

IN THE HIGH COURT OF JUDICATURE AT PATNA

Miscellaneous Appeal No.68 of 2015

-
-
1. Rajendra Nath Singh @ Raju Singh.
 2. Birendra Nath Singh,
 3. Dhirendra Nath Singh @ Tuntun Singh, All are Sons of Sri Nath Singh.
 4. Digvijay Nath Singh, Son of Rajendra Nath Singh, all are resident of Village +P.O. -Zaitpur Kala, P.S. Bhagwanpur, District- Rohtas.

... .. Appellant/s

Versus

1. The State of Bihar through Collector, Kaimur, At P.O. + P.S. Bhabua, District Kaimur (Bhabua).
2. Anchal Adhikari, Bhagwanpur, At- Rampur, P.S.- Bhagwanpur, District- Kaimur Bhabua.
3. Sub- Divisional Officer, Bhabua, At P.O. P.S.- Bhabua, District- Kaimur Bhabua.
4. Dina Nath Mali, Son of Sita Ram Mali,
5. Munna Paswan, Son of Bal Kishun Paswan,
6. Randhir Paswan, Son of Somaru Paswan,
7. Suresh Ram Son of Hardeo Ram,
8. Most. Lachhaminiya Kuwar, Wife of Late Haregen Ram,
9. Ram Dayal Mali, Son of Ram Gohan Mali,
10. Radhe Shyam Bari,
11. Ghyanshyam Bari Both are son of Late Kedar Bari All are resident of Village- Jaitpur Kala, P.O. - Jaitpur Kala, Police Station- Bhagwanpur, District- Kaimur Bhabua.

... .. Respondent/s

with

Miscellaneous Appeal No. 79 of 2015

1. Rajendra Nath Singh @ Raju Singh
2. Birendra Nath Singh
3. Dhirendra Nath Singh @ Tuntun Singh All are Sons of Sri Nath Singh
4. Digvijay Nath Singh Son of Rajendra Nath Singh. All are resident of Village P.O. - Zaitpur Kala , P.S. - Bhagwanpur, District- Rohtas



... .. Appellant/s

Versus

1. The State Of Bihar through Collector, Kaimur At P.O. + P.S. Bhabua, District- Kaimur (Bhabua)
2. Anchal Adhikari , Bhagwanpur, At-Rampur, P.S. - Bhagwanpur, District- Kaimur Bhabhua .
3. Sub-Divisonal Officer, Bhabhua, At P.O. P.S. - Bhabhua, District- Kaimur Bhabhua.
4. Dina Nath Mali, Son of Sita Ram Mali
5. Munna Paswan, Son of Bal Kishun Paswan,
6. Randhir Paswan Son of Somaru Paswan,
7. Suresh Ram Son of Hardeo Ram,
8. Most. Lachhaminiya Kuwar, Wife of Late Haregen Ram
9. Ram Dayal Mali , Son of Ram Gohan Mali,
10. Radhe Shyam Bari
11. Ghanshyam Bari Both are son of Late Kedar Bari All are resident of Village- Jaitpur Kala, P.O. - Jaitpur Kala, Police Station- Bhagwanpur, District- Kaimur Bhabhua .

... .. Respondent/s

Appearance :

(In Miscellaneous Appeal No. 68 of 2015)

For the Appellant/s : Mr.Sandip Singh, Adv.

For the Respondent/s : Mr.Kundan Bhadur Singh, Adv.

(In Miscellaneous Appeal No. 79 of 2015)

For the Appellant/s : Mr.Sandip Singh, Adv.

For the Respondent/s : Mr.Kundan Bhadur Singh, Adv.

CORAM: HONOURABLE MR. JUSTICE S. KUMAR
ORAL JUDGMENT

Date : 15-07-2019

Heard the parties.

2. Both miscellaneous appeals have been filed for setting aside the judgment and order dated 17.12.2014 passed in Title Appeal No. 05 of 2011 passed by Additional District and



Sessions Judge-2, Kaimur, Bhabhua by which the learned appellate court after setting aside the judgment and decree dated 29.10.2010 and 15.11.2010 has remanded the matter to the trial court for de novo trial of the title suit.

3. Plaintiff had filed the suit before the Munsif, Kaimur, Bhabhua giving rise to title suit No. 8 of 1991 for a declaration that the map prepared in the consolidation proceeding was defective and the land shown as Khata Nos. 4, 5 and 8 is contrary to the findings of the Consolidation Officer. The matter relates to Mauza- Jaitpur, Thana- Bhagwanpur, Munger District, Kaimur with respect to Chak Khata No. 38 and Chak Plot No. 4 measuring 95 decimals, Chak Plot No. 5 measuring 30 decimals, Chak Plot No. 45 from west measuring 1 acre 10 decimals and Chak Plot No. 3 (part) measuring 40 decimals measuring total lands as 2 acres 75 decimals. Lands are part of plaintiff's Chak Plot Nos. 50 and 53 for which wrong chak map was prepared and the suit was filed for said declaration.

4. According to the plaintiff, Chak Khata No. 30, Chak Plot No. 50 is part of Chak Plot No. 50 and Chak Khata No. 10, Chak Plot No. 53 was purchased by way of sale deed which constituted the Chak Plot Nos. 50 and 53 and they are



coming in possession but at the time of preparation of Chak Map it has wrongly been shown as road in the Chak Map.

5. Notices were issued to defendant and they appeared and filed two different written statements, one by the State of Bihar and other by the persons in whose favour Red Card was issued and settlement made by the State of Bihar.

