

**IN THE HIGH COURT OF JUDICATURE AT PATNA**

**Miscellaneous Appeal No.333 of 2018**

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**Satya Narayan Prasad Gupta @ Sato Sao @ Satya Prakash Prasad, Son of Late Ram Chandra Prasad Bedil and adopted ,Son of Late Bhola Sao alias Bhola Halwai** resident of Mohalla-Kamasi Bazar Tola Commissionerary, P. O , P. S and District-Sheikhpura, at present resident of Mohalla-Chandani Chowk, P. O, P.S and District-Sheikhpura.

(Plaintiff in the court below) .... Appellant

-Versus-

1. Bijay Kumar Gupta, Son of Late Ram Chandra Prasad Bedil, resident of Mohalla- Kamasi Bazar, Tola Commissionerary P.o. P.s and District -Sheikhpura.

(A) Madhuri Devi, wife of Kishor Kumar Gupta, daughter of Late Ram Chandra Prasad Bedil, resident of Mohalla Dengal para, P. O , P.S and District Dumka.

(B) Gita Devi, wife of Kanhai Prasad Gupta, daughter of Late Ramchandra Prasad Bedil resident of Mohalla Katrapar, Biharsharif, District-Nalanda.

.. Defendant-Respondent (Ist Party)

2. Jai Prakash Gupta, Son of late Ram Chandra Pd. Bedil

3. Kaushal Kumar Gupta

4. Kamlesh Kumar Gupta Both minor sons of Jai Prakash Gupta under the Guardianship of their natural father and next friend Jai Prakash Gupta.

All residents of Mohalla Kamasi Bazar Tola Commissary P. O and P.S. District-Sheikhpura.

Respondents/Defendant (Second Party)

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**Appearance :**

For the Appellant/s : None.

For the Respondent No. : Mr. Kameshwar Prasad Gupta  
Mr. Virendra Kumar, Advocate

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**CORAM: HONOURABLE MR. JUSTICE P. B. BAJANTHRI**

**and**

**HONOURABLE MR. JUSTICE JITENDRA KUMAR**

**CAV JUDGMENT**

**(Per: HONOURABLE MR. JUSTICE JITENDRA KUMAR)**

**Date : 25-08-2023**

The present appeal has been filed impugning the judgment dated 29.01.2018 passed by Principal Judge, Family



Court, Sheikhpura, in Title Suit (Adoption) No. 21 of 2009, whereby learned Family Court has dismissed the petition of the Appellant/Plaintiff seeking declaration that the Appellant/Plaintiff is adopted son of Bhola Sao and Parwati Devi (both deceased) and the Appellant/Plaintiff is legal heir and representative of Bhola Sao and Parwati Devi.

**2.1** The case of the Appellant/Plaintiff as per the pleading is that one Bhola Sao alias Bhola Halwai had some landed property including building in the town Sheikhpura. He was married to one Parwati Devi (now deceased). They had no child. So they thought it fit to adopt a son, and accordingly, placed proposal to his brother-in-law / Ramchandra Prasad Bedil and his wife Sabo Devi (deceased), who agreed to give their son (Appellant/Plaintiff) Satya Narayan Prasad Gupta @ Sato Sao @ Satya Prakash Prasad, in the year 1967, who was ten years' old. Accordingly, on 15.05.1967, both the parties i.e Bhola Sao and his wife Parwati Devi and Ramchandra Prasad Bedil and his wife Sabo devi along with some respectable persons of the locality were invited at Maharani Asthan, Bypass, Sheikhpura, P.O. and District - Sheikhpura. Purohit, Jay Pandit Ji started puja-path and hoam before the sacred fire and Ramchandra Prasad Bedil and his wife Sabo Devi gave the



