

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.189 of 2013

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Shree Shree Chandra Das S/O Late Bachchu Das Resident Of Village Dinara, P.S. Dinara, District Rohtas (Sasaram).

.... Petitioner

Versus

Balajee Singh S/O Late Dhananjay Singh Resident Of Village Dinara, P.S. Dinara, District Rohtas (Sasaram).

.... Respondent

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Appearance :

For the Petitioner/s : Mr. B. N.Chaudhary, Adv.

For the Opposite Party : Mr. Sandeep Kumar Singh, Adv.

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CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 31-08-2016

Heard Mr.B.N.Chaudhary, learned counsel for the petitioner and Mr.Sandeep Kumar Singh, learned counsel for the sole opposite party.

This revision application has been filed by the plaintiff challenging the impugned order whereby the court below has dismissed the suit for want of evidence on behalf of the plaintiff on the date when the plaintiff was absent, purporting to exercise the jurisdiction under Order 15 Rule 4 C.P.C.

The learned counsel for the petitioner has submitted that under the provision of Order 15 Rule 4 C.P.C. the court has only two options. The first option as envisaged under the said provision is to pronounce judgment at once and another option is to



frame and record issues, adjourn the suit for producing the witnesses as may be necessary for the decision upon such issues. It has been contended that the learned court below has not acted in the prescribed manner by adopting either of the two options available with it rather it has proceeded to dismiss the suit on the ground which has not been envisaged in the said provision or any other provision in the C.P.C. The learned counsel has also pointed out that the issues in the suit were already framed and a pleader commissioner was also appointed for local inspection of the suit property and had also submitted his report which under the law was also an evidence in the suit.

Mr. Sandeep Kumar Singh, learned counsel for the sole opposite party, however, has firstly submitted that the revision application itself is not maintainable against the impugned order which amounts to a decree as the suit has been disposed of by an order of dismissal for want of evidence. It has been further submitted that the court has also not committed any error of jurisdiction in passing the impugned order as the plaintiff was not appearing for last several dates and was also absent on the date when the suit was taken up. It has, however, been accepted on behalf of the opposite party that the issues were already framed and a pleader commissioner had also been appointed and the report had been submitted.

After considering the submissions and perusal of



the impugned order including the ordersheet which has also been annexed with the revision application, it is evident that the issues in the suit had already been framed and the pleader commissioner was also appointed in the suit who submitted his report which was accepted on 15.06.2011 as apparent from the order of the said date. It is also apparent that the plaintiff was absent on 16.09.2013 on which date the submission on behalf of the defendant-opposite party was made that the plaintiff was absent and had not produced evidence nor had filed any petition for adjournment. The learned court below, thereafter, had passed the order stating that the suit was dismissed under Order 15 Rule 4 C.P.C. for want of evidence.

The provision of Order 15 as mentioned in its heading is applicable when the court proposes to dispose of the suit at the first hearing. This is also apparent from the provision contained in Order 15 Rule 4 C.P.C. which gives the option to the court for framing and recording issues instead of at once pronouncing the judgment. In the present case, admittedly the issues have been framed and the report of the pleader commissioner which is annexed in accordance with the provision of Order 26 Rule 10 C.P.C. is also there on record. In such a situation, it does not appear that the court has rightly exercised its jurisdiction dismissing the suit for want of evidence in absence of the plaintiff. This Court also does not align

with the submission made on behalf of the opposite party questioning the maintainability of this revision application on the base that the impugned order amounts to a decree and therefore the plaintiff-petitioner has the option to prefer appeal against the same. As such, this Court comes to the conclusion that the impugned order is not sustainable in law in view of the error of jurisdiction committed by the learned court below.

The revision application is, accordingly, allowed and the impugned order is set aside. The learned court below is directed to proceed with the suit in accordance with law.

(V. Nath, J)

Nitesh/-

AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	27.10.2016
Transmission Date	