

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No.41 of 2015

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1. Most. Tara Devi, wife of late Hari Mohan Prasad.
2. Mahendra Sao
3. Manoranjan Sao
4. Niranjana Sao Sons of Late Hari Mohan Prasad. All resident of mohalla Naya Gaon P.S. East Colony P.S. Jamalpur, Distt. Munger.

.... Petitioner/s

Versus

1. Ashok Sao, son of Chamru Sao
2. Manju Devi, wife of Ashok Sao Both resident of mohalla Naya Gaon P.S. East Colony Post Office Jamalpur, Distt. Munger.
3. Most Sita Devi, wife of late Ramotar Sao.
4. Bibhash Kumar, son of late Ramotar Sao
5. Pintu Kumar, son of late Ramotar Sao All resident of mohalla Nayagaon Shankarpur Near S.P. Sinha Nursing Home Police Station East Colony Post Office Jamalpur Distt. Munger.

.... Respondent/s

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Appearance :

For the Petitioner/s : Mr. Harshwardhan Sahay
For the Respondent/s : Mr.

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CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR SRIVASTAVA
ORAL JUDGMENT
Date: 07-07-2017

Heard

2. This Civil Revision Petition is filed against the order dated 02.04.2015 passed by the Munsif-I, Munger, in Misc. Case No. 10 of 2014 by which and whereunder the learned Munsif-I, Munger, rejected the petition filed on behalf of the petitioners under section 47 of the Code of Civil Procedure on the ground of pendency of Second Appeal no. 443 of 2005 before this Court.

3. It is an admitted position that opposite 1st parties filed Title Suit No. 19 of 2003 against the petitioners and others for preferential right to purchase the suit land with house, detailed in schedule -III of the plaint, and also for issuance of direction to the petitioners to execute registered sale deed in their



favour in respect of land and property in question. The aforesaid suit was dismissed by the learned Munsif-I, Munger, vide judgment dated 05.07.2008 against which the opposite 1st parties preferred Title Appeal No. 40 of 2008 which was allowed by the learned Additional District Judge, F.T.C-V Munger, vide judgment dated 28.08.2009. The opposite 1st parties (decree holder) filed Title execution Case no. 10 of 2005 for execution of the decree passed in Munsif Title appeal no. 40/2008 . However, in the meantime, the petitioners filed a petition under section 47 of the Code of Civil Procedure raising this point that the decree passed by the appellate Court in Title Appeal No. 40 of 2008 is not an executable decree because no relief was granted by the learned Additional District Judge F.T.C-V, Munger, in the aforesaid Title Appeal No. 40 of 2008. However, the learned Munsif -I, Munger rejected the petition filed on behalf of the Petitioners under section 47 of the Code of Civil Procedure passing the impugned order dated 24.04.2012 against which this revision petition has been filed.

4. Learned counsel appearing for the petitioners questioned the legality and validity of the impugned order placing Order 41 Rule 31(d) of the Code of Civil Procedure and argued that the decree passed by the learned Additional District Judge, F.T.C -V, Munger, in Title Appeal no. 40 of 2008 is not an executable decree because no relief was granted by the learned appellate Court to the opposite 1st parties. To fortify his submission, he referred Order XXI Rules 31 and 35 of the Code of Civil Procedure and submits that the aforesaid rules prescribe the manner in which decree could be passed by the appellate court, if the appellate court reverse the judgment of sub-ordinate court. He also relied upon Order XX Rule 14 of the Civil Procedure Code which describes as to how decree in pre-emption suit is passed. Learned counsel for the petitioners also relied upon the decision rendered in the case of Lakshmi Ram Bhuyan v/s Hari



Prasad Bhuyan reported in 2003 SAR (civil) 10 wherein Hon'ble Apex Court has held that in the event of, the suit having been decreed by the trial court if the Appellate Court, interferes with the judgment of the trial court, the judgment of the Appellate Court should precisely and specifically set out the reliefs granted and modifications, if any, made in the original decree explicitly and with particularity and precision.

5. On the strength of the aforesaid decision, the learned counsel for the petitioners submitted that when the decree passed by the Appellate Court does not contain any relief or any description of the property, the aforesaid decree can not be executed.

