

IN THE HIGH COURT OF JUDICATURE AT PATNA
Letters Patent Appeal No.524 of 2018

In
Civil Writ Jurisdiction Case No.10044 of 2014

1. Bijendra Goswami, son of Late Mohan Goswami
2. Smt. Anita Devi, wife of Bijendra Goswami
3. Babloo Goswami @ Babloo, son of Bijendra Goswami
All resident of Mohalla- Gobindpur, P.O. and P.S.-Fatuha, District Patna.
... ... Defendants 1st Set/Respondents/Appellant/s

Versus

Surendra Goshwami, son of late Mohan Gosain, resident of Mohalla
Govindpur, P.O. and P.S.-Fatuha, District-Patna.
... ... Defendant 2nd Set/Petitioner/Respondent/s

Appearance :

For the Appellant/s : Mr. Ram Shankar Das, Advocate
Mr. Abhay Kumar, Advocate

For the Respondent/s :

CORAM: HONOURABLE THE CHIEF JUSTICE

and

HONOURABLE JUSTICE SMT. ANJANA MISHRA

ORAL JUDGMENT

(Per: HONOURABLE THE CHIEF JUSTICE)

Date : 08-01-2019

The defects are ignored.

There is a limitation petition filed, being I.A. No. 7034 of 2018, indicating 05 days delay. The delay is also liable to be condoned as sufficient cause has been shown. The application is allowed.

Re. Letters Patent Appeal No.524 of 2018

A copy of the writ petition indicates that it has been filed under Article 227 of the Constitution of India. The challenge raised is to the order dated 06th of March, 2018 passed in CWJC No. 10044 of 2014, whereby the writ petition filed by the respondent-petitioner has been allowed holding that the order passed by the court below on



13.05.2014 was erroneous. We are, therefore, presuming that the learned Single Judge was exercising his supervisory jurisdiction in the exercise of powers under Article 227 of the Constitution of India.

However, since no such issue has been raised before us, we are only proceeding to examine as to whether the Trial Court was justified in passing the order which was impugned in the writ petition.

For this, reference be made to sub-rule (3) of Rule-1 of Order XXIII of the Civil Procedure Code which spells out that whenever an application for abandoning the claim is filed, then where the Court is satisfied it may, on such terms as it thinks fit, grant permission to the plaintiff to withdraw from such suit or such part of the claim or otherwise as indicated therein. Undisputedly no orders were passed by the trial court in the present case during the lifetime of the plaintiff.

In the instant case, the sole plaintiff Smt. Kewla Devi filed the suit after impleading her son and with a plea for setting aside the sale deed stated to have been executed in favour of one of the other contesting defendants. It is undisputed that an application through a different counsel stated to be on behalf of the plaintiff was filed for withdrawing the suit. Smt. Kewla Devi died on 31st of December, 2013 even before final order could be passed on the said application. The Trial Court after the death of Smt. Kewla Devi proceeded to pass the order on 13.05.2014 allowing the said application and permitting



withdrawal of the suit. It is this order which was challenged before the learned Single Judge and it was held that since the son was already on record as a defendant and he had moved an application for transposition in terms of Rule 1-A of Order XXIII of the Civil Procedure Code, therefore, he was entitled to be transposed as plaintiff as he was pursuing the same interest as that of his mother.

In the circumstances, learned Single Judge was right in his conclusion that the application for withdrawal which otherwise was moved under suspicious circumstances through a different counsel, ought to have been rejected and the suit should not have been permitted to be withdrawn.

Consequently, the impugned judgment does not call for any interference by us in this appeal which is hereby dismissed.

(Amreshwar Pratap Sahi, CJ)

(Anjana Mishra, J)

Sunil/-

AFR	AFR
CAV DATE	NA
Uploading Date	10.01.2019
Transmission Date	