Plaintiff to Bhola Sao and his wife Parwati Devi, who accepted the Appellant/Plaintiff as his son in presence of the respectable persons, invitees and witnesses : (i). Khaderan Lal, son of late Bihari Lal, resident of Mohalla Bangaliper P.S.- Sheikhpura, district-Sheikhpura. (ii) Jagdish Prasad, son of late Bachu Lal, resident of Mohalla - Bangaliper, P.S. & district-Sheikhpura. (iii). Anirudh Singh, Son of late Dhanushdhari Singh, resident of village- Barmaper, P.O.- Sarari, P.S.- Sarari, District-Sheikhpura. (iv) . Daso Mahto, son of late Saukhi Mahton, Kamasi Bazar, P.O.- Sheikhpura, P.S. Sheikhpura, District-Sheikhpura and several other persons. Thereafter, Bhola Sao distributed sweets as prasad to the present persons. Since then, late Bhola Sao and late Parwati Devi started living with Appellant/Plaintiff and gave love and affection to him as their son and the Appellant/Plaintiff also became a devotee, follower, loyal and obedient to his adoptive parents.

**2.2** It has been further pleaded that Bhola Sao died in the year 2002 and his Shraddh was performed by the Appellant/Plaintiff and his son. It has further been pleaded that since Bhola Sao had got no child and the Appellant/Plaintiff had been adopted by the said Bhola Sao and Parwati Devi, Ramchandra Prasad Bedil had greedy eye over the properties of



the deceased Bhola Sao. Hence, he willfully gave the Appellant/Plaintiff in adoption so that he might help him in misappropriating the property of Bhola Sao, but as this Appellant/Plaintiff is very loyal to his adoptive father, there arose differences between Ramchandra Prasad Bedil and the Appellant/Plaintiff. After death of Bhola Sao, Ramchandra Prasad Bedil and his son Jai Prasad Gupta instigated Parwati Devi against the Appellant/Plaintiff causing some differences in between the adoptive mother and the Appellant/Plaintiff.

**2.3** It has further been pleaded that during his lifetime, Bhola Sao purchased a piece of land, measuring two decimals, half in the name of his wife Parwati Devi and half in the name of this Appellant/Plaintiff, situated at Mouza-Sheikhpura, Thana No. 178, Touzi No. 887, Khata No. 174, Plot No. 520 through registered sale-deeds dated 19.11.1982.

**2.4** Later, it came to the notice of the Appellant/Plaintiff that khata number and boundary of the said land was wrongly mentioned in the sale deed, so he approached the vendor who executed a correction deed on 30.04.1983 and produced the same before the Sub-Registrar, Sheikhpura on 03.05.1983 for registration. But as the deed of Parwati Devi has not been corrected, the Appellant/Plaintiff also acquired the land



of the Parwati Devi forcibly and thereafter constructed a double-storied building over the same and he has been residing there along with his wife and children till date.

**2.5** It has been further pleaded that the adoptive father and mother of the Appellant/Plaintiff, who were residing in the old ancestral house at Kamasi Bazar but the Appellant/Plaintiff looked after her at the said house.

**2.6** Taking advantage of the absence of the Appellant/Plaintiff and death of Bhola Sao, Ramchandra Prasad Bedil, the natural father of the Appellant/Plaintiff, along with his son Jai Prakash Gupta got entrance in the said house by showing sympathy and service to the deceased, Parwati Devi and after few days they obstructed entry of the Appellant/Plaintiff and his family members into the said house. However, the Appellant/Plaintiff kept mum to avoid nuisance and litigations.

**2.7** It has further been pleaded that in the year 2003, late Parwati Devi under the instigation of Jai Prakash Gupta and Ramchandra Prasad Bedil, filed two Eviction Suits against the tenants of the Appellant/Plaintiff. In the Eviction Suit, late Parwati Devi as well as Ramchandra Prasad Bedil accepted the averments of the Appellant/Plaintiff during the course of cross examination. It has also been pleaded that Bhola



Sao had given a written paper in favour of the Plaintiff to the tenants regarding adoption and for realization of rent. Such paper, as per the pleading has already been filed by the tenant in the Eviction Suit.

