

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL REVIEW No.524 of 2016

In
Miscellaneous Appeal No.731 of 2011

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1. Pradeep Singh @ Jamuna Singh son of Late Ram Shuhawan Singh.
 2. Binod Kumar.
 3. Ritesh Kumar @ Ritesh Kumar Singh @ Rajesh Kumar.
 4. Tunna @ Tunna Ji @ Priyaranjan Kumar.
All sons of Pradeep Singh @ Jamuna Singh. All resident of village-Goshaldih, P.O.-Goshaldih, P.S.-Surajpura, District-Rohtas.

... .. Petitioner/s

Versus

1. Maniraj Singh son of Late Ram Suhawan Singh.
2. Ashok Kumar Singh.
3. Kamlesh Kumar Singh.
Both sons of Sri Mahiraj Singh.
4. Neeraj Kumar Singh son of Sri Ashok Kumar Singh.
5. Gunjan Prakash Singh minor son of Sri Ashok Kumar Singh, Under the guardianship of Sri Ashok Kumar Singh, father and natural guardian.
All resident of village-Gosaldih, P.O.-Surajpura, P.S.-Surajpura, District-Rohtas.
6. Ramesh Kumar Singh.
7. Akhilesh Kumar Singh.
8. Anil Kumar Singh.
9. Arun Kumar Singh.
6 to 9 are sons of Late Dilip Kumar Singh.
10. Birendra Kumar.
11. Harendra Kumar.
Both minor sons of Sri Anil Kumar Singh, under the guardianship of Sri Anil Kumar Singh, father and natural guardian.
All resident of village-Gushaldih, P.O.-Surajpura, P.S.-Surajpura, District-Rohtas.
12. Deepak Kumar.
13. Pradeep Kumar Both sons of Satya Narayan Singh, resident of village-Jitpura, P.O.-Piro, District-Bhojpur.
14. Sonia @ Kamla Devi wife of Late Jageshwar Singh.
15. Rameshwar Singh son of Ram Bachhan Singh.
Both resident of mohalla-New Sidhank, Dalmiya Nagar, P.S.-Dehri, District-Rohtas.
16. Bimla Devi.
17. Matura Devi.
Both daughters of Lakshman Singh resident of village-Dayalganj, P.O. & P.S.-Rajpur, District -Rohtas.
18. Rang Bahadur Singh.
19. Sri Niwas Singh.
20. Kamla Devi.
21. Bansiay Devi.
22. Sumita Devi.
23. Sunita.
All sons of daughters of Ram Singhasan Singh, resident of village-Chhopra,



P.O. & P.S.-Akorhigola, District-Rohtas.
24. Lakshmina Devi wife of Nathuni Singh, resident of village-Mojrorh,
P.O.-Mojrorh, P.S.-Mokha, District-Rohtas.

... .. Opposite Party/s

with
CIVIL REVIEW No. 525 of 2016
In
Miscellaneous Appeal No.732 of 2011

1. Pradeep Singh @ Jamuna Singh and Ors Son of Late Ram Shunhawan Singh
2. Binod Kumar
3. Ritesh Kumar @ Ritesh Kumar Singh @ Rajesh Kumar.
4. Tunne Singh @ Tunna Ji
All Sons of Pradeep Singh @ Jamuna Singh All resident of village -
Goshaldih, P.O. Goshaldih, P.S. Surajpura, District - Rohtas

... .. Petitioner/s

Versus

1. Maniraj Singh Son of Late Ram Suhawan Singh
2. Ashok Kumar Singh,
3. Kamlesh Kumar Singh
Both Sons of Sri Mahiraj Singh
4. Neeraj Kumar Singh, Son of Sri Ashok Kumar Singh
5. Gunjan Prakash Singh, Minor son of Sri Ashok Kumar Singh, under the
guardianship of Sri Ashok Kumar Singh, father and natural guardian.
All resident of village - Gushaldih, P.O. Surajpura, P.S. Surajpura, District -
Rohtas
6. Ramesh Kumar Singh,
7. Akhilesh Kumar Singh,
8. Anil Kumar Singh,
9. Arun Kumar Singh,
6 to 9 are sons of Late Dilip Kumar Singh
10. Birendra Kumar
11. Harendra Kumar
Both minor sons of Sri Anil Kumar Singh, under the guardianship of Sri Anil
Kumar Singh, father and natural guardian.
All resident of village - Gushaldih, P.O. Surajpura, P.S. Surajpura, District -
Rohtas
12. Deepak Kumar,
13. Pradeep Kumar, both sons of Satya Narayan Singh, resident of village -
Jitpura, P.O. Piro, District - Bhojpur
14. Sonia @ Kamla Devi Wife of Late Jageshwar Singh
15. Rameshwar Singh Son of Ram Bachhan Singh
Both resident of Mohalla - New Sidhank, Dalmiya Nagar, P.S. Dehri,



