

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No.355 of 2014

**IN
LPA 681 of 2013**

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1. Husn Ara Begum wife of the Muzaffar Khan
2. Rashid Khan Son of the Muzaffar Khan
3. Md. Sajid Khan Son of the Muzaffar Khan
4. Md. Shahid Khan Son of the Muzaffar Khan
5. Md. Asif Khan Son of the Muzaffar Khan
6. Md. Aaqueb Khan Son of the Muzaffar Khan All Resident of Mohalla -
Ismailganj (Dumdum), Police Station - Leheriasarai, District - Darbhanga

.... Petitioners

Versus

1. The State of Bihar
2. The Inspector General of Registration, Government of Bihar, Patna
3. The District Magistrate cum Registrar, Darbhanga
4. The Sub - Registrar, Darbhanga, District - Darbhanga
5. Mr. Shailendra Nath Sinha, Deputation on Registration Inspector Head Quarter,
Government of Bihar, Patna
6. Braj Mohan Sah Son of Late Jamun Sah Resident of Mohalla - Imailganj, P.S.
Laheriasarai, District - Darbhanga

.... Opposite Parties

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Appearance :

For the Petitioners : Mr. Shahnawaz, Advocate
For Opposite Parties : Mr. Sudhish Kumar, AC to Pr. AAG 2

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CORAM: HONOURABLE THE ACTING CHIEF JUSTICE
And
HONOURABLE MR. JUSTICE VIKASH JAIN

ORAL JUDGMENT

(Per: HONOURABLE THE ACTING CHIEF JUSTICE)

Date: 07-12-2016

Heard learned counsel for the parties.

The prayer in the present review petition is for review of the
order passed by a Division Bench of this Court on 10th of March,
2014 in L.P.A. No. 681 of 2013 whereby the appeal filed by the State



of Bihar was allowed and the order passed by the learned Single Bench was set aside.

The sole ground to seek review of the order is that the writ applicant died on 24th February, 2014 whereas the order was passed by the Division Bench on 10th March, 2014 without substituting the legal heirs of the deceased applicant.

Perusal of the record of the Letters Patent Appeal shows that the notice was ordered to be served upon respondent no.1 under registered cover with AD as well as ordinary process on 11th of December, 2013. Such notice was found validly served in the mid of January, 2014, which fact is recorded in the order dated 11.2.2014. Respondent no.1 was alive on the date when the order of proper service was passed. Therefore, it cannot be said that the order could not have been passed by the Division Bench in absence of the substituted heir of the respondent No.1.

Still further, we find that in view of the provision of Section 141 of the Code of Civil Procedure, the Code is not applicable to the writ applications and consequently in Letters Patent Appeal arising out of the order passed in the writ application. The Hon'ble Supreme Court in the case of Puran Singh Vs State of Punjab, [(1996)2 SCC 205], has held to the following effect that Code of Civil Procedure is not applicable to writ proceedings. The Court held as under:-



“7. When the High Court exercises extraordinary jurisdiction under Article 226 of the constitution, it aims at securing a very speedy and efficacious remedy to a person, whose legal or constitutional right has been infringed. If all the elaborate and technical rules laid down in the Code are to be applied to writ proceedings the very object and purpose is likely to be defeated. According to us, in view of the conflicting opinions expressed by the different courts, the Parliament by the aforesaid amending Act introduced the explanation saying that in Section 141 of the Code the expression ‘proceedings’ does not include “any proceedings under Article 226 of the Constitution” and statutorily recognised the views expressed by some of the courts that writ proceedings under Article 226 of the Constitution shall not be deemed to be proceedings within the meaning of Section 141 of the Code. After the introduction of the explanation to Section 141 of the Code, it can be said that when Section 141 provides that the procedure prescribed in the Code in regard to suits shall be followed, as far as it can be made applicable “in all proceedings in any court of civil jurisdiction” it shall not include a proceeding under Article 226 of the constitution. In this background, according to us, it cannot be held that the provisions contained in Order 22 of the Code are applicable per se to writ proceedings. If even before the introduction of the explanation to Section 141, this Court in the case of *Babubhai v. Nandlal* had said that (SCC Headnote p. 707) the words “as far as it can be made applicable” occurring in Section 141 of the Code made it clear that in applying the various provisions of the Code to the proceedings other than those of a suit, the court has to take into consideration the nature of those proceedings and the reliefs sought for after introduction of the explanation the writ proceedings have to be excluded from the expression ‘proceedings’ occurring in Section 141 of the Code. If because of the explanation, proceeding under Article 226 of the Constitution has been excluded, there is no question of making applicable the procedure of Code “as far as it can be made applicable” to such proceeding. The procedures prescribed in respect of suit in the Code if are made applicable to the writ proceedings then in many cases it may frustrate the exercise of extraordinary powers by the High Court under Articles 226 and



227 of the Constitution.”

In view of the said judgment, we do not find any error in the order passed by the learned Single Bench.

At this stage, learned counsel for the review petitioner raised an argument that the appeal was not maintainable in view of the fact that writ applicant was directed so as to seek enforcement of the order of the Civil Court. We do not find any merit in the said argument as well. The Civil Court decreed the suit for specific performance of the agreement but when the sale deed was presented, it was not registered as it was presented beyond the period contemplated by the Stamp Act. Therefore, the sale deed was not registered in terms of the Indian Stamps Act. Thus, it is an order of Sub Registrar which was subject matter of the challenge in the writ application and not an order of the Civil Court. Consequently, it cannot be said that said Letters Patent Appeal was not maintainable before this Court.

The Civil Review petition is thus, dismissed.

(Hemant Gupta, ACJ)

A.I./-

(Vikash Jain, J)

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