**2.8** It is further pleaded that the said Parwati Devi, on account of old age, illness and unsoundness of mind is leading her life in the house at Kamasi Bazar along with Jai Prakash Gupta and his wife and children.

**2.9** It has been further pleaded that Jai Prakash Gupta taking advantage of weakness of late Parwati Devi got a fraudulent Will executed by her in favour of his two minor sons, namely, Kausal Kumar Gupta and Kamlesh Kumar Gupta on 22.05.2003.

**2.10** It is further pleaded that under the instigation of the Respondent/Defendant, Parwati Devi filed two Eviction Suits No. 03 of 2002 and No. 4 of 2002 against the Tenant of the Plaintiff. Thereafter, the tenants filed Eviction Appeal No. 2 of 2007 and No. 3 of 2007 which had been pending before learned A.D.J., F.TC.-IVth, Sheikhpura. During the pendency of the Appeals, Most. Parwati Devi died on 19.03.2008 and after her death, the Appellant/Plaintiff filed petition for substitution in her place and the Defendant-Second Party also filed substitution



petition. However, the Court was pleased to direct the Appellant/Plaintiff to obtain a succession certificate from the appropriate Court. And hence, the necessity of the present Suit arose.

**2.11.** It has been further pleaded that cause of action for filing the present suit arose on 15.05.1967 for the first time when the Appellant/Plaintiff was adopted and again in 2002 when Bholu Sao died and again on 22.05.2003 when Will was executed by Parwati Devi and again on 19.03.2008 when Parwati died and lastly on 30.03.2009 when learned A.D.J.,F.T.C. IVth, Sheikhpura, directed him to obtain order from the competent Court in support of his adoption or a succession certificate.

**3.1** On notice, only Respondent-No. 2 Jai Prakash Gupta, who was Defendant No. 2 before the Family Court, appeared and filed his written statement, wherein he took following preliminary objections : (i) That the suit as framed is not maintainable. (ii) That the Plaintiff has got no cause of action or right to sue . (iii) That save and except what has been specifically admitted in the written statement all the allegations made in the plaint are denied. (iv) That the instant suit is barred by law of estoppel, waiver and acquiescence. (v) That the



instant suit is barred by the Specific Relief Act. (vi) That the instant suit is bad for misjoinder and non-joinder of the parties.

**3.2** He has also denied the averment that the Appellant/Plaintiff was adopted by Bhola Sao and Parwati Devi. It is also claimed that Bhola Sao @ Bhola Halwai had executed three registered deeds of gift on 08.04.2000 in favour of Niraj Kumar, son of Satya Narayan Prasad Gupta and Kaushal Kumar Gupta alias Gope son of Jai Prakash Gupta Gupta, Kamlesh Kumar Gupta @ Gholu, son of Jai Prakash Gupta. However, he has admitted that Eviction Suit No. 3 of 2003 and Eviction Suit No. 4 of 2003 are going on in the Court of Munsif, Sheikhpura.

**3.3** It has also been denied by the Respondent/Defendant that the Appellant/ Plaintiff had ever lived with Bhola Sao and his wife Parwati Devi and it is also denied that the Appellant/Plaintiff had performed Shraddh of Bhola Sao after his death. He has also admitted that in Probate Case No. 03 of 2008, the Appellant wanted to become a party but the same has not been allowed by the Court.

**4.** Considering the pleading of the parties, the Court Below has framed the following issues:

- i). Whether the suit is maintainable ?
- ii). Whether the Plaintiff has got valid cause of action or right to sue?



iii). Whether the suit is barred by the Specific Relief Act?

iv). Whether on 15.05.1967 at Maharani Asthan, Ram Chandra Prasad Bedil and his wife Sabo Devi gave the Plaintiff to Bhola Sao and his wife Parwati Devi who accepted him as their son in presence of the witnesses?

v). Whether the Plaintiff from the date of adoption left the house and property of natural parents and resided with Bhola Sao and Parwati Devi?

vi). Whether the Plaintiff is the legal adopted son of Bhola Sao and Parwati Devi?

vii). Whether the Plaintiff is entitled for any other relief or reliefs?

