

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.920 of 2016

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Md. Rafique

.... Appellant/s

Versus

Md. Idris & Ors

.... Respondent/s

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Appearance :

For the Appellant/s : Mr. Lakshmi Kant Tiwary

For the Respondent/s : Mr. Sajid Salim Khan- Sc25

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CORAM: HONOURABLE MR. JUSTICE MUNGESHWAR
SAHOO
ORAL ORDER

- 2 26-10-2016 **1.** It appears that the names of the respondent No.13 and 14 have wrongly been mentioned as respondent in this Civil Misc. case as they are not party to this title suit. Accordingly, their names are deleted.
- 2.** Heard the learned counsel, Mr. Laxmi Kant Tiwary, for the petitioner.
- 3.** This application under Article 227 of the Constitution of India has been filed by the petitioner against the Judgment and Order dated 31.07.2013 passed by the District Judge, Nawada in Title Appeal No.14 of 2012 whereby the learned lower appellate Court dismissed the Appeal on the ground that it is time barred.
- 4.** It appears that earlier the petitioners had filed Second Appeal No.342 of 2013. However, from perusal of the order Annexure '5', it appears that the learned counsel for the petitioner

withdrew the Second Appeal with liberty to seek remedy available to them for redressal of their grievance in accordance with law.

5. The learned counsel for the petitioner submitted that the order impugned whereby the Title appeal has been dismissed as barred by law of limitation is not a decree. In support of his contention, he relied upon a decision of Madhya Pradesh High Court in the case of ***Ram Bharaso Singh Vs. Hemlata Aaple AIR 1994 M.P. 198*** and submitted that in the said decision, it has been held that if the Title Appeal has been dismissed on the ground of limitation, it will not amount to a decree.

6. A Division Bench of this Court in the case of ***Ravneshwar Thakur Vs. Neeraj Kumar Thakur 1996 (1) PLJR 494*** has held that ‘the order rejecting an appeal as time barred amounts to “decree”, whatever be the nature of order rejecting the Memo of appeal on whatsoever ground whether for non-payment of Court fee or failure of comply a peremptory order or limitation, the effect of the rejection, is confirmation of decision of the trial Court. The decision of the trial Court will be deemed to have merged in the order of appellate Court. If that be so, it will be difficult to hold that such orders do not have the force of “decree” but it will amount to “decree” only if the decision was on merit.’



Accordingly, the Division Bench has held that if the Judgment of the trial Court is on merit and the appeal has been dismissed on the ground of limitation, it will amount to a decree because the trial Court Judgment merged in the order of the appellate Court whereby the appeal was dismissed on the ground of limitation. If the Judgment of the trial Court is not on merit but it has been dismissed on any preliminary issue then it will not amount to a decree.

7. This question was specifically dealt with by the Supreme Court in the case of ***Ratan Singh Vs. Vijay Singh and Ors. (2001) 1 SCC 469*** and it was held therein that ‘dismissal of an application for condonation of delay would not amount to a decree and, therefore, dismissal of appeal as time barred was also not a decree.’ However, this decision of the Supreme Court has specifically been overruled in the decision of Supreme Court by larger Bench in the case of ***Shyam Sunder Ram Vs. Pannalal AIR 2005 SC 226***. The Hon’ble Supreme Court in this case has held that ‘dismissal of application for condonation of delay and consequently dismissal of appeal on refusal to condone the delay is nevertheless a decision in Appeal.’

8. Therefore, in my opinion, the petitioner has wrongly

withdrawn the Second Appeal as the only course was to file Second Appeal because the dismissal of the Title Appeal on the ground of limitation is decree within the meaning of said term as defined under Section 2 sub Section 2 CPC in view of the decisions referred to above. However, since Second Appeal is maintainable which was filed by the petitioner earlier, I permit him to convert this Civil Misc. application to Second Appeal within two weeks after Chhath Pooja holidays.

(Mungeshwar Sahoo, J)

Sanjeev/-

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