District - Rohtas

16. Bimla Devi
17. Matura Devi
Both daughters of Lakshman Singh resident of village - Dayalganj, P.O. and P.S. Rajpur, District - Rohtas
18. Rang Bahadur Singh
19. Sri Niwas Singh
20. Kamla Devi
21. Bansiay Devi
22. Sumita Devi
23. Sunita
All sons of and daughters of Ram Singhasan Singh, resident of village - Chhopra, P.O. and P.S. Akorhigola, District - Rohtas
24. Lakshmina Devi Wife of Nathuni Singh, resident of village - Mojrorh, P.O. Mojrorh, P.S. Mokha, District - Rohtas

... .. Opposite Party/s

Appearance :

(In CIVIL REVIEW No. 524 of 2016)

For the Petitioner/s : Mr.Ravindra Kr Sinha No.2, Adv.

For the Opposite Party/s : Mr.Rakesh Kumar Shrivastava, Adv.

(In CIVIL REVIEW No. 525 of 2016)

For the Petitioner/s : Mr.Ravindra Kr Sinha No.2

For the Opposite Party/s : Mr. Ramadhar Singh, Adv.

**CORAM: HONOURABLE MR. JUSTICE ADITYA KUMAR TRIVEDI
CAV ORDER**

18 6-09-2019 Considering the nature of controversy inconsonance with the manner whereunder Miscellaneous Appeal No.731 of 2011 along with Miscellaneous Appeal No.732 of 2011 were decided by a conjoint order on account thereof, Civil Review No.524 of 2016, Civil Review No.525 of 2016 are being decided by a common order.

2. Against the order dated 24.06.2016 passed in Miscellaneous Appeal No.731 of 2011 along with Miscellaneous Appeal No.732 of 2011 dismissing both the appeals, the



appellants/petitioners preferred Special Leave to Appeal (C) No(s).30962-30963/2016 and vide order dated 28.10.2016 it has been held:

“Mr. Krishnan Venugopal, learned Senior Counsel for the petitioners submits that the statements recorded in paragraph 2, 10 and 13 relating to order in C.R. No.2360 are factually incorrect.

In view of the above statement, liberty is granted to the petitioners to bring this fact to the notice of the High Court by filing appropriate application. If aggrieved by the decision of the High Court, liberty is granted to again approach this Court.

With the aforesaid liberty, the Special Leave Petitions are dismissed.”

3. Under guise of aforesaid observation, these two review petition have been filed on the ground so enumerated therein. During course of hearing over admission it has been felt that matter in controversy could be properly redressed at the admission stage itself, on account thereof, adversaries were noticed and, after their appearance, all have been heard.

4. It has been submitted at the end of the learned



counsel for the petitioners that Civil Revision No.2360/2007 was filed against the order dated 08.11.2007 passed in Title Appeal No.25/2005 filed by the Defendant Ist Set/appellant against judgment dated 24.12.2004 (Preliminary Decree) relating to Title (Partition) Suit No.265/1995 whereby further proceeding before lower court was stayed. Furthermore, it has been submitted that Miscellaneous Appeal No.731 of 2011, Miscellaneous Appeal No.732 of 2011 have been filed against the order dated 04.07.2011 passed by the lower appellate court concerning Title Appeal No.59/2009 as well as Title Appeal No.60/2009 wherein the order dated 04.08.2009 passed in Title (Partition) Suit No.265/1995 whereby and whereunder engrossing of the final decree over stamp paper has been finalized, been subject to challenge and, the appellate court directed for appointment of Survey Knowing Pleader Commissioner afresh for effectuating equitable allotment of share in accordance with identification of share so made under the preliminary decree dated 24.12.2004 in Title (Partition) Suit No.265/1995, annulling the order dated 04.08.2009.

5. It has been submitted at the end of the learned counsel for the petitioner that on account of misconception of factual aspect as is evident from relevant para-2,10,13 of order



dated 24.06.2016 wherein it has been construed in following manner:-

“2.It is also evident that against acceptance of report of Survey Knowing Pleader Commissioner, civil revision was filed and the same was disposed off with an observation that petitioner will have an opportunity to file an appeal against final decree. ...”

At para-10, “It has further been submitted that the facts of the instant case has got different twist, against the acceptance of Pleader Commissioner's report, Civil Revision No.2360/2007 was filed and the same was disposed of with an observation that proceeding of the final decree is not going to put the appellants to any irreparable loss as if final decree is prepared and if so aggrieved, they will definitely have an opportunity of challenging the said final decree in an appeal and so, the appeal has been preferred in pursuance of aforesaid observation. ...”

