

IN THE HIGH COURT OF JUDICATURE AT PATNA

Civil Revision No. 110 of 2015

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Ram Bilash Singh Son of Late Shankar Singh resident of village + P.O. Ariaon,
P.S. Krishna Brahm, District - Buxar

.... Plaintiff/Respondent/Petitioner

Versus

1. Ram Ekbal Singh Son of Late Shankar Singh resident of village + P.O. Ariaon,
P.S. Krishna Brahm, District - Buxar

.....Defendant/Appellant/Opposite Party

2. Suresh Singh Son of Late Shankar Singh resident of village + P.O. Ariaon, P.S.
Krishna Brahm, District - Buxar

.... Defendant/Respondent/Opposite Party

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Appearance :

For the Petitioner : Mr. Bibhakar Tiwary

For the Opposite Parties Mr.

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**CORAM: HONOURABLE MR. JUSTICE HEMANT KUMAR
SRIVASTAVA**

ORAL JUDGMENT

Date: 13-10-2017

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

2. This revision petition has been preferred against the
order dated 22.07.2015 passed by learned Additional District Judge-
V, Buxar in Title Appeal No. 19 of 2012 by which and where under
he having condoned the delay admitted the aforesaid appeal.

3. It would appear from perusal of the record that
petitioner-plaintiff brought Title Partition Suit No. 148 of 2005
against the defendant-opposite parties. The preliminary decree in the
aforesaid title partition suit was passed on 18.09.2008 and
subsequently, final decree was prepared and sealed as well as signed



on 04.02.2011.

4. However, the defendant-opposite party no. 1 filed Title Appeal No. 19 of 2012 on 03.09.2012 and also filed petition under Section 5 of Limitation Act for condonation of delay in filing the aforesaid first appeal. The matter was placed before the then District Judge, Buxar on 08.01.2013 and the learned District Judge, Buxar vide order dated 08.01.2013 provisionally admitted the aforesaid appeal subject to hearing on limitation petition and transferred the aforesaid title appeal to the court of Additional District Judge and thereafter, the learned Additional District Judge-V, Buxar passed the impugned order dated 22.07.2015.

5. Here, I would like to refer Section 21 of Bengal, Agra and Assam Civil Courts Act, 1887 which says as follows:-

21. Appeals from Subordinate Judges and Munsifs-(1) Save as aforesaid, an appeal from a decree or order of a Subordinate Judge shall lie-

(a) to the District Judge where the value of the original suit in which or in any proceeding arising out of which the decree or order was made was less than [two lakhs rupees]; and

(b) to the High Court in any other case.

(2) Save as aforesaid, an appeal from a decree or order of a Munsif shall lie to the District Judge.

(3) Where the function of receiving any appeals which lie to the District Judge under sub-section (1) or sub-section (2) has been assigned to



an Additional Judges, the appeals may be preferred to the Additional Judge.

(4) The High Court may, with the previous sanction of the [State] Government, direct by notification in the official Gazette, that appeals lying to the District Judge under sub-section (2) from all or any of the decrees or orders of any Munsif shall be preferred to the court of such Subordinate Judge as may be mentioned in the notification, and the appeals shall thereupon be preferred accordingly.

6. From bare perusal of the aforesaid provision, it is obvious that the appeal against the decree or order of a Subordinate Judge subject to pecuniary jurisdiction shall lie to District Judge and, therefore, it is clear from the aforesaid provision that the District Judge has jurisdiction to admit the appeal against the decree or order of Subordinate Judge. The Additional District Judge gets jurisdiction only on being assigned to him.

7. In the present case, admittedly, the delay in filing the Title Appeal No. 19 of 2012 has been condoned by the Additional District Judge and he passed order on admission of the aforesaid appeal. In my view, the Additional District Judge-V, Buxar had no jurisdiction to condone the delay and admit the Title Appeal No. 19 of 2012.

8. So far as order dated 08.01.2013 passed by learned District Judge, Buxar is concerned, though the aforesaid order has not



been challenged before this court in this revision petition but in my view, the aforesaid order dated 08.01.2013 is also not in accordance with law because there is no provision to admit any appeal provisionally without condoning the delay. In my view, learned District Judge, Buxar committed error while passing the aforesaid order because he had no jurisdiction to transfer the appeal without condoning the delay and admitting the appeal.

9. In the case of **Smt. Narmada Devi @ Narbada Devi vs. State of Bihar and others** reported in 1998 (3) PLJR 100, a co-ordinate Bench of this court held that *“Additional District Judge has no jurisdiction to entertain an appeal nor he can exercise original jurisdiction and in that sense, he does not stand at par with a District Judge and he gets jurisdiction when he is assigned by the District Judge to hear the appeal.”*

10. Although, the aforesaid decision relates to a particular Act but the ratio laid down in that case is applicable in present case also.

11. Therefore, in the aforesaid circumstance, in my view, the impugned order dated 22.07.2015 passed by the learned Additional District Judge-V, Buxar cannot stand in the eye of law and is liable to be set aside. Accordingly, the impugned order dated 22.07.2015 passed by learned Additional District Judge-V, Buxar in



Title Appeal No. 19 of 2012 is, hereby, set aside and the matter is remitted back with direction to learned District Judge, Buxar to hear the matter afresh on the petition filed under Section 5 of Limitation Act and pass order in accordance with law keeping in mind Order 41 Rule 3 A of C.P.C. without being prejudiced by his previous order dated 08.01.2013 as well as impugned order dated 22.07.2015.

(Hemant Kumar Srivastava, J)

SHAHZAD/-

AFR/NAFR	A.F.R.
CAV DATE	N.A.
Uploading Date	18.10.2017
Transmission Date	N.A.

