

IN THE HIGH COURT OF JUDICATURE AT PATNA
SECOND APPEAL No.404 of 2008

PRABHAKAR SINGH, Son of Late Madhav Singh, resident of Village-Bhushichak P.S. Kharagpur, District-Munger

... .. Appellant/s

Versus

1. MOSTT. RAMDULARI DEVI wife of Late Raj Kishore Singh, village-Bhushichak, P.S. Kharagpur, District-Munger
2. Smt. Bibha Devi, daughter of late Raj Kishore Singh and wife of Sunil Singh, Village Govindpur, P.O. Rampur, District-Lakhisarai.
3. Sushila Devi W/o Late Madav Singh, Both resident of Village- Bhushichak, P.S. Kharagpur, district-Munger.
4. Diwakar Singh s/o Late Madav Singh R/Vill. Bhushichak at present section II E.Q. No. 318 Sharmaik Nagar Bhuli District-Dhanbad
5. Kumkum devi D/o Late Madav Singh W/o Ramanand Prasad Siongh R/Village- Naudiha, PO + PS Khaira, District-Jamui
6. Rubi Devi D/o Late Madav Singh W/o Sarvan Prasad Singh resident of Village- Rehua, P.S. District- Lakhisarai
7. Lata Devi D/o Late Madav Singh w/o sri Tan Singh Resident of village-Rehua, P.S. _ District-Lakhisarai
8. Mostt. Shivdani Devi D/o Late Shubhit Lal Singh w/o Late Shiv Nandan Singh R/Village- Ghosaith, P.S. Piri Bazar District- Lakhisarai
9. Sulochana Devi D/o Late Subhit Lal Singh W/o Sri Ganesh Prasad Singh, Resident of village-Singarpur, P.O. Sahpur, P.S. Surajgarha, District Lakhisarai
10. Sanyakta Devi D/o Late Subhit Lal Singh W/o Sri Nawal Kishore Singh, Resident of Village-Gokhla P.O. Kumar P.S. Sikandra, District-Jamui.
11. Indu Devi D/o Loate Shubhit Lal Singh W/o Awaqdhesh Prasad Singh resident of village-Kaithwar, P.O. _ PS Sikandra, Dist-Jamui
12. Meera Devi D/o Subhit Lal Singh W/o Sri Niranjan Prasad Singh Resident of village- Barabandh, P.O. Chandra Mauli, P. S. Khaira, District-Jamui
13. Shobha Devi W/o Late Bachchan Prasad Singh
14. Suman Kumar/
15. Brajesh Kumar,/ Respondent Nos. 14 & 15 are sons of Late Bachchan Prasad Singh residents of Village Bhushichak, P.S. Kharagpur, Dist-Munger
16. Rani Devi D/o Late Bachchan Prasad Singh w/o Sri Rahul Kumar of Pashchimi Karayanand Nagar, Chitranjan Road, Behind the Bharati School, Lakhisarai
17. Ajit Kumar Singh S/o Sri Rajesh Prasad Singh
18. Punit Kumar & Rahul Kumar
19. Annu Kumari, Nati nd Natini of Late Bachchan Prasad Singh
Both minor son and daughter of Sri Ajit Kumar Singh Under guardianship of their father Sri Ajit Kumar Singh of Mohalla Babua Bazar Road No.5, Gardanibagh, Patna
20. Anarudh Choudhary son of Harkhit Narain Choudhary resident of village Bokhra PO + P. S. Haveli Kharagpur, District-Munger.

Defendent-Respondent-Respondent 2nd set.

Defendent/respondent/Respondent 3rd Set.



... .. Respondent/s

Appearance :

For the Appellant/s : Mr. Nand Gopal Mishra
Mr. Ram Sevak Choudhary
For the Respondent/s : Mr. Dronacharaya
Ms. Pravina Kumari

CORAM: HONOURABLE MR. JUSTICE CHAKRADHARI SHARAN SINGH

ORAL JUDGMENT

Date : 25-04-2019

The present second appeal has been filed against the judgment and decree dated 03.09.2008, passed by the learned Additional District Judge F.T.C. No.II, Munger, in Title Appeal No. 2 of 2007, whereby he has reversed the judgment and decree dated 06.12.2006, passed by the learned Sub-Judge, 2nd, Munger in Title Suit No. 140 of 1995.

2. I have heard Mr. Nand Gopal Mishra, learned counsel for the appellant and Mr. Dronacharaya, learned counsel for the respondents.

