

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.265 of 2019

Md. Amanatullah Salfi @ Md. Amanutullah aged about 68 years Gender-
Male, Son of Late Md. Leyaquat Hussain Resident of Mohalla- Imam Bari,
P.S.- Laheria Sarai, District- Darbhanga

... ..Defendant No.1... Petitioner

Versus

1. Girish Chandra Mandal Son of Mit Lal Mandal Resident of Mohalla- Imam
Bari, P.S.- Laheria Sarai, District- Darbhanga

..Plaintiff..Respondent 1st Set.

2. Sanaullah Son of Md. Amanatullah Salfi @ Md. Amanutullah Resident of
Mohalla- Imam Bari, P.S.- Laheria Sarai, District- Darbhanga
3. Hamidullah Son of Md. Amanatullah Salfi @ Md. Amanutullah Resident of
Mohalla- Imam Bari, P.S.- Laheria Sarai, District- Darbhanga
4. Samiullah Son of Md. Amanatullah Salfi @ Md. Amanutullah Resident of
Mohalla- Imam Bari, P.S.- Laheria Sarai, District- Darbhanga

..Defendant No.2 to 4..Respondent 2nd Set.

5. Amiriti Devi Wife of Late Harekrishna Sah Resident of Mohalla- Imam
Bari, P.S.- Laheria Sarai, District- Darbhanga
6. Smt. Rajo Devi Daughter of Late Harekrishna Sah Resident of Mohalla-
Imam Bari, P.S.- Laheria Sarai, District- Darbhanga
7. Smt. Raj Rani Devi Daughter of Late Harekrishna Sah Resident of Mohalla-
Imam Bari, P.S.- Laheria Sarai, District- Darbhanga

.. Defendant 2nd Party.. Respondent 3rd Set.

Appearance :

For the Petitioner : Mr. Md. Anis Akhtar, Advocate
For the Respondent/s : Mr. Dhanendra Chaubey, Advocate



CORAM: HONOURABLE MR. JUSTICE ASHWANI KUMAR SINGH
ORAL JUDGMENT

Date : 25-04-2019

I. A. No. 2 of 2019

Learned counsel for the respondent 1st set seeks leave to withdraw the present interlocutory application with liberty to seek other remedies available in law.

2. Leave is granted.

3. The interlocutory application is dismissed as withdrawn.

Civil Miscellaneous No. 265 of 2019

4. This application under Article 227 of the Constitution of India has been filed by the defendant no.1-petitioner for setting aside the order dated 30.01.2019 passed in Title Suit No. 125 of 1999 by learned Sub-Judge-IV, Darbhanga whereby petition dated 22.01.2019 filed by the defendant-petitioner for recall of part of the order dated 25.10.2018 whereby an observation to the effect that “ if during the course of argument of the parties the judgement and decree of earlier instituted P.S. No.157 of 1986 or appellate court decision can be considered for the just decision” was made, has been rejected by the court below and the judgment and decree of Partition Suit



No.157 of 1986 and the judgment and decree of the appellate court have been admitted in evidence as Ext. 6 and Ext. 6/A respectively.

5. Learned counsel appearing for the defendant no.1-petitioner submitted that the trial court has passed the order impugned dated 30.1.2019 ignoring and without appreciating the materials available on record . It failed to appreciate its own findings recorded in the order dated 25.10.2018. It also failed to appreciate the judgment passed by this Court in Second Appeal No. 88 of 2013 and the directions contained therein while passing the impugned order. On the basis of the aforesaid submissions, he submitted that the order passed by the court below is unsustainable in law.

6. Per contra, learned counsel appearing for the plaintiff-respondent 1st set submitted that there is no illegality in the order impugned. The trial court has appreciated the facts and law in proper perspective. The impugned order is not in violation of the order passed in Second Appeal No. 88 of 2013. It is not contrary to its own finding recorded in the order dated 25.10.2018. He contended that by admitting the two public documents in evidence, the trial court has not introduced any



new evidence. Hence, no interference with the impugned order is warranted by this court.