And at para-13, “...admittedly against the order dated 15.09.2007 whereby and whereunder Survey Knowing Pleader Commissioner's report was accepted by the learned lower court, Civil Revision No.2360 of 2007 was filed and the same was decided



keeping the right of the respondent 1st/plaintiff immuned by way of identifying an opportunity for filing an appeal against the final decree going to be passed in terms of Survey Knowing Pleader Commissioner report, as accepted under para-6 thereof.”

And that wrong perception ultimately resultant adverse to the petitioners who were appellant in the above referred two miscellaneous appeals.

6. In the aforesaid background, it has been submitted that once, the cloud is removed sky beoames clear. In order to justify such plea, it has been submitted that against an acceptance of the Pleader Commissioner report, the appeal would have been filed as it tantamounts to final decree. No appeal was filed against the acceptance of the Pleader Commissioner report dated 03.07.2007 which was accepted vide order dated 15.09.2007. On account thereof, the matter reached at finality. Vide order dated 04.08.2009 only clerical job was being done by way of engrossing the final decree over the stamp paper which was not at all an appealable order and so, Title Appeal No.59/2009 and Title Appeal No.60/2009 were not at all maintainable.

7. It has further been submitted that on account of



wrong notion, the filing of Civil Revision No.2360/2007 has been misconstrued and that happens to be reason behind presence of contrary finding under paragraph 13, 14 of the order impugned consequent thereupon, both the Miscellaneous Appeal No.731 of 2011 and Miscellaneous Appeal No.732 of 2011 have been dismissed. Therefore, after proper identification of filing of Civil Revision No.2360/2007 being against stay granted by the Appellate Court in connection with T.A. No.25/2005 over preparation of final decree by the learned lower court relating to Title (Partition) Suit No.265/1995 the matter in controversy has to be seen in its right perspective. That being so, relating to maintainability of Title Appeal No.59/2009, Title Appeal No.60/2009 as, would not be maintainable, the whole scenario has changed and consequent thereupon, the finding under paragraph 13, 14 of the order dated 24.06.2016, while dismissing both the Miscellaneous Appeals needs, reconsideration as a result of which it happens to be a fit case, wherein review be allowed.

8. Respondent-plaintiff as well as respondent-defendant 1st set have jointly objected the submissions having on behalf of appellants petitioners and submitted that instant review petitions are non-maintainable and to justify the same, it has been submitted that the Apex Court has not directed that



judgment impugned be reviewed rather, the direction happens to be that the mistake so pointed at the end of the appellants/petitioners be brought to the knowledge of the bench. It is not that Civil Revision No.2360/2007 was not filed. It is not that the relevant portion of the order having been passed thereunder has been misquoted. It is not that before filing of Civil Revision No.2360/2007, Pleader Commissioner's report dated 317/2007 was not accepted on 15.09.2007. It is not that stay in T.A. No.25/2005 so passed on 08.11.2007 was after acceptance of Pleader Commissioner's report. It is not that before passing of order dated 13.08.2009 in Civil Revision No.2360/2007, Title Appeal No.59/2009 as well as Title Appeal No.60/2009 were filed. That means to say, the parties were well-versed with regard thereto and in the aforesaid background, passing of final order dated 13.08.2009 under Civil Revision No.2360/2007 before filing of Title Appeal No.59/2009, Title Appeal No.60/2009 would be considered to be having after due recognition thereof. That means to say, on proper appreciation of submission of commissioner report on 03.07.2007, and its acceptance on 15.09.2007. That means to say, while the order under Civil Revision No.2360/2007 was passed, the limitation for filing an appeal against final decree in terms of principle laid



down by the Apex Court in (2005) 10 SCC 746 had already exhausted. That means to say, in the aforesaid background there was no occasion left for having the finding relating to right to appeal against final decree after engrossing under para-6.

9. It has also been submitted that both the Miscellaneous Appeals would not have been entertained in the background of the fact that both the miscellaneous appeals were not at all in accordance with Order XLIII, as, the order passed under Title Appeal No.59/2009, Title Appeal No.60/2009 did not find place under Rule-1 of Order XLIII. So, it has been submitted that in any view of the matter, the instant petition for review is non-maintainable hence, are fit to be dismissed.

10. Heard the parties, gone through the record along with the judgment impugned dated 24.06.2016 passed by this Bench relating to Miscellaneous Appeal No.731 of 2011 as well as Miscellaneous Appeal No.732 of 2011.

11. The learned counsel for the petitioners/appellants is correct in his submission that Civil Revision No.2360/2007 was filed against staying the process of final decree passed in connection with Title Appeal No.25/2005 (Preliminary Decree) and not against acceptance of report of Survey Knowing Pleader Commissioner and so, to that extent, the incorporation of fact at



para-2,10 as well as para-13 is found factually incorrect. Now the only question is to be seen whether the aforesaid mistake will attract review of the order impugned.