**5.** During the trial, in support of his petition, the Appellant/Plaintiff had examined the following five witnesses:

(i) P.W. 1 - Satya Narayan Prasad Gupta @ Sato Sao @ Satya Prakash Prasad (who is Plaintiff himself), (ii) P.W. - 2, Suresh Yadav, (iii) P.W. - 3, Gore Lal Yadav, (iv) P.W.-4, Ram Jatan Paswan, (v) P.W. - 5, Chandeshwar Prasad (vi) P.W. - 6, Niraj Prasad Gupta.

**6.** Respondent No.2, who was Defendant No. 2 in the Court below, had examined the following three witnesses :

(i) D. W. - 1 Jai Prakash Gupta (who is Defendant No. 2 himself), (ii) D. W. - 2 Shiv Nandan Singh, (iii) D. W. - 3 Firdosh Khan.



7. The Appellant / Plaintiff has also got the following documents exhibited : (I) Ext. 1-Invitation Card, ii) Ext. 2- Copy of Deposition of Parwati Devi in MEA No. 03 of 2007 / Eviction Suit No. 03 of 2003, iii) Ext. 3- Fardbeyan in MEA No. 03 of 2007, iv) Ext. 4- Copy of Judgment dated 06.05.2016 passed in Misc. Case No. 06 of 2013 and 07 of 2013, v) Ext.-5, Copy of Deed No. 1948 of 2000.

8. After consideration of evidence on record and submission made on behalf of the parties, Ld. Family Court dismissed the suit finding all the issues against the Appellant-Plaintiff.

9. Vide order dated 28.06.2023, learned counsel for the appellant was directed to apprise this Court relating to jurisdiction of the Family Court insofar as deciding the adoption matter. It was also cautioned that in case there is no representation on behalf of the appellant, the appeal would be decided with reference to whether the Family Court has jurisdiction to decide the adoption matter or not. However, on the next date of hearing, i.e., on 13.07.2023, none appeared on behalf of the appellant, though Ld. counsel for the respondent was present, who was heard. He supported the impugned judgment passed by Ld. Family Court. However, when the



Court put the question to him whether the suit for declaration regarding adoption is within the jurisdiction of the Family Court or Civil Court, he could not point out how the Family Court has jurisdiction to decide whether the Plaintiff was adoptive son of Bhola Sao and Parvati Devi and on account of being adopted son, he is a legal heirs to them. When the relevant laws were pointed out by the Court to him, he was unable to have contrary view based on law.

**10.** Hence, the first and foremost question which arises for consideration of this Court is whether the Family Court has jurisdiction to entertain any suit for declaration that the Plaintiff is adopted son of Bhola Sao and Parwati Devi and on account of being adopted son, he is a legal heir to them. It is surprising that such question was not raised by either of the parties. Even the Family Court failed in its duty to raise such question and decide it before admitting the suit. Such question is a pure question of law and it could have been raised by the Court on its own. In case of its finding that it has no jurisdiction, it could have been required to return the plaint to the Plaintiff under **Order VII Rule 10 Civil Procedure Code**, to present the plaint to the Court of competent jurisdiction.

**11.** Now let us examine whether the Family



Court has jurisdiction to adjudicate the matter as contained in the plaint presented to it. As per **Section 9 of the Civil Procedure Code**, the Court has jurisdiction to try all suits of a civil nature excepting suits of which their cognizance is either expressly or impliedly barred. However, exclusion of the jurisdiction of the Civil Courts is not to be readily inferred, but such exclusion must be either explicitly expressed or clearly implied as **Hon'ble Supreme Court in Dhulabhai Vs. State of M.P.** as reported in **(1968) 3 SCR 662** has held that the jurisdiction of the Civil Courts is all embracing except to the extent it is excluded by an express provision of law or by clear intendment arising from such law. The ouster of the jurisdiction of a Civil Court is not to be lightly inferred and can only be established if there is an express provision of law or is clearly implied.

