

IN THE HIGH COURT OF JUDICATURE AT PATNA

CIVIL MISCELLANEOUS JURISDICTION No.762 of 2016

=====

Mahendra Mandal S/o Late Paltu Mandal resident of Mohalla- Nokbira Chain Tola
(Karballa), P.O.- Heru Dira, P.S.- Kasim Bazar, District- Munger.

.... Petitioner

Versus

Smt. Manorama Devi W/o Sri Subodh Kumar Singh resident of Village- Bekapur,
P.O.- Munger, P.S.- Kotwali, District- Munger.

.... Respondent

=====

Appearance :

For the Appellant/s : Mr. Sumeet Kumar Singh, Adv.
Mr. Abhipran Singh, Adv.
Mr. Satyendra Prasad Singh, Adv.
For the Respondent/s : Mr. Harshbradhan Sahay, Adv.
Mina Kumari, Adv.

=====

CORAM: HONOURABLE MR. JUSTICE V. NATH

ORAL JUDGMENT

Date: 10-04-2017

Heard Mr. Sumeet Kumar Singh, learned counsel
appearing for the petitioner and Mr. Harshwardhan Sahay, learned
counsel appearing for the respondent.

By the impugned order the learned court below
has allowed the Miscellaneous Case No. 05 of 1988 under Order 9
Rule 13 C.P.C. and restored the Title Mortgage Suit No.04/1989.

It is not in dispute that the present petitioner was
plaintiff in the Title Mortgage Suit No.04/1989 which was decreed ex
parte against the defendant-respondent. The Miscellaneous Case No.
05/1998 was filed by the defendant-respondent praying for setting
aside the said ex parte decree. The said miscellaneous case was



dismissed on technical point of bar of limitation etc and eventually the matter reached to this Court in C.R.No. 1397/2003. The said revision application was allowed by order dated 19.05.2004 (Annexure-3) . The concluding part of the said order reads as follows:

“...I think this is a fit case in which the defendant-petitioner may be given a chance to contest the matter on merits. Accordingly, I set aside the aforesaid impugned orders of both the learned courts below and direct the learned Munsif, Munger, to hear the said Misc.Case No.05/1998 afresh and decide the same on merits. However, this order will be subject to payment of cost of Rs.10,000/- (ten thousand) to the opposite party in the court below by the petitioner within a month from this date of order.

With the aforesaid directions, this Civil Revision is allowed...”

It is transparent that by the above said order that the Miscellaneous Case was directed to be decided by the learned court below afresh on merits. The cost of Rs.10,000/- was also imposed upon the petitioner in the said revision application.



However, after the said order, the learned court below heard the parties and by the impugned order dated 08.07.2016 has refrained from recording any finding on the issues in the said Miscellaneous Case No.05/1998 on the ground that in view of the findings of this Court in C.R.No1397/2003 the learned court below would not be justified in recording any findings.

Mr.Singh, learned counsel appearing on behalf of the petitioner has raised a limited submission that the learned court below has abdicated its duty in refusing to decide the issues arising between the parties in the miscellaneous case on merits as directed by this Court. It has also been contended that the learned court below has entirely misconceived the tenor, nature and scope of the order of this Court as contained in Annexure-3.

Per contra, Mr.Sahay, learned counsel for the respondents has contended that after findings recorded by this Court in its order dated 19.05.2004 (Annexure-3) there was no scope left for the court below to decide anything afresh. It has, therefore, been canvassed that the learned court below has not committed any error and there is also no failure of jurisdiction in passing the impugned order. The learned counsel has also argued that the matter has been pending since long and it was a simple mortgage suit being lingered by the petitioners only with intention to harass.



After considering the submissions and the facts and circumstances as above mentioned, it is manifest that no finding has been recorded by the learned court below on the issues arising between the parties in the Miscellaneous Case No.05/1998 which has been disposed of by the impugned order. It is also demonstrably clear that this Court has entered into the larger question of the petitioner having the sufficient cause or not in the earlier civil revision application only for the purpose of deciding the said revision application which was filed against the dismissal of the miscellaneous case and the appeal thereafter. In this backdrop, it cannot be said that this Court has decided the issues arising between the parties in Miscellaneous Case No. 05/1998. This is also plain and patent from the concluding paragraph of the order of this Court as above quoted.

This Court, therefore, has no scintilla or doubt that the learned court below has committed illegality in passing the impugned order merely on the base that the issues have already been decided and the findings have already been recorded by this Court.

In result, this revision application is allowed and the impugned order is set aside. The matter is remitted back to the learned court below for decision afresh on merits in Miscellaneous Case No.05/1998 as earlier directed. It is made clear that this Court has not expressed any opinion on the rival case of the parties as



arising in Miscellaneous Case No.05/1998 and the same shall be decided by the learned court below in accordance with law on merits. As this matter has been delayed for no fault attributable to the parties, the learned court below is directed to decide the miscellaneous case preferably within a period of three months from the date of receipt/production of a copy of this order.

(V. Nath, J)

Nitesh/-

U			
---	--	--	--

