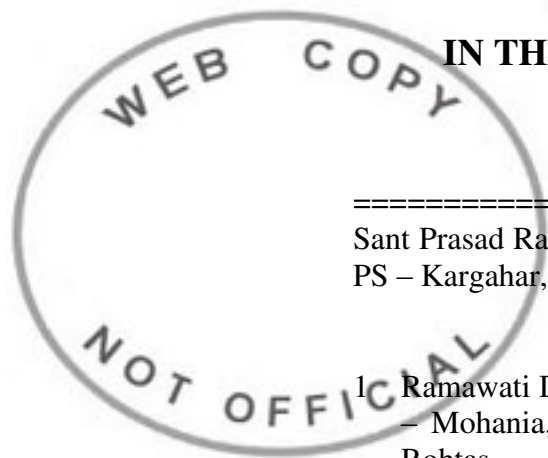




IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No 784 of 2016

IN

SA 218 of 2006

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Sant Prasad Rai @ Sant Prasad, son of late Sudama Rai, resident of Village – Gori,
PS – Kargahar, District - Rohtas

.... Appellant/s

Versus

1 Ramawati Devi, sife of Shiv Narayan Singh, resident of Village – Samahuta, PS
– Mohania, at present resident of Village – Gori, PS – Kargahar, District –
Rohtas

2 Ramesh Kumar Singh, son of Janki Rai

3 Smt Parmila Devi, wife of Ashok Kumar Singh

4 Munna Singh, son of Ram Ekbal Singh

5 Pratap Bahadur Singh, son of Madan Singh

6 Indu Devi, wife of Sri Madan Singh

7 Rakesh Kumar Singh, son of Sri Madan Singh, residents of Village – Gori, PS –
Kargahar, District - Rohtas

.... Respondent/s

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For the Appellant/s : Mr Dudh Nath Singh, Advocate

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CORAM: HON'BLE MR JUSTICE NAVANITI PRASAD SINGH

&

HON'BLE JUSTICE SMT NILU AGRAWAL

ORAL JUDGMENT

(Per: HONOURABLE MR JUSTICE NAVANITI PRASAD SINGH)

Date: 21-04-2016

The Stamp Report is that the instant Letters Patent Appeal, purportedly filed under Clause 10 of the Patna High Court Rules Letters Patent, is not maintainable. On this question of maintainability, we have heard the learned counsel for the appellant at length.

2 The facts relevant for deciding the question are that in a

pending Second Appeal, an interlocutory application was filed by purchasers of certain property during pendency of suit. They wanted to be impleaded as the interest in the suit property had been purchased by them. That intervention application was allowed and the interveners were directed to be added as intervener-respondents. The appellant, in the intra-Court appeal, was the defendant in the Title Suit who had preferred appeal against the original decree and succeeded. He was also one of the respondents in the Second Appeal. His plea, in this intra-Court appeal, is that the second appellate Court, that is this Court dealing with the Second Appeal, had no jurisdiction to add parties. Therefore, this Court exceeded the jurisdiction of a second appellate Court. The jurisdiction could only be found in Article 226 of the Constitution and by this reasoning, the Letters Patent Appeal would lie. According to the learned counsel, whether the second appellate Court decided the matter within its jurisdiction or beyond its jurisdiction, does not matter. According to him, we have to assume that it exercised jurisdiction beyond the Code of Civil Procedure (for brevity, *CPC*) and, as such, it could only be Article 226 of the Constitution. For the aforesaid, he relies on the recent judgment of the Apex Court in the case of *Sh Jogendrasinhji Vijaysinghji –Versus- State of Gujarat & Others, (2015) 9 Supreme Court Cases 1*. He has first referred to paragraph 30 which is quoted hereunder:

