

IN THE HIGH COURT OF JUDICATURE AT PATNA
Civil Review No.317 of 2014

In
Second Appeal No.171 of 2012

Vivekanand Pathak son of Late Akhilanand Pathak @ Nathuni Pathak,
resident of village & P.O.-Chap, P.S.-Pachrukhi, District -Siwan

... .. Appellant/ Petitioner/s

Versus

1. Vinayanand Pathak son of Late Akhilanand Pathak @ Nathuni Pathak,
resident of Balkrishnaganj, P.O. Gulzarbagh, P.S. Alamganj, District Patna
2. Subhadra Devi
3. Asha Devi

Both are daughters of Late Akhilanand Pathak @ Nathuni Pathak, resident
of village & P.O. Chap, P.S. Pachrukhi, District Siwan.

... .. Respondent/s.. opp. Parties.

Appearance :

For the Petitioner/s : Mr. Abhay Kumar Thakur
For the Respondent/s : Mr.

CORAM: HONOURABLE MR. JUSTICE KISHORE KUMAR MANDAL
ORAL JUDGMENT

Date : 06-12-2017

Heard Mr. J.S. Arora for the petitioner and the counsel
for the State.

By filing the instant application the appellant of Second
appeal no. 171 of 2012 prays for the review of the order dated
24.07.2014 whereby the appeal was dismissed.

It is submitted that the appellant of the appeal being the
plaintiff of the suit had prayed for specific declaration of his
share with respect to property embodied in Schedule-I and
Schedule -II. The Trial Court, allowed the prayer with respect to
Schedule-I property whereas in respect of Schedule-II property,
it was held that the same was the exclusively acquired property



of the defendant no.1. Aggrieved thereby the Title Appeal was preferred by the plaintiff. The appellate Court, on a consideration of the evidence on record, set aside the said finding of the learned Trial Court in respect of the Schedule-II property but also dismissed the appeal. Questioning that part of the judgment of the learned lower appellate Court, the appeal was preferred.

It is submitted that the defendants (respondents of the Second Appeal) had not filed any cross appeal. In a situation like this, the finding of the learned lower appellate Court in respect of Schedule -II property, in the circumstances, became final. This aspect of the matter was not argued and considered in the order dated 24.07.2014. He submits that a congruous situation has emerged in the case where the lower appellate Court has not adjudicated upon his rights after having set aside the findings of the learned Trial Court on Schedule-II property.

Mr. Arora also placed some orders where the Court having regard to the peculiar facts of the case have passed order under the review jurisdiction.

Learned counsel for the respondents, however, submits that there was no such pleading in the plaint with respect to the



Schedule-II property. This has been considered by this Court in the order dated 24.07.2014.

Having heard both the parties and considering the peculiar facts of the case, noticed hereinabove, the Court allows the present review application. The order dated 24.07.2014 passed in S.A. No. 171 of 2012 is recalled. Second Appeal No. 171 of 2012 shall now be placed for hearing under Order 41 Rule 11 of the CPC before an appropriate Bench .

(Kishore Kumar Mandal, J)

shyambihari/-

AFR/NAFR	NAFR
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