**12.** Declaratory suit has been provided under **Section 34 of the Specific Relief Act, 1963** as per which, any person entitled to any legal character, or to any right as to any property, may institute a suit against any person denying, or interested to deny, his title to such character or right, and the court may in its discretion make therein a declaration that he is so entitled, and the plaintiff need not in such suit ask for any



further relief.

**13. Hon'ble Supreme Court** in para 41 of **Ramchandra Dagdu Sonavane & Ors. Vs. Vithu Hira Mahr & Ors.** as reported in **(2009) 10 SCC 273** has observed that as regards whether there is valid adoption or not, that question pertains to the status and legal character of an individual, which falls within the purview of Section 34 of the Specific Relief Act, 1963 and a suit for declaration before a civil court is maintainable. Hon'ble Supreme Court has further held that when a person claims on the basis of adoption, such an adoption cannot be decided by the Collector as the same involves legal status/character of a person which can only be decided by the civil court.

**14. Relying upon Ramchandra Dagdu Sonavane case (supra), Hon'ble Jammu and Kashmir High Court** in para 9 of the **Rajan Samotra & Ors. Vs. Financial Commissioner & Ors.** as reported in **2017 SCC Online J&K 534** has also held that dispute with regard to the validity of adoption is not a dispute in respect of which a revenue court has exclusive jurisdiction. Such a dispute is a matter well within the jurisdiction of a civil court. Therefore, it cannot be within the exclusive jurisdiction of the revenue court to



determine the legal character of an individual, whether he is an adopted son or not.

**15.** As such, it is crystal clear that declaratory suit in regard to adoption comes within the jurisdiction of Civil Courts. However, sometimes, jurisdiction of Civil Court is barred by special legislations with regard to civil suits of particular nature providing alternative forum for adjudication of the same for the purpose of speedy disposal or otherwise. Unless the jurisdiction of Civil Court is barred by such express legislations or by necessary implication, jurisdiction of Civil Courts regarding civil matters cannot be excluded. In such situation, question is whether jurisdiction of Civil Courts has been excluded in regard to adoption by Family Courts Act, 1984, which has been enacted to establish the Family Courts with jurisdiction in regard to matters enumerated therein. If it is found that jurisdiction in regard to adoption has not been conferred upon the Family Courts, the jurisdiction of Civil Courts in regard to adoption matters does not stand excluded.

**16.** Hence, it is imperative to examine the Family Courts Act, 1984 to see whether the Family Courts have been entrusted with jurisdiction to deal with the matters connected



with adoption. Section 7 of the Family Courts Act, 1984 deals with the jurisdiction of the Family Court, which reads as follows:-

*“7. **Jurisdiction.**—(1) Subject to the other provisions of this Act, a Family Court shall—*

*(a) have and exercise all the jurisdiction exercisable by any district court or any subordinate civil court under any law for the time being in force in respect of suits and proceedings of the nature referred to in the Explanation; and*

*(b) be deemed, for the purposes of exercising such jurisdiction under such law, to be a district court or, as the case may be, such subordinate civil court for the area to which the jurisdiction of the Family Court extends.*

***Explanation.**—The suits and proceedings referred to in this sub-section are suits and proceedings of the following nature, namely:—*

*(a) a suit or proceeding between the parties to a marriage for a decree of nullity of marriage (declaring the marriage to be null and void or, as the case may be, annulling the marriage) or restitution of conjugal rights or judicial separation or dissolution of marriage;*

***(b) a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person;***

*(c) a suit or proceeding between the parties to a marriage with respect to the property of the parties or of either of them;*

*(d) a suit or proceeding for an order or injunction in circumstance arising out of a marital relationship;*

***(e) a suit or proceeding for a declaration as to the***



***legitimacy of any person;***

*(f) a suit or proceeding for maintenance;*

*(g) a suit or proceeding in relation to the guardianship of the person or the custody of, or access to, any minor.*