“30. From the aforesaid pronouncements, it is graphically clear that maintainability of a letters patent appeal would depend upon the pleadings in the writ petition, the nature and character of the order passed by the learned Single Judge, the type of directions issued regard being had to the jurisdictional perspectives in the constitutional context. Barring the civil court, from which order as held by the three-Judge Bench in Radhey Shyam that a writ petition can lie only under Article 227 of the Constitution, orders from tribunals cannot always be regarded for all purposes to be under Article 227 of the Constitution. Whether the learned Single Judge has exercised the jurisdiction under Article 226 or under Article 227 or both, needless to emphasise, would depend upon various aspects that have been emphasized in the aforesaid authorities of this Court. There can be orders passed by the learned Single Judge which can be construed as an order under both the articles in a composite manner, for they can co-exist, coincide and imbricate. We reiterate it would depend upon the nature, contour and character of the order and it will be the obligation of the Division Bench hearing the letters patent appeal to discern and decide whether the order has been passed by the learned Single Judge in exercise of jurisdiction under Article 226 or 227 of the Constitution or both. The Division Bench would also be required to scrutinize whether the facts of the case justify the assertions made in the petition to invoke the jurisdiction under both the articles and the relief prayed on that foundation. Be it stated, one of the conclusions recorded by the High Court in the impugned judgment pertains to demand and payment of court fees. We do not intend to comment on the same as that would depend upon the rules framed by the High Court.”

3 We have considered the matter and we are not impressed

for we maintain that from second appellate proceedings arising from a Civil Court, no Letters Patent Appeal lies.

4 Firstly, to the contention that the second appellate Court lacks jurisdiction to add parties and its only jurisdiction is to determine substantial questions of law, we are noticing the argument only to reject the same. The answer is to be found in Section 107 of the CPC noted hereunder with emphasis on sub-section (2) thereof:

“107. Powers of appellate Court.-(1)
Subject to such conditions and limitations as may be prescribed, an appellate Court shall have power-

- (a) to determine a case finally;*
- (b) to remand a case;*
- (c) to frame issues and refer them for trial;*
- (d) to take additional evidence or to require such evidence to be taken.*

(2) Subject as aforesaid, the appellate Court shall have the same powers and shall perform as nearly as may be the same duties as are conferred and imposed by this Code on Courts of original jurisdiction in respect of suits instituted therein.”

5 As to the remedy against orders passed by the appellate Court, the answer is to be found in sub-section (1) of Section 105 of CPC quoted hereunder:

“105. Other orders.-(1) *Save as otherwise expressly provided, no appeal shall lie*

from any order made by a Court in the exercise of its original or appellate jurisdiction; but, where a decree is appealed from, any error, defect or irregularity in any order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal.”

6 Thus seen, the appellate Court has jurisdiction in the matter to pass order and if a party is aggrieved, the remedy is indicated in Section 105 of CPC itself. Thus, when CPC itself provides for a situation like this, then a Letters Patent Appeal, which is different from normal appeal and is an intra-Court appeal from original jurisdiction of the High Court, such an appeal would not lie. We may fortify ourselves with the judgment, as relied by the learned counsel himself in *Sh Jogendrasinhji Vijaysinghji (supra)* wherein, in paragraph 45 of the reports, their Lordships have summarized their findings and the relevant would be paragraph 45.2 which is quoted as under:

“45.2. The order passed by the civil court is only amenable to be scrutinized by the High Court in exercise of jurisdiction under Article 227 of the Constitution of India which is different from Article 226 of the Constitution and as per the pronouncement in Radhey Shyam, no writ can be issued against the order passed by the civil court and, therefore, no letters patent appeal would be maintainable.”

7 In view of the aforesaid, we agree with the Stamp Reporter that the Letters Patent Appeal is not maintainable and is, accordingly,

fit to be dismissed and is dismissed accordingly.

(Navaniti Prasad Singh, J)

(Nilu Agrawal, J)

M.E.H./-

AFR/NAFR	AFR
CAV DATE	
Uploading Date	25-04-2016
Transmission Date	