

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVISION No.1706 of 2009

VICTOR CHAND LALL, Purnia Motor Works Employees Parivahan Swawalambi Sahakari Samiti Ltd., Mohalla- Sahaban, P.S.- Khajanchi Hat, Distt.- Purnea Through Its Chief Executive And Secretary Md. Akbar Ali Khan, Son Of Late Yar Ali Khan

... .. Petitioner/s

Versus

1. SRI PETER LALL @ PETER DERICK S/O Late Victor Chand Lall By Faith Christian And Citizen Of Australia R/O 16 Hawthorn Street- Loftus, New South Wales Sydney-2232 Australia
2. Sri Pradeep Chand Lall S/O Late Kumar Vishan Chand Lall, The So Called Attorney Of The Defendant No. 1 R/O Nazarganj House, Purnea City, P.O.- Purnea City, P.S.- Sadar, Distt.- Purnea, At Present Residing At 12 Penn Court, 5b, Penn Road, Alipore, Calcutta-27

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Rashid Izhar, Adv
For the Respondent/s : None

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 22-11-2019

Heard learned counsel for the petitioner.

2. The present civil revision petition has been filed on behalf of Victor Chand Lal Purnia Motor Works Employees Parivahan Swawalambi Sahakari Samiti Ltd for setting aside the order dated 3.06.2009 passed in T.S. NO. 375 of 1999.

3. The plaintiff-petitioner filed T.S. No. 375 of 1999 in the court of Subordinate Judge-I, Purnea, for declaration that judgment and decree passed in Eviction Suit No. 01 of 1990 is collusive and non est, in the eye of law and is not binding upon the plaintiffs with a further prayer that defendant no. 1 is not legally entitled to claim any portion of the suit land as he is not



a citizen of India and is by faith Christian.

4. Plaintiffs further claimed that they have right, title and interest to carry on the entire business of M/s Purnea Motor Works and to manage, supervise and control the same and the defendants have no right to interfere with the same as the plaintiff is a co-operative society duly organized and constituted by late Victor Chand Lall (father of defendant no. 1) during his life time who was the sole proprietor of M/s Purnea Motor Works and after his death plaintiff has been continuously running the shop.

5. Plaintiffs have further prayed that if they are found to have been dispossessed, recovery of possession be passed in their favour as well as decree of permanent injunction be passed restraining the defendants from interfering in carrying their business of M/s Purnea Motor Works.

6. In the suit three defendants were impleaded as party. Defendant no. 1 and 2 are necessary parties and defendant no. 3 was impleaded being the power of attorney holder of defendant no. 1.

7. Co-operative society was constituted by Late. Victor Chand Lall himself and he functioned as proprietor of M/s Purnea Motor Works and he was the sole owner of property and



subsequently he formed the co-operative society and started looking after work of the workshop. Defendant no. 1 is the only son of Late. Victor Chand Lall who is permanently residing outside India and has voluntarily acquired the citizenship of Australia after 1965.

8. Original owner Victor Chand Lall transferred the management of the Purnea Motor Works to the co-operative society, however, he died on 21.07.1987. Plaintiffs pleaded that defendant no. 1 being the foreign national could not inherit property left by his father late Victor Chand Lall in India.

9. Plaintiff Purnia Motor Works Employees Parivahan Swawalambi Sahakari Samiti Ltd. Started facing difficulty as defendant no. 3 Amal Kumar Guha, disclosed about having power of attorney on behalf of defendant no. 1 and tried to sale the properties of the co-operative society.

10. Notices were issued to defendants but defendant no. 1 never appeared in the suit and finally defendant no. 3 Amal Kumar Guha on the basis of alleged power of attorney of appointed lawyer to defend the case on behalf of defendant no. 1.

11. On 19.05.2009 said defendant no. 3 Amal Kumar Guha died and thereafter only two defendants were left.



Defendant no. 1 is Peter Lall @ Peter Derick Lyall s/o Late Victor Chand Lall and defendant no. 2 Pradeep Chand Lall. After death of defendant no. 3 Amal Kumar Guha, his name was deleted from the suit, plaintiffs filed a petition dated 10.06.2009 with prayer that advocate appointed by defendant no. 3 Amal Kumar Guha for himself and on behalf of defendant no. 1 is not entitled to act or make any pairvi on behalf of Amal Kumar Guha or on behalf of defendant no. 1 Peter Lall @ Peter Derick Lyall. Rejoinder to said petition was filed by defendants on 17.06.2009.

12. In the Title Suit notices were issued to defendant no. 1 who resides in Australia but there was nothing on record to show that the notices issued by the trial court were ever served upon defendant no. 1 and on his behalf power of attorney was granted to defendant No. 3 Amal Kumar Guha to act on his behalf. The trial court held by impugned order that even after death of defendant no. 3 Amal Kumar Guha who was holding power of attorney on behalf of defendant no. 1 will not come to an end on death of defendant no. 3 and the lawyer appointed by defendant no. 3 shall have authority to appear on behalf of defendant no. 1.

13. Notices were issued to Opposite Party no.1 and 2,



however, subsequently notices were issued by substituted service on defendant no. 2 by paper publication, however, despite of that none has appeared on behalf of defendants.

14. Civil revision no. 427 of 2007 was filed by Opposite Party No. 1 Peter Lall @ Peter Derick Lyall, through his power of attorney holder and his counsel Anil Jaiswal stated before this Court that attorney holder of Sri Peter Lall @ Peter Derick Lyall has died thus petitioner requires to appoint a fresh attorney. This Court in its order dated 02.04.2013 passed in Civil Revision No. 1706 of 2009 with Civil Revision No. 427 of 2007 passed order in following manner:-

'Learned counsel for the petitioner in Civil Revision No. 427 of 2007 would be well advised to file a fresh power of attorney executed by petitioner no. 1 i.e. Peter Lall @ Peter Derick Lyall in favour of an attorney duly certified by a competent authority from Australia'.

However, instead of filing fresh power of attorney the civil revision was withdrawn on 24.06.2013.

15. This civil revision petition is disposed with similar direction that a fresh power of attorney shall be executed by Opposite Party No. 1 Peter Lall @ Peter Derick Lyall (defendant no. 1) in favour of an attorney duly certified by a competent authority by Australia and previous power filed through deceased-defendant no. 3 on behalf of defendant no. 1 shall cease to exist.



16. With the aforesaid observation, the civil revision
petition is disposed of.

(S. Kumar, J)

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AFR/NAFR	NAFR
CAV DATE	NA
Uploading Date	13.02.2020
Transmission Date	NA

