

IN THE HIGH COURT OF JUDICATURE AT PATNA
CIVIL MISCELLANEOUS JURISDICTION No.404 of 2020

Rang Bahadur Singh Son of Late Rajendra Prasad Singh Resident of Village- Chhotaki Kulharia, P.S.- Mohania, District- Kaimur Bhabua presently residing at A 402 Vamika Kunj Apartment, B.V. College Khajpura, Rukunpura, Patna.

... .. Petitioner/s

Versus

1. Sharda Singh Daughter of Rajendra Prasad Singh, Wife of Khan Bahadur Singh Resident of Chhotaki Kulharia, P.S. Mohania, District- Kaimur, Bhabua, Presently residing at Sharda Singh, C/o Dr. Vivek Singh, Singrauli Block 20/53, Budh Bihar Colony, Mal Road, Varanasi.
2. Kiran Singh Wife of Late Rameshwar Singh, Daughter of Late Rameshwar Singh Resident of Village- Chhotaki Kulharia, P.S. Mohania, District- Kaimur, Bhabua, Presently residing at B/5 Karm Bhumi Apartment C.H.S. Ltd., Jain Mandir Road, Virar (W), Mumbai- 401303.
3. Ajan Kumar Singh Son of Late Rameshwar Singh Resident of Village- Chhotaki Kulharia, P.S. Mohania, District- Kaimur, Bhabua, Presently residing at B/5 Karm Bhumi Apartment C.H.S. Ltd., Jain Mandir Road, Virar (W), Mumbai- 401303.
4. Jitiksha Singh Daughter of Late Rameshwar Singh Resident of Village- Chhotaki Kulharia, P.S. Mohania, District- Kaimur, Bhabua, Presently residing at B/5 Karm Bhumi Apartment C.H.S. Ltd., Jain Mandir Road, Virar (W), Mumbai- 401303.
5. Neema Singh Daughter of Late Rameshwar Singh Resident of Village- Chhotaki Kulharia, P.S. Mohania, District- Kaimur, Bhabua, Presently residing at B/5 Karm Bhumi Apartment C.H.S. Ltd., Jain Mandir Road, Virar (W), Mumbai- 401303.
6. Krishna Kumar Singh Son of Rang Bahadur Singh Resident of Village- Chhotaki Kulharia, P.S. Mohania, District- Kaimur, Bhabua, Presently correspondence Address at A 402 Vamika Kunj Apartment, B.V. College Khajpura, Rukunpura, Patna.
7. Rudresh Kumar Singh Son of Rang Bahadur Singh Resident of Village- Chhotki Kulharia, P.S. Mohania, District- Kaimur Bhabua, Present correspondence Address at A 402 Vamika Kunj Apartment, B.V. College Khajpura, Rukunpura, Patna.

... .. Respondent/s

Appearance :

For the Petitioner/s : Mr.Radha Mohan Pandey
For the Respondent/s :

CORAM: HONOURABLE MR. JUSTICE ANIL KUMAR SINHA
ORAL ORDER

2 07-07-2022

Heard Mr. Radha Mohan Pandey, learned counsel for



the petitioner.

Petitioner is the defendant no. 1 in Title Suit No. 781 / 2014 filed by plaintiff – respondent 1st set claiming her 1/3rd share in the suit property described at schedule ॠ of the plaint. Both the plaintiff as well as defendant – petitioner are brother and sister. The petitioner is aggrieved by an order dated 03 / 12 / 2019 by which the objection of the petitioner that the plaintiff cannot be permitted to lead evidence on the point of date of death of her father in absence of pleading in the plaint has been rejected.

Learned counsel for the petitioner vehemently argued that it is a cardinal principle that in absence of pleading a party cannot be permitted to lead evidence inasmuch as a party should not be permitted to travel beyond its pleadings. He further submitted that in the plaint the date of death of Rajendra Prasad Singh (father of the plaintiff) has not been mentioned meaning thereby that pleading with regard to date of death of father of the plaintiff is absent. Upon commencement of trial the plaintiff – respondent filed her examination -in- chief on affidavit in which she has stated that her father died on 04 / 02 / 2006, whereas, the petitioner in his written statement in paragraph no. 22 has specifically stated that his father Rajendra



Singh has died on 04 / 01 / 2000. Accordingly the petitioner raised objection before the court below to strike down paragraph- 8 of the affidavit of the examination -in- chief by which the plaintiff -respondent introduced the date of death. Since there is no pleading in the plaint at all regarding the date of death as such allowing the plaintiff to lead evidence without pleading shall be against the cardinal rule of evidence and will amount to lead evidence without pleading.