6. In support of case of plaintiff four witnesses were examined and documentary evidences were produced which were marked as Exhibit-1 Chak Khata No. 13, Chak Plot No. 50 and rent receipts issued, Exhibit-1/A Chak Khat No. 10, Chak Plot No. 53 and rent receipts issued, Exhibit-2 is Chak Khata No. 13, Chak Plot No. 50 for which a Hibbanama dated 18.08.1981 was executed by Badrinath Singh in favour of plaintiff. Rajendra Nath Singh Exhibit-3 is Chak Khata No. 10, Plot No. 53 for which a sale deed dated 06.11.79 was executed by the Devkumar Lal in favour of plaintiff Rajendra Nath Singh, Exhibit-3A is also a sale deed dated 1960, Exhibit-4 is the miscellaneous case No. 10/83-84 dated 29.07.83 of the Consolidation order passed by the Consolidation Officer, Exhibit-4A is the order passed in Case No. 42/56-57, Exhibits-5 to 5B is the map of cadastral survey and revisional survey, Exhibit-6 is the Chak Khata No. 13, Chak Plot No. 50



corresponding the revisional survey, Exhibit-6A is Chak Khata No. 10, Chak Plot No. 53 corresponding to revisional survey, Exhibit-6B is Chak Khata No. 10 and Chak Plot No. 53, Exhibit 7 is the Jamabandi return No. 42/56-57, Exhibit-8 is the deed of exchange between Santosh Kumar Singh and plaintiff Rajendra Nath Singh by a registered deed of sale exchange dated 18.03.89, Exhibit-9 is the survey Advocate Commissioner's report, Exhibit-10 is Chak Khata No. 13, Chak Plot No. 50, Chak Panji, Exhibit-10A Chak Khata No. 10, Chak Plot No. 53 and Chak Panji, Exhibit-10B is Chak Khata No. 38 and Chak Panji, Exhibit-11 is Chak Khata No. 10 and Chak Plot No. 53 and Chak Panji, Exhibit 12 is Order dated 24.09.92 passed in miscellaneous appeal No. 21/1991.

7. Defendants 1st set have examined one witness and has produced Exhibit-A to A/4 i.e. the red card issued to defendants 2nd party and they have not adduced any documentary evidence and three witnesses have been examined on behalf of defendant 2nd party.

8. After considering and appreciating the evidences on record, the trial court framed ten issues and decreed the suit and declared the right, title, possession and interest over the suit land of the plaintiff and found that the Chak map prepared was



defective and erroneous and decreed the suit of the plaintiff.

9. Aggrieved by the said decision, the defendants both sets filed appeal before the District Judge, Kaimur which was heard by Additional District Judge, Kaimur, Bhabua in appeal No. 331 of 2014 and 332 of 2014 and after considering the arguments made on behalf of both the parties, the appellate court had framed three issues for consideration by the appellate court. Issue No. (i) whether the finding arrived by the trial court was based upon no evidence. (ii) Whether the civil court has jurisdiction to interfere in the orders passed by the Consolidation authorities and (iii) whether appeal No. 9/11 was time barred and delay was fit to be condoned.

10. After hearing the appellants and respondents, the appellate court set aside the order passed by the trial court and remitted the suit for de novo trial by the trial court.

11. After going through the order passed by both courts, this Court is of the view that there was no case for remand made before the appellate court and it was erroneous on the part of the appellate court to remand the matter to the trial court when there were sufficient evidences adduced by both the parties before the trial court on the basis of which three issues were framed by the appellate court which could be decided by



the appellate court under the provisions of Order 41 Rule 25.

12. The case can be remanded under Order 41 Rule 23 if the trial court has decided the issue on any preliminary issue and said order on preliminary issue is reversed by the appellate court and then only a case of remand is made out or under order 41 Rule 23(a) when decree is reversed in appeal and a re-trial is considered necessary.

13. Order 41 Rule 24 and 25 reads as follows:

“24. Where evidence on record sufficient, Appellate Court may determine case finally—

Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which Appellate Court proceeds.

25. Where Appellate Court may frame issues and refer them for trial to Court whose decree appealed from—

Where the Court from whose decree the appeal is preferred has omitted to frame or try any issue, or to determine any question of fact, which appears to the Appellate Court essential to the right decision of the suit upon the merits the Appellate Court may, if necessary, frame issues, and refer the same for trial to the Court from whose decree the



appeal is preferred, and in such case shall direct such Court to take the additional evidence required; and such Court shall proceed to try such issues, and shall return the evidence to the Appellate Court together with its findings thereon and the reasons therefor within such time as may be fixed by the Appellate Court or extended by it from time to time.”

14. Conjoint reading of both the provisions makes it explicit clear that if there are sufficient evidence and materials on record and there is no requirement of additional evidence then after framing the issues the appellate court could decide the matter itself without remanding the case to the trial court. In the present case, there were sufficient materials and evidences on record and none of the parties were willing to lead any additional evidence and, as such, there was no occasion for the appellate court to remand the matter after re-framing the issues and could have decided the appeal without remitting the matter to the trial court. As such, the orders passed by the appellate court remanding the matter to the trial court are not sustainable in the eye of law and are, accordingly, set aside.

15. The appellate court is directed to decide the appeal after hearing all the concerned parties within three months from the date of receipt/production of a copy of order passed by this



Court.

16. Both the appeals stand allowed.

(S. Kumar, J)

veena/-

AFR/NAFR	NAFR
CAV DATE	N.A.
Uploading Date	10.09.2019
Transmission Date	N.A.