3. The appellants herein, are the defendants. The suit was dismissed by the judgment and order of the trial Court dated 06.12.2006. From the judgment of the trial Court I notice that there were altogether ten issues framed, in relation to which the parties had adduced their evidences, at the trial, both oral and documentary. Dealing with all the issues in detail, with reference to pleadings and evidences, the trial Court had



dismissed the suit. The first appellate Court, however, by his judgment and decree under appeal, allowed the appeal in favour of the plaintiffs/respondents. It is manifest from the judgment of the trial Court that he did not delve at all into the pleadings/evidence brought on record on behalf of the contesting parties. He has not even bothered to record as to why the judgment of the trial Court required interference and how the findings recorded by the trial Court could be said to be untenable.

4. This appeal was admitted by an order dated 01.07.2013, framing following questions of law:-

“Whether the judgment of the Lower Appellate Court is vitiated for non-compliance of the provision under Order 41 Rule 31 C.P.C. by not applying independent mind, not giving independent reasons for finding and only summarizing the submission of the parties and in one paragraph at 46, recorded the finding without considering the evidence oral and documentary?”

5. Learned counsel appearing on behalf of the appellant has relied on a decision of this Court in case of **Chakrapani Dubey Vs. Babu Nand Dubey** reported in **2013 (3) PLJR 196** and has submitted that the judgment and decree of the first appellate Court being in teeth of the provisions of



Order 41 Rule 31 of the Code of Civil Procedure (CPC), cannot be sustained.

6. Mr. Dronacharaya, learned counsel appearing on behalf of the contesting defendants, on the other hand, has relied upon Supreme Court's decision in case of **Ramchandra Vs. Ramalingam** (AIR 1963 SC 302) with reference to paragraphs 10,11,12 and 17 thereof to argue that since the finding recorded by the first appellate Court cannot be said to be unsustainable on the basis of the pleadings and materials available on record, this Court may not interfere with the impugned judgment of the first appellate Court.

7. The proper mode of disposal of an appeal under the CPC is not required to be reiterated. Language of Order 41 Rule 31 of the CPC is unambiguous which commands, *inter alia*, that the judgment of the appellate Court must state the points for determination, decisions on such points for determination and the reasons for such decisions. None of these ingredients are present in the impugned judgment of the first appellate Court. There is a long line of decisions of the Supreme Court emphasizing the need for strict compliance of the provisions under Order 41 Rule 31 of the Code of Civil Procedure. In case of **Vinod Kumar Vs. Gangadhar** reported



in **(2015) 1 SCC 391**, noticing prior decisions rendered in cases of **Kurian Chacko vs. Varkey Ouseph (AIR 1969 Kerla 316)**, **Sasntosh Hazari Vs. Purushottam Tiwari** reported in **(2001) 3 SCC 179**, **Madhukar Vs. Sangram** reported in **(2001) 4 SCC 756**, **H.K.N. Swami Vs. Irshad Basith** reported in **(2005) 10 SCC 243** and **B. V. Nagesh Vs. H.V. Sreenivasa Murthy** reported in **(2010) 13 SCC 530**, has emphasized the need of adherence to the provision under Order 41 Rule 31 of the Code of Civil Procedure. It is thus, not indisputable, as has been held in case of **B.V. Nagesh** (supra) that the first appeal is a valuable right of the parties and the judgment of the appellate Court must, therefore, reflect its conscious application of mind and record findings supported by reasons, on all the issues arising, along with the contentions put forth, and convassed by the parties for decision of the appellate Court. Learned counsel appearing on behalf of the appellant has rightly placed reliance on this Court's decision in case of **Chakrapani Dueby** (supra).

8. The Supreme Court's decision in case of **Ramachandra Vs. Ramalingam** (supra), relied on by the learned counsel appearing on behalf of the contesting respondents is of no help in the facts and circumstances of the present case as has been noted above. The said case is clearly



distinguishable and it does not permit an appellate Court to reverse findings recorded by the trial Court without formulating to points for determination and rendering decisions thereon.

9. The substantial question of law framed by this Court is answered accordingly.

10. The impugned judgment and order of the first appellate Court, for the aforesaid reason, cannot be sustained and is accordingly set aside.

11. The matter is remanded back to the first appellate Court for a decision afresh.

12. This appeal is allowed but without costs.

13. Since the second appeal has remained pending in this Court for nearly eleven years and the matter is being remanded back to the Court below now, after setting aside the judgment of the first appellate Court, it is directed that let the first appeal be decided expeditiously.

arun/-

(Chakradhari Sharan Singh, J)

AFR/NAFR	NAFR
CAV DATE	N/A
Uploading Date	18.05.2019
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