6. On the other hand, learned counsel appearing for the opposite parties refuted the above stated submissions arguing that, admittedly, the judgment and decree passed in Title Appeal No. 40 of 2008 is under challenge before this Court in Second Appeal and, as a matter of fact, when the petitioners failed to obtained the stay order from the Appellate Court, they have filed the present civil revision petition . He further submitted that the decision cited on behalf of the petitioners is itself indicative of this fact that any decree can be modified and rectified under section 152 of the Code of Civil Procedure and, therefore, even if there is any error in the impugned decree, it cannot be said that the aforesaid decree is not an executable decree.

7. Having heard the above stated contentions of the parties, I went through the record. In the present matter, it is not in dispute that the petitioners have filed a petition under section 47 of the Code of Civil procedure for determination of this question as to whether the impugned decree was executable decree or not.

8. Here I would like to refer Order 41 Rule 31 of the Civil



Procedure Code which runs the as follows:-

“The judgment of the Appellate Court shall be in writing and shall state (a) the points for determination (b) the decision thereon(c) the reasons for the decision and (d) where the decree appealed from is reserved or varied, the relief to which the appellant is entitled and shall bear the date on which it is pronounced and shall be signed by the judge or the judges concurring therein”.

9. From bare perusal of the aforesaid provision, it is obvious that it is mandatory for the Appellate Court to the record the points for determination, the decision thereon, the reasons for the decision and where the decree appealed is reversed or varied, the relief to which the appellant is entitled. The aforesaid provision is not directory rather it is mandatory in nature and if the judgment of Appellate Court lacks even one of the aforesaid points the judgment pronounced by the appellate court cannot be said to be in accordance with law. Similarly, Rule 35 of Order XLI of the Civil Procedure Code says that the decree of the Appellate Court shall bear date the day on which the judgment was pronounced and the decree shall contain the number of the appeal, the names and descriptions of the appellant and respondent, and a clear specification of the relief granted or other adjudication made. It is obvious from the aforesaid provision that if judgment and decree of Appellate Court lacks the aforesaid ingredients, the judgment and decree of the Appellate Court cannot be executed because it is settled principle of law that non executable decree cannot be executed.

10. No doubt, second appeal against the judgment and decree passed by the appellate court in Title appeal no. 40 of 2008 is pending but mere pendency of the aforesaid second appeal does not reverse the non executable decree into executable decree. It is an apparent from perusal of the decree passed by the appellate court in Title Appeal No. 40 of 2008, that the aforesaid decree is



a non executable decree because the aforesaid decree does not contain the relief granted to the plaintiff and the aforesaid decree simply says as follows “ Accordingly, in the result the impugned Judgment and decree dated 05.07.2008 and 17.07.2008 are set aside and the appeal is allowed and the suit of the plaintiff is decreed on context with cost”. Therefore it is clear that the said decree is not an executable decree because the said decree neither contains the relief granted to the plaintiff nor the description of the property in respect of which the said decree has to be executed. Therefore, in my view, the impugned order passed by the learned Munsif 1st Muzaffarpur is not sustainable in the eye of law.

11. In course of hearing, learned counsel appearing for the opposite parties submitted that the opposite parties may be granted liberty to take step for modification of impugned judgment and decree and file fresh execution case with modified judgment and decree.

12. On the basis of aforesaid discussions, this Civil Revision petition is allowed and the impugned order dated 2.4.2015 passed by the Munsif 1st, Muzaffarpur in Misc. Appeal No. 10 of 2014 is set aside and the learned Munsif 1st Muzaffarpur is directed to pass a fresh order on the petition of the petitioners after hearing the parties in the light of observations given in this order giving opportunity of hearing to both the parties.

13. However, the opposite parties shall be at liberty to take steps for modification of appellate court’s judgment and decree passed in Munsif Title appeal no. 40/ 2008 and they may file fresh execution case with modified judgment and decree. It is also made clear that the findings/ observations given in this order shall not affect the parties in other litigations.

(Hemant Kumar Srivastava, J)

N.K/-



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