

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Review No. 297 of 2012

IN

C.R. 22 of 2012

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Madan Singh S/O Late Kapildev Singh Resident Of Village +Post+ P.S- Baniapur,
Distt- Saran At Chapra.

.... Petitioner

Versus

1. Pintu Singh S/O Sri Ajay Kumar Singh
2. Kailash Singh @ Ram Kailash Singh S/O Late Ram Prit Singh
3. Lal Babu Singh S/O Ram Kailash Singh
4. Ajay Kumar Singh S/O Ram Kailash Singh
5. Baban Singh S/O Late Sukat Singh
6. Birendra Singh S/O Late Sukat Singh
7. Rabindra Singh S/O Late Sukat Singh
8. Bipin Singh S/O Late Sukat Singh

All are Resident of Vill+ Post+ P.S- Baniapur, Distt- Saran.

9. Harendra Singh S/O Rup Narayan Singh
10. Rabindra Singh S/O Rup Narayan Singh

Both are Resident of Village- Dhoury, Madarpur, P.O- Madarpur, P.S-
Mashrakh, Distt- Saran.

11. Smt. Sarswati Devi W/O Birendra Ojha
12. Shashi Bhushan Ojha

13. Mani Bhushan Ojha both are sons of Sri Birendra Ojha Resident of Village+
P.O + P.S- Baniapur, Distt- Saran.

14(a) Birendra Ojha

14(b) Ravindra Ojha, both are sons of late Rajmati Kuwar @ Rajpati Kuwar,
Resident of Village+ P.O + P.S- Baniapur, Distt- Saran.

14(c) Vimla Devi, wife of Bhaneshar Singh, D/o Late Rajmati Kuwar @ Rajpati
Kuwar, R/v Mura, P.O. Tarwar, District Saran.

15. Meena Devi, Wife of Rabindra Ojha, Resident of Village+ P.O + P.S- Baniapur,
Distt- Saran.

.... Opposite Parties

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Appearance :



For the Petitioner : Mr. Ajay Kumar Singh No.1, Adv.
For the Opposite Parties : Mr. S.S. Dwivedi, Sr. Adv.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**
ORAL JUDGMENT
Date: 08-09-2017

1. Heard learned counsel for the petitioner as well as learned counsel appearing for the opposite parties.

2. This review petition has been preferred against the order dated 01.05.2012 passed by this court in Civil Revision No. 22 of 2012 by which this court dismissed the aforesaid Civil Revision No. 22 of 2012.

3. The petitioner wants review of above stated impugned order on the ground that this court failed to appreciate the binding precedent and as a matter of fact, the then learned counsel of the petitioner failed to place the case properly before this court.

4. I.A. No. 8202 of 2012 has been filed on behalf of the petitioner for condoning the delay in filing the review petition.

5. The office has reported that there is ten days delay in filing this review petition and, therefore, on the basis of averments made in I.A. No. 8202 of 2012, the limitation petition stands allowed and accordingly, delay in filing this review petition is, hereby, condoned.

6. It would appear from perusal of the record that Title Suit No. 79 of 1989 was filed by one Raj Kumar Singh, Ganesh Singh



and Devdhari Kunwar against petitioner and opposite parties for declaration that the family arrangement deed dated 30.07.1984 was a forged and void document and was not binding upon the plaintiffs of the aforesaid case but no consequential relief was prayed in the aforesaid suit. The aforesaid suit was dismissed. However, an appeal was preferred against the judgment of dismissal and the first appellate court allowed the appeal setting aside the judgment and decree passed by the trial court. It is informed that against the judgment and decree of first appellate court, second appeal bearing Second Appeal No. 65 of 2011 is pending before this court and in the aforesaid second appeal following substantial questions of law have been framed:-

1. Whether Order 41 Rule 31 of the Code of Civil Procedure mandates the First Appellate Court to state clearly the points for determination which the First Appellate Court in the present case failed to do and on such basis the judgment and decree of the First Appellate Court can be held to be illegal?

2. Whether the learned First Appellate Court wrongly upset the finding of learned Trial Court that the suit was barred by proviso to Section-34 of the Specific Relief Act, 1963?

7. It is pertinent to note here that during pendency of the aforesaid second appeal, Execution Case No. 02 of 2011, 11 of 2011 was filed by the petitioner who was defendant in the aforesaid Title Suit No. 79 of 1989. The petitioner prayed in the aforesaid execution



case for sending the copy of judgment and decree to the Registrar and also for removal of possession from the lands. The execution court dismissed the aforesaid Execution Case No. 02 of 2011, 11 of 2011 on the ground of maintainability holding that execution court has no right to go beyond the original decree. The order of aforesaid execution court was challenged by the petitioner before this court by filing Civil Revision No. 22 of 2012 which was dismissed by this court vide impugned order dated 01.05.2012 discussing all the relevant points involved in the aforesaid revision case.

8. Learned counsel appearing for the petitioner submits that there is apparent mistake on the face of the impugned order as this court while passing impugned order dated 01.05.2012 failed to take note of this fact that execution court was duty bound to determine all the questions arising in aforesaid execution proceeding. Learned counsel for the petitioner relied upon a decision reported in **1991(1) PLJR, 114** in which it has been held by this court that *“in declaratory suit executing court is duty bound to determine question arising between the parties to the suit relating to the execution”* but in my view, the aforesaid decision is not applicable in the present case because in that case, a petition under Section 47 of the C.P.C. was filed and in that scenario, this court observed that execution court is duty bound to determine all the questions arising in the aforesaid



proceeding.

9. On the other hand, learned counsel appearing for the opposite parties submits that admittedly, the petitioner was defendant in above stated title suit and he had not filed any counter claim and, therefore, the execution court rightly held that the execution court cannot go beyond the original decree. He further submitted that moreover, the aforesaid suit was itself not maintainable as the same was hit by Section 34 of Specific Relief Act and the aforesaid point for determination is still pending before this court in Second Appeal No. 65 of 2011. Learned counsel for the opposite parties also referred a decision reported in **2006(3) PLJR (SC) 99** in which the Apex Court of this country has held that ***“it is not permissible in review to re-argue the same points which has been agitated earlier and rejected.”*** Having relied upon the aforesaid decision learned counsel for the opposite parties submits that this court while passing impugned order dated 01.05.2012 discussed all the points involved in the aforesaid Civil Revision No. 22 of 2012 and, therefore, the same point cannot be re-agitated in the review petition.

10. Having heard the contentions of both the parties, I went through the impugned order as well as review petition. I find force in contention of learned counsel appearing for the opposite parties because admittedly, the petitioner was defendant in Title Suit



No 79 of 1989 and he had not made any counter claim in the said suit.

Moreover, I do not find any apparent mistake on the face of the impugned order and, therefore, in my view, this review petition is liable to be dismissed.

11. Accordingly, this review petition stands dismissed.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	12.09.2017
Transmission Date	N.A.