***(2) Subject to the other provisions of this Act, a Family Court shall also have and exercise—***

*(a) the jurisdiction exercisable by a Magistrate of the first class under Chapter IX (relating to order for maintenance of wife, children and parents) of the Code of Criminal Procedure, 1973 (2 of 1974); and*

***(b) such other jurisdiction as may be conferred on it by any other enactment. ”***

17. Section 8 of the Family Courts Act, 1984 deals with exclusion of jurisdiction and pending proceedings, which reads as follows:-

***“8. Exclusion of jurisdiction and pending proceedings.***

***—Where a Family Court has been established for any area,—***

***(a) no district court or any subordinate civil court referred to in sub-section (1) of section 7 shall, in relation to such area, have or exercise any jurisdiction in respect of any suit or proceeding of the nature referred to in the Explanation to that sub-section;***

*(b) no magistrate shall, in relation to such area, have or exercise any jurisdiction or powers under Chapter IX of the Code of Criminal Procedure, 1973 (2 of 1974);*

*(c) every suit or proceeding of the nature referred to in the Explanation to sub-section (1) of section 7 and every proceeding under Chapter IX of the Code of*



*Criminal Procedure, 1973 (2 of 1974),—*

*(i) which is pending immediately before the establishment of such Family Court before any district court or subordinate court referred to in that sub-section or, as the case may be, before any magistrate under the said Code; and*

*(ii) which would have been required to be instituted or taken before such Family Court if, before the date on which such suit or proceeding was instituted or taken, this Act had come into force and such Family Court had been established, shall stand transferred to such Family Court on the date on which it is established.”*

#### **18. Section 20 of the Family Courts Act, 1984**

provides for overriding effect which reads as follows:-

*“20. Act to have overriding effect.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in any instrument having effect by virtue of any law other than this Act.”*

**19.** It is clear from **Section 20 of the Family Courts Act, 1984** that the Act has overriding effect over all other previous Acts. As such, it will prevail over all other previous Acts which may have inconsistent provisions. As per **Section 7 of the Act of 1984**, the jurisdiction of the Family Court is limited to the specific categories of the cases as referred to in the **Explanation to Section 7(1). Section 7(2)(b)**



**of the Act of 1984** further makes it clear that any other jurisdiction can be conferred on the Family Court only by further enactment. In other words, other jurisdiction upon Family Court cannot be conferred except by enactment or explicit implication or clear inference. **Section 8(a) of the Act of 1984** further makes it clear that the jurisdiction of Civil Courts or any other court in regard to the subject matter of the jurisdiction of the Family Court is barred.

**20.** Now coming to the jurisdiction of the Family Courts as provided by the Act of 1984, it is crystal clear that there is no jurisdiction of the Family Court in regard to adoption. None of the clauses from (a) to (g) of the **Explanation to Section 7(1) of the Act of 1984** is related with adoption. As such, no suit declaratory or otherwise in regard to adoption comes within the jurisdiction of Family Courts. The declaratory suits as provided in Clause (c) and (e) are also not connected with adoption. As per Clause (b), a suit or proceeding for a declaration as to the validity of a marriage or as to the matrimonial status of any person has been provided and as per Clause (e), a suit or proceeding for a declaration as to legitimacy of any person has been provided. Neither suit is connected with adoption. The legitimacy of any person as



provided in Clause (e), must be arising out of marriage and not of adoption or any other thing because the object of the Family Courts Act is to provide jurisdiction to Family Courts in regard to marriage and family affairs and for matters connected therewith and establish Family Court as one spot forum for family litigations. Adjudication of other civil matters comes within the domain of Civil Courts. As such, Family Courts have no jurisdiction to adjudicate any adoption matters.