7. Having heard learned counsel for the parties, at this stage, it would be apt to refer to the admitted facts of the case.

8. In the year 1988, the defendant no. 1-petitioner filed Eviction Suit No.24 of 1988 in the court of Munsif-1st, Darbhanga on the ground of personal necessity against the tenant Kamal Mahto and his sub-tenant, namely, Girish Chandra Mandal (plaintiff-respondent 1st set). On contest, the suit was decreed in favour of the petitioner by judgment and decree dated 17.11.1992. Being aggrieved by the judgment dated 17.11.1992, respondent 1st set filed Title Eviction Appeal No. 5 of 1992, which was contested and was allowed and judgment dated 17.11.1992 was set aside by judgment and decree dated 08.07.1997. Against the said judgment passed in Title Eviction Appeal No. 5 of 1992, the petitioner and others filed Second Appeal No.233 of 1997 before this Court. Vide order dated 15.02.1999, this Court set aside the order of the appellate court and directed the said court to return the memo of appeal to the respondent 1st set to enable him to prefer revision under Section 14(8) of the Building Control Act. Thereafter,



respondent 1st set filed Civil Review No. 218 of 1999 before this Court for reviewing the aforesaid order passed in Second Appeal No.233 of 1997 and, ultimately, the application was disposed of vide order dated 13.10.1999 giving liberty to the respondent 1st set to avail of appropriate remedy before the appropriate court. Thereafter, respondent 1st set filed Title Suit No.125 of 1999 in the court of 1st Sub-Judge, Darbhanga seeking declaration of his title with respect to Schedule-1 land. The suit was contested and, ultimately, dismissed vide judgment dated 27.09.2011 and decree dated 15.10.2011. Being aggrieved by the judgment dated 27.09.2011 and decree dated 15.10.2011, the respondent 1st set filed Title Appeal No. 32 of 2011, which was dismissed on contest vide judgment dated 13.03.2013. Against the said judgment, respondent 1st set filed Second Appeal No. 88 of 2013 before this Court. After hearing the parties, vide judgment dated 20.04.2018, the appeal was allowed and the impugned judgment was set aside and the case was remitted back to the trial court for deciding Title Suit No. 125 of 1999 afresh on the basis of evidence adduced on behalf of the parties with reference to their pleadings and issues framed.



9. The operative part of the aforesaid judgement dated 20.04.2018 passed in Second Appeal No. 88 of 2013 reads as under :-

“ In view of the aforesaid, this appeal is allowed. Considering the fact that dispute between the parties started from filing of the execution case in the year 1988, **I direct the learned trial court to decide the suit within three months from the date of the communication of the present order. The parties shall not be allowed any adjournments unless essentially required, based on the evidence already adduced on behalf of the parties in the suit, from the stage of argument.**

There shall be no order as to costs.”

(emphasis mine)

10. After remand, the case started before the trial court from the stage of argument. However, on 16.07.2018, a petition was filed on behalf of the plaintiff-respondent 1st set under Order 13 Rule 1 of the Code of Civil Procedure with prayer to mark certain documents, i.e. judgments and decrees as exhibits in Title Suit No.125 of 1999. The defendant-petitioner contested the matter. After hearing the parties, the trial court, vide its order dated 25.10.2018, rejected the said petition dated 16.07.2018, but observed that if during course of argument of



the parties, the judgment and decree of earlier instituted P.S. No. 157 of 1986 or appellate court decision can be considered for the just decision.