I have heard learned counsel for the petitioner and have perused the material on record including the impugned order. From perusal of the plaint it appears that the factum of death of father of the plaintiff- respondent and defendant- petitioner is already mentioned and admittedly in the written statement the petitioner – defendant has not denied regarding the factum of death of late Rajendra Prasad Singh and date of death of his father has been disclosed as 04-01-2000 in paragraph no. 22 of the plaint. In other words, in substance both the parties knew their case regarding death of late Rajendra Prasad Singh and they proceeded to trial on the issues by producing evidence. The respondent- plaintiff by disclosing the date of death of her father in her examination -in- chief is not introducing the third case putting the petitioner by surprise.



The Hon'ble Supreme Court in a case reported in (1987) 2 Supreme Court Cases 555 RAM SARUP GUPTA *Versus* BISHUN NARAIN INTER COLLEGE AND OTHERS has held that the object and purpose of pleading is to enable adversary party to know the case it has to meet. The pleadings should receive a liberal construction; no pedantic approach should be adopted to defeat justice on hair-splitting technicalities instead the court must find out whether in substance the parties knew the case and the issues upon which they went to trial.

The Supreme Court in the aforesaid judgment (Supra) has taken note of the observation of the Constitution Bench of the Apex Court in a case reported in AIR 1966 SC 735 Bhagwati Prasad v. Chandramaul, which is quoted hereinbelow for ready reference:-

“If a plea is not specifically made and yet it is covered by an issue by implication, and the parties knew that the said plea was involved in the trial, then the mere fact that the plea was not expressly taken in the pleadings would not necessarily disentitle a party from relying upon it if it is satisfactorily proved by evidence. The general rule no doubt is that the relief should be founded on pleadings made by the parties. But where the substantial matters relating to the title of both



parties to the suit are touched, though indirectly or even obscurely in the issues, and evidence has been led about them, then the argument that a particular matter was not expressly taken in the pleadings would be purely formal and technical and cannot succeed in every case. What the court has to consider in dealing with such an objection is: did the parties know that the matter in question was involved in the trial, and did they lead evidence about it? If it appears that the parties did not know that the matter was in issue at the trial and one of them has had no opportunity to lead evidence in respect of it, that undoubtedly would be a different matter. To allow one party to rely upon a matter in respect of which the other party did not lead evidence and has had no opportunity to lead evidence, would introduce considerations of prejudice, and in doing justice to one party, the court cannot do injustice to another.”

The Hon’ble Supreme Court in another case discussed the procedure to be followed by the trial court whenever an objection is raised regarding admissibility of any material or any item of oral evidence and held in paragraph nos. 13 , 14 and 15 of the judgment reported in (2001) 3 Supreme Court Cases 1 BIPIN SHANTILAL PANCHAL *Versus* STATE OF GUJARAT AND ANOTHER as follows:-



“13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is this: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must be recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an



objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

15. The above procedure, if followed, will have two advantages. First is that the time in the trial court, during evidence-taking stage, would not be wasted on account of raising such objections and the court can continue to examine the witnesses. The witnesses need not wait for long hours, if not days. Second is that the superior court, when the same objection is recanvassed and reconsidered in appeal or revision against the final judgment of the trial court, can determine the correctness of the view taken by the trial court regarding that objection,



without bothering to remit the case to the trial court again for fresh disposal. We may also point out that this measure would not cause any prejudice to the parties to the litigation and would not add to their misery or expenses.”

In view of the aforesaid discussion on conspectus of fact and law, I find no illegality and / or jurisdictional error in the impugned order.

Accordingly, this civil miscellaneous application is dismissed.

(Anil Kumar Sinha, J)

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