DR. PRADEEP KUMAR RESIDENT OF MOHALLA-
 TILKAMANJHI, P.S- KOTWALI, DISTRICT- BHAGALPUR.

3. MADHURI SINHA W/O NAGENDER NARAYAN SINHA RESIDENT OF
 MOHALLA- TILKAMANJHI, P.S- KOTWALI, DISTRICT- BHAGALPUR.

4. PUNAM CHANDRA W/O SRI PRAKASH CHANDRA RESIDENT OF MOHALLA-
 TILKAMANJHI, P.S- KOTWALI, DISTRICT- BHAGALPUR.

Plaintiffs, Respondents 1st Set, Petitioners

1. DINESH CHANDRA DAS S/O LATE RAM SURAT DAS RESIDENT OF
 VILLAGE- MAHADA, P.S- RAJOUN, DISTRICT- BANKA, PRESENTLY AT
 MOHALLA- ALIGANI, WARD NO. 3, P.S- BANKA, DISTRICT- BANKA.

Defendant 2nd Set, Appellant, Respondent

VERSUS

1. THE STATE OF BIHAR THROUGH THE COLLECTOR, BANKA.

2. THE MEDICAL OFFICER, INCHARGE (PRABHARI CHIKITSA PADAKHIKARI)
 STATE DISPENSARY, RAOUN, ASPATAL RAJOUN, P.S- DISTRICT- BANKA.

3. THE ANCHAL ADHIKARI, RAJOUN, POLICE STATION- RAJOUN, DISTRICT-
 BANKA.

Defendant 1st Party, Respondents 2nd Party

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Appearance :

For the Petitioner/s : Mr. Ajay Kumar Singh--Advocate

For the Respondent/s : Mr. Harish Kumar-G.P.32

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CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
ORAL ORDER

03 20-01-2016

Heard learned counsel for the petitioners as well as
 learned G.P.32.

Petitioners are aggrieved by an order dated
 04.10.2012 passed by the learned Appellate Court in connection
 with Title (F.A.) No.118 of 1997 whereby and whereunder the
 learned Appellate Court has fixed the appeal for hearing on its
 merit after deciding the controversial issue in terms of the order of
 this Court passed under M. A. No.95 of 2009.

It has been submitted on behalf of petitioners that M.



A. No.95 of 2009 was filed at their behest on a limited point against the judgment dated 22.11.2008 passed by the First Appellate Court relating to Title First Appeal No.118 of 1997 whereunder the matter was remanded after setting aside the judgment dated 25.09.97 relating to Title Suit No.47 of 1987. Furthermore, it has been submitted that above referred Misc. Appeal was filed against the part of the judgment of the learned Appellate Court whereby and whereunder the matter was remanded over the issue of valuation as well as having the suit land suffering from vagueness. For that, it has been observed that, it should be properly identified by way of appointment of Survey Knowing Pleader Commissioner which, this Court while adjudicating upon the aforesaid Appellate Court's judgment, struck down the aforesaid operative portion of the judgment and instead thereof, the learned Appellate Court has been directed to see the feasibility of framing of aforesaid issues and further, would strive to decide the same at its own level. Therefore, the learned Appellate Court had rightly decided the feasibility of having the aforesaid issues in order to come to a conclusion that aforesaid two issues were not pivotal one, hence did not opine to revisit. However, it is the submission of the learned counsel for the petitioners that other parts of judgment of learned Appellate Court

was not challenged. Therefore, the findings so recorded by the learned Appellate Court vide judgment dated 22.11.2008 should not be tested and that being so, the learned Appellate Court happens to be wrong in directing that appeal be heard on its merit.

The learned G.P.-32 has controverted the submission made on behalf of the petitioners.

For better appreciation, the relevant paragraph of order dated 28.02.2011 passed in M. A. No.95 of 2009 (Annexure-2) is quoted below:- “ On considering the rival submissions and various decisions on this point whereby this Court has repeatedly held that remand of suit should be resorted only under exceptional circumstances and the Appellate Court should strive to decide the suit itself by framing additional issues if it thinks fit, the order dated 22.11.2008 passed in T. A. No.118 of 1997 by the Additional District Judge, (Fast Track Court-IV), Banka, is set aside with the direction to the Appellate Court to frame the two additional issues if it requires and decide the matter itself without prolonging the Appeal any further”.

From plain reading of the operative portion of the order, as indicated above, answers the submission made on behalf of the learned counsel for the petitioners as from the order impugned, it is evident that judgment dated 22.11.2008 passed by

the learned Appellate Court has been set aside. That means to say, no judgment, though challenged on limited point, survives. Accordingly, learned Appellate Court was right in directing the parties to come ready for hearing the appeal on the merit of the case.

As such, instant petition is found devoid of merit and is accordingly, rejected.

(Aditya Kumar Trivedi, J)

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