11. The operative part of the order dated 25.10.2018 passed by the trial court reads as under:-

“ Further on perusal of the record it appears that vide Second Appeal No.88/2013 the Hon’ble High Court, Patna has directed this Court to **“decide the suit within three months from the date of communication of the present order. The parties shall not be allowed any adjournments unless essentially required, based on the evidence already adduced on behalf of the parties, from the stage of argument.** By the aforesaid petition the plaintiff wants to admit the judgment and decree passed in P.A. 23/2011 in evidence, which is not admissible in the light of direction contained in Second Appeal No.88/2013 passed by the Hon’ble High Court, Patna, because this Court has to decide the suit on the evidence already adduced on behalf of the parties. If during the course of argument of the parties, the judgment and decree of earlier instituted P.S. No. 157 of 1986 or appellate court decision can be considered for the just decision.



Accordingly, the petition dated 16.07.2018 filed on behalf of plaintiff is hereby rejected.

To 01.11.2018 for argument on behalf of defendants.”

12. Being aggrieved by the observations made in concluding portion of the order dated 25.10.2018 whereby the trial court had held that if during course of argument of the parties, the judgment and decree of earlier instituted P.S. No. 157 of 1986 or appellate court decision can be considered for the just decision, a petition dated 22.01.2019 was filed by the defendant no.1-petitioner for recall of the said observation.

13. After hearing the parties, the trial court, vide impugned order dated 30.01.2019, not only rejected the petition filed by petitioner dated 22.01.2019 but also admitted the judgment and decree passed by the trial court in Partition Suit No. 157 of 1986 as Ext. 6 and 6/A.

14. Being aggrieved by the aforesaid order dated 30.01.2019, the instant application under Article 227 of the Constitution of India has been filed by defendant no.1-petitioner.

15. Having heard the parties and noticed the aforesaid admitted facts of the case, I find that while passing the order impugned, the trial court has grossly erred in law. By



judgment dated 20.04.2018, when the case was remitted back to the trial court, specific direction was issued by this court that the trial court shall decide the suit within three months and shall not allow any adjournment unless essentially required based on the evidence adduced on behalf of the parties in the suit from the stage of argument. The direction given by this Court was not ambiguous. Hence, there was no scope for its interpretation by the trial court. When it was specifically directed that no fresh evidence would be taken by the trial court, the learned Sub-Judge ought to have adhered to the direction given by this Court. By allowing the plaintiff-respondent to bring on record certain judgments and decree and mark them as exhibits, the trial court clearly allowed the plaintiff-respondent to adduce fresh evidence in suit. If the order passed by this Court would have been ambiguous, then the trial court would have been justified in taking a decision in the light of its own distinctive knowledge and opinion, but when the order passed by this Court was not ambiguous, the trial court was duty bound to follow the direction. The order impugned, as a matter of fact, amounts to effectively overruling the order passed by this Court.

16. Furthermore, the trial court has not only ignored the order passed by this court while passing the



impugned order, but has also not cared of its own order dated 25.10.2018 whereby it had itself recorded that allowing the plaintiff to admit judgment and decree passed in P.A. 23/2011 in evidence would not be justified in the light of the direction given by this Court in Second Appeal No. 88 of 2013.

17. Curiously, the documents have been taken into evidence in a peculiar manner. It was the defendant no. 1-petitioner, who had filed the application before the trial court for expunging certain observations from the order dated 25.10.2018 whereby it had held that if during the course of argument of the parties, the judgment and decree of earlier instituted P.S. No. 157 of 1986 or appellate court decision can be considered for the just decision. However, the trial court not only rejected the prayer but also admitted the judgement and decree of Partition Suit No. 157 of 1986 and the judgment and decree of the appellate court in evidence.

18. For the reason discussed above, the order impugned cannot be sustained.

19. Accordingly, impugned order dated 30.01.2019 passed in Title Suit No. 125 of 1999 by learned Sub-Judge-IV, Darbhanga is set aside. The learned Sub-Judge is directed to decide the suit forthwith without granting any



adjournments to either of the parties on the basis of the evidence
already adduced on behalf of the parties in the suit.

20. The application stands allowed.

(Ashwani Kumar Singh, J.)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	30.04.2019
Transmission Date	NA

