

IN THE HIGH COURT OF JUDICATURE AT PATNA

Letters Patent Appeal No.1446 of 2018

In

CIVIL REVIEW No.283 of 2018

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1. Mahanth Sudama Das Chele of Late Mahanth Shyamdasi @ Shyam Das, At P.O. and P.S.- Ghorasahan, District- East Champaran (Motihari), duly appointed Mahanth of Ram Janki Math, At P.O. and P.S.- Ghorasahan, District- East Champaran Motihari.
 2. Sri Ram Janki Math and Idols situated in the Math through Mahanth Ramawtar Das, Sevayat at P.O. & P.S. Ghorasahan, District- East Champaran (Motihari)

... .. Appellant/s

Versus

1. Krishna Chandra Prasad Gupta and Ors Son of Ganesh Prasad Gupta, Resident of Village- Ghorasahan, Police Station- Ghorasahan, District- East Champaran.
2. Ramdeni Devi, Wife of Krishna Chandra Prasad Gupta,
3. Madan Prasad, son of Krishna Chandra Prasad Gupta
4. Vijay Prasad, Son of Ganesh Prasad,
5. Mohan Prasad,
6. Dhananjay Prasad,
7. Harendra Prasad, 5 to 7 are sons of Krishna Chandra Prasad Gupta,
8. Indra, Daughter of Krishna Chandar Prasad Gupta, All resident of Village- Ghorasahan, P.S. and P.O.- Ghorasahan, District- East Champaran.
9. Bihar State Religious Trust Board, Patna through its Special Officer, Bidyapati Marg, P.S.- Kotwali, District- Patna

... .. Respondent/s

Appearance :

For the Appellant/s : Mr.Narayan Singh, Sr. Advocate
For the Respondent/s : Mr.

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE MR. JUSTICE ANIL KUMAR UPADHYAY

ORAL ORDER

(Per: HONOURABLE THE CHIEF JUSTICE)

6 03-12-2019

Heard learned counsel for the parties.

The appellants have prayed for the following relief:

“It is, therefore, prayed that your Lordships will be graciously be pleased to admit this Appeal, issue Notices to the Respondents and after hearing the parties be further pleased to allow this Appeal and set aside the order dated 19.09.2018 passed in Civil Review No. 283 of 2018.”

We noticed that the impugned order was passed by the



learned Single Judge in Civil Review No. 283 of 2019 arising out of Second Appeal No. 73 of 1986 against which no appeal is maintainable.

On 15th May, 2019, this Court in the present appeal has already expressed its opinion with regard to the maintainability of the present appeal under Clause 10 of the Letters Patent. Thereafter, since none appeared, matter was adjourned only to obtain report of the Registry with regard to the listing of the appeal before the Court. The Registry has given its report of non-maintainability of the appeal. Subsequently, when the matter came up for hearing on 20th June, 2019, since none had appeared on behalf of the appellants, appeal was dismissed for non-prosecution, though, it stood reiterated that the appeal was not maintainable.

Having heard Shri Narayan Singh, Sr. Advocate, we recall that part of the order dated 20th June, 2019, whereby the appeal was dismissed for non-prosecution. But, however, on the issue with regard to maintainability of the appeal, we are afraid, in view of the law laid down by the Apex Court in **Shah Babulal Khimji Versus Yayaben D. Kania and another: AIR, 1981 Supreme Court, 1786** and most specifically in para-120 which is reproduced as under:-



“Thus, these are some of the principles which might guide a Division Bench in deciding whether an order passed by the Trial Judge amounts to a judgment within the meaning of the Letters Patent. We might, however, at the risk of repetition give illustrations of interlocutory orders which may be treated as judgments:

(1) An order granting leave to amend the plaint by introducing a new cause of action which completely alters the nature of the suit and takes away a vested right of limitation or any other valuable right accrued to the defendant

(2) An order rejecting the plaint.

(3) An order refusing leave to defend the suit in an action under Order 37, Code of Civil Procedure.

(4) An order rescinding leave of the Trial Judge granted by him under clause 12 of the Letters Patent.

(5) An order deciding a preliminary objection to the maintainability of the suit on the ground of limitation, absence of notice under S. 80, bar against competency of the suit against the defendant even though the suit is kept alive.

(6) An order rejecting an application for a judgment on admission under order 12 Rule 6.

(7) An order refusing to add necessary parties in a suit under s. 92 of the Code of Civil Procedure.



(8) An order varying or amending a decree.

(9) An order refusing leave to sue in forma pauperis.

(10) An order granting review.

(11) An order allowing withdrawal of the suit with liberty to file a fresh one.

(12) An order holding that the defendants are not agriculturists within the meaning of the special law.

(13) An order staying or refusing to stay a suit under s. 10 of the Code of Civil Procedure.

(14) An order granting or refusing to stay execution of the decree.

(15) An order deciding payment of court fees against the plaintiff.”

The present appeal in its form not being maintainable, is dismissed.

We clarify that we have not adjudicated the issue on merits and as such, it shall be open for the appellants to take steps, assailing the impugned order in accordance with law.

(Sanjay Karol, CJ)

(Anil Kumar Upadhyay, J)

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