

IN THE HIGH COURT OF JUDICATURE AT PATNA
Miscellaneous Appeal No.175 of 2012

1. The Chairman @ The President, Bihar State Hindu Religious Trust Board, Bihar, Patna, at China Kothi, Vidyapati Marg, P.S- Kotwali, District- Patna, through its President Koshore Kunal.
2. The Administrator, Bihar State Hindu Religious Trust Board, Patna, at China Kothi, Vidyapati Marg, P.S- Kotwali, District- Patna, through Its President Koshore Kunal.

... .. Appellant/s

Versus

1. Smt. Meena Gupta W/O Late Om Prakash Gupta
2. Arti Ranjan Gupta S/O Late Om Prakash Gupta
3. Akash Ranjan Gupta S/O Late Om Prakash Gupta
4. Reshmi Gupta D/O Late Om Prakash Gupta
5. Swati Gupta D/O Late Om Prakash Gupta
6. Smt. Ram Dulari Devi W/O Raj Kumar Gupta and D/o Late Om Prakash Gupta
7. Sanjiv Ranjan Gupta S/O Sri Raj Kumar Prasad
8. Ranjit Ranjan Gupta S/O Sri Raj Kumar Prasad. All Residents Of Mohalla - Jhing Nagar, P.O And P.S.- Biharsharif and District- Nalanda.

... .. Plaintiffs... .. Appellants... .. Respondents.

9. Sri Thakur Govind Bihari Lal Jee installed In The Temple In Mohalla- Jhing Nagar, P.O And P.S- Biharsharif and District- Nalanda, through The Administrator, Bihar State Hindu Religious Trust Board, Bihar, Patna, Trustee Representative Welfare And Next Friend, Resident Of China Kothi, Vidyapati Marg, P.S- Kotwali, District- Patna.

... .. Defendants..... Respondent/s

Appearance :

For the Appellant/s	:	Mr. Ganpati Trivedi, Senior Advocate Mr. Madan Mohan, Advocate Mrs. Pallavi Pandey, Advocate
For the Respondent/s	:	Mr. J.K.Verma, Advocate Mr. Abhishek Anand, Advocate

CORAM: HONOURABLE MR. JUSTICE BIRENDRA KUMAR
ORAL JUDGMENT

Date : 21-01-2019

Heard learned counsel for the parties.

1. This appeal has been preferred under Order XLIII Rule 1
(u) of the Code of Civil Procedure, 1908 against the
judgment of remand of the case passed by the learned



District Judge, Nalanda, Bihar Sharif in Title Appeal No.42 of 2008 on 30.11.2011.

2. A brief background leading to this appeal is that appellant-the Bihar State Hindu Religious Trust Board had issued notice to the trustee of *Thakur Govind Bihari Lalji* for furnishing true and correct accounts of the Trust. The Trust was created through a deed of endowment dated 17.09.1905 by *Pokhan Sao @ Sukhan Sao*.
3. *Rajkumar Prasad, trustee of Thakur Govind Bihari Lalji* filed Title Suit No.62 of 1954/23 of 1955 against the Bihar State Hindu Religious Trust Board stating therein that trust is a private trust. One of the issue in that suit was “*whether the trust created by Late Pokhan Sao @ Sukhan Sao is a public religious trust or a private religious trust in respect of family idol in which the public are not interested*”. The trial court held that the trust created by *Pokhan Sao @ Sukhan Sao* was a public religious trust and the deity was for the public and accordingly, the suit was dismissed on contest.
4. The aforesaid dismissal was challenged before this Court in appeal from original decree, vide F.A. No. 695 of 1956



and the appeal was dismissed, vide judgment dated 02nd May, 1961 by a Division Bench of this Court.

5. Thereafter, Title Suit No.42 of 1992 was filed by *Om Prakash Gupta and Others*, claiming themselves to be purchasers from *Lilawati Devi*, sister of aforesaid *Rajkumar Prasad* in respect of the lands mentioned in Schedule 1 and Schedule 2 of the plaint of Title Suit No.42 of 1992. The suit was for declaration that the plaintiffs have full title on the suit land. They had asserted that *Lilawati Devi* was *settlee* from the ex-landlord by *Hukumnama* executed by *Harilal*, father of *Lilawati Devi*.
6. The learned trial judge in Title Suit No.42 of 1992 framed one of the issue, as to whether the suit is barred by the principle of res judicata and decided this issue against the plaintiffs therein that the suit is barred by res judicata, as the dispute was already decided in Title Suit No.62 of 1954/23 of 1955.
7. The said order was challenged by the plaintiffs in appeal in Title Appeal No.42 of 2008 by the plaintiffs of the suit on the ground that the dismissal of the suit on a technical issue against the material on the record is bad in law. Since it seriously prejudiced right of the plaintiffs, the court



should have gone through the required material to come to the conclusion that earlier suit was between the same parties. Whether the issue raised therein is substantially involved in the present suit or the issue which ought to have been raised in the earlier suit was not raised or by necessary implication raised and decided.

8. Contention of the respondents is that in the earlier suit the only issue was whether *Thakur Govind Bihari Lalji* is a private trust or a public trust because the Bihar State Hindu Religious Trust Board could have exercised any power under the provisions of Bihar State Hindu Religious Trust Act only against a public trust. In the subsequent suit, the issue involved was whether the suit property was a trust property or private property of *Lilawati Devi*, which she got by *Hukumnama* from her father. This issue could not have been raised in the earlier suit, nor it was needed to be decided in the earlier suit. Moreover, *Lilawati Devi* was not a party in the earlier suit. Therefore, the court could not have recorded a finding in the earlier suit regarding genuineness or otherwise of *Hukumnama* in favour of *Lilawati Devi*. In the circumstances, the lower appellate court by the impugned judgment dated 30th November,



2011 passed in Title Appeal No.42 of 2008 remanded the matter to the trial court to reconsider afresh the issue of res judicata after collecting the material to come to the conclusion whether the parties in the present suit were litigating in the earlier suit under same title or under different title? Whether the subject matter of the suit was identical in both the suits etc.?

9. Learned counsel for the appellants contents that the finding of the learned trial court that the suit was barred by res judicata is based on no material on the record nor after well appreciation of the facts of the case. Hence, the learned lower appellate court has erred in remitting back the matter for adjudication of the aforesaid issue afresh.
10. Though the learned counsel for the appellants has taken the court through different portion of the judgment of the trial court as well as of the appellate court in the earlier suit. However, it is not clear on the basis of material on the record that issue of declaration of title on the suit property in the present suit was also there in the earlier suit. It is also not clear whether the plaintiffs of the present suit were litigating under the same title or not. If they are litigating in a different capacity, it cannot be said that the present suit



was barred by res judicata. The record also does not specify that whether the issue raised in the present suit was raised in the earlier suit or ought to have been raised in the earlier suit. There must have been clear finding of the trial court on this issue also. Hence, the learned lower appellate court was wholly justified in remitting back the matter for fresh adjudication.

11. In my view also, this is a fit case for remitting back the matter and re-adjudication by the trial court. Therefore, the impugned judgment passed by the learned lower appellate court does not require any interference. Accordingly, this appeal stands dismissed without cost.

(Birendra Kumar, J)

abhishek/-

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