12. In order to appreciate the same, again I will invite paragraph 6 of the order passed in connection with Civil Revision No.2360 of 2007.

“6. From the facts and circumstances of the case as well as the averments of the parties and the specific provisions of law, it is quite apparent that the proceeding of the final decree is not going to put the appellants to any irreparable loss as if final decree is prepared and they are aggrieved by it they will definitely have an opportunity of challenging the said final decree in an appeal. Furthermore, until the final decree is prepared there is no question of any execution case being filed and if any execution case is filed after the preparation of the final decree, the party aggrieved will have an opportunity to file an interlocutory application in the appeal filed against the final decree for stay of the execution case. In the said circumstances, neither the appellants would suffer any irreparable loss, nor the question of balance of convenience is in favour of the appellants of the title appeal. In the aforesaid facts and circumstances,



there was no occasion for the appellate court to pass the impugned order for stay of further proceeding of the preparation of final decree.”

13. It is needless to say that Civil Revision No.2360/2007 was finally disposed of on 13.08.2009. It is further evident that before 13.08.2009, Pleader Commissioner's report dated 03.07.2007 was already accepted on 15.09.2007. The stay granted under T.A. No.25/2005 vide order dated 08.11.2007 was certainly after acceptance of pleader commissioner's report. So, had there been proper appreciation of the principle laid down by the Apex Court in **Chiranji Lal (DR) v. Haridas** reported in **(2005) 10 SCC 746**, the opportunity so granted under Civil Revision No.2360/2007 would not have arisen as since thereafter, the cause of final decree has changed and in likewise manner, filing of an appeal against final decree relating to partition suit. That means to say, during course thereof, there was no proper consideration of the principle laid down by the Apex Court and by such activity, parties have been misled, on the score that irrespective of finding under para-6, the appeal against final decree which ought to have been against acceptance of advocate commissioner's report would not be maintainable as barred by



limitation, but since before **Chiranjil Lal** case, final decree has been construed after having the same engrossed in a non-judicial stamp as held in **Surya Kumar Das vs. Ajit Kumar Das**, reported in **AIR 1998 Pat. 96**.

14. Against the order dated 04.08.2009 passed by the learned lower court in connection with Title (Partition) Suit No.265/1995 whereby and whereunder the engrossing of final decree over stamp paper was finalized, been challenged at the behest of plaintiff as well as Defendant 1st party under Title Appeal No.59/2009 as well as Title Appeal No.60/2009 which were allowed on 04.07.2011 by way of remitting the matter to the learned lower court to appoint Survey Knowing Pleader Commissioner who will indulge afresh for equitable allotment of share amongst co-sharer in accordance with the preliminary decree. At that very moment Title Appeal No.25/2005 was pending against the preliminary decree. Though, it has been pleaded that Title Appeal No.25/2005 has been dismissed on 15.04.2010 against which Second Appeal No.252/2010 was filed, which also been dismissed but those are subsequent events.

15. Moreover, when the order dated 04.08.2009 was not an appealable order, then in that circumstance, the order



dated 04.07.2011 passed by the lower appellate court in connection with T.A. No.59/2009, 60/2009, would be an appealable order, when it did not satisfy any of criteria so specified under Order XLIII, or would have taken recourse under Section 115, or 151 of the CPC, or under Article 227 of the Constitution of India.

16. Because of the fact that Title Appeal No.59/2009 and 60/2009 have been preferred after passing of an order dated 13.08.2009 in Civil Revision No.2360/2007, and further, considering para-6 thereof, in the background of the fact that much prior thereto, the Pleader Commissioner's report had already been accepted, created a new horizon, dazzling the spectrum, which got finality, as never been challenged, hence petitioners are found duly eclipsed by the same.

17. Because of the fact that there happens to be own submission at the end of the petitioner that order dated 04.08.2009 passed by the lower court was not an appealable order, even then both the Miscellaneous Appeals would not be maintainable in light of order dated 04.07.2011 passed in T.A. No.59/2009, 60/2009, being deficient one to be recognized as an order falling under Rule-1 of Order XLIII of CPC to be an appealable order under Miscellaneous Appeal.



18. That being so, even identifying that some sort of mistake has cropped up on factual aspect as discussed herein-above to the extent of identifying the cause whereupon Civil Revision No.2360 of 2007 was filed, it is not going to give a ground for recalling the order, whereupon, did not justify the petition of review save and except, correcting the averments relating thereto that Civil Revision No.2360 of 2007 was filed against an order dated 08.11.2007 passed by the appellate court in connection with Title Appeal No.25/2005, and acknowledging the same to that extent, instant petition is found devoid of merit and is accordingly, dismissed.

(Aditya Kumar Trivedi, J.)

Prakash Narayan

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