21. Hence, the Family Court has passed the impugned judgment without jurisdiction. The impugned judgment is therefore nullity and non-est as per pronouncements of the Apex Court. **Hon'ble Supreme Court** in para 18 of **Chiranjilal Shrilal Goenka Vs. Jasjit Singh** as reported in **(1993) 2 SCC 507** has clearly observed that it is settled law that a decree passed by a court without jurisdiction on the subject-matter or on the grounds on which the decree made which goes to the root of its jurisdiction or lacks inherent jurisdiction is a *coram non judice*. A decree passed by such a court is a nullity and is non est. Its invalidity can be set up whenever it is sought to be enforced or is acted upon as a foundation for a right, even at the stage of execution or in collateral proceedings. The defect of jurisdiction strikes at the



very authority of the court to pass decree which cannot be cured by consent or waiver of the party.

**22. Hon'ble Supreme Court in para 30 of Harshad Chiman Lal Modi Vs. DLF Universal Ltd.** as reported in **(2005) 7 SCC 791** has observed that the jurisdiction of a court may be classified into several categories. The important categories are (i) territorial or local jurisdiction; (ii) pecuniary jurisdiction; and (iii) jurisdiction over the subject-matter. So far as territorial and pecuniary jurisdictions are concerned, objection to such jurisdiction has to be taken at the earliest possible opportunity and in any case at or before settlement of issues. The law is well settled on the point that if such objection is not taken at the earliest, it cannot be allowed to be taken at a subsequent stage. Jurisdiction as to subject-matter, however, is totally distinct and stands on a different footing. Where a court has no jurisdiction over the subject-matter of the suit by reason of any limitation imposed by statute, charter or commission, it cannot take up the cause or matter. An order passed by a court having no jurisdiction is a nullity.

**23. Hon'ble Supreme Court in para 24 of Hasham Abbas Sayyad Vs. Usman Abbas Sayyad & Ors.,**



as reported in **(2007) 2 SCC 355** has observed that a distinction must be made between a decree passed by a court which has no territorial or pecuniary jurisdiction in the light of Section 21 of the Civil Procedure Code, and a decree passed by a court having no jurisdiction in regard to the subject-matter of the suit. Whereas in the former case, the appellate court may not interfere with the decree unless prejudice is shown, ordinarily the second category of the cases would be interfered with.

**24. Hon'ble Bombay High Court** in para 20 of **I.C.I.C.I. Vs. Sharad Khanna** as reported in **1993 Mh.LJ. 448** has observed that a situation, where a statute mandates the Court of plenary jurisdiction to do or not to do something, and the Court breaches the mandate, cannot be equated with a situation where the Court inherently lacks jurisdiction to adjudicate upon the subject matter of the dispute or with the case of a special forum of limited jurisdiction acting out of bounds of its jurisdictional limits. The former results in an erroneous decree; the latter in a decree which is a nullity.

**25.** Hence, this Court has no option but to set aside the impugned judgment and direct the return of the plaint under **Order VII Rule 10 of the Civil Procedure Code** to the



Plaintiff to present it before the Civil Court of competent jurisdiction. As per **Rule 10(1) of Order VII of the Civil Procedure Code**, the plaint can be returned at any stage of the suit and the appellate/revisional courts are also competent to return the plaint after setting aside the impugned judgment/decree.

**26. Rule 10(1) of Order VII of the Civil Procedure Code** reads as follows:-

*“10. Return of plaint.- (1) subject to the provisions of rule 10A, the plaint shall at any stage of the suit be returned to be presented to the Court in which the suit should have been instituted.*

***Explanation.-** For the removal of doubts, it is hereby declared that a Court of appeal or revision may direct, after setting aside the decree passed in a suit, the return of the plaint under this sub-rule.”*

**27.** As per **Rule 10(B) of Order VII of the Civil Procedure Code**, presentation of such return of the plaint to the Court of competent jurisdiction is subject to the provisions of the **Limitation Act, 1963**.

**28.** Hence, the impugned judgment is set aside. The office is directed to return the plaint to the Appellant-Plaintiff to present it before Civil Court of competent jurisdiction, subject to the law of limitation.

**29.** The instant Appeal is disposed of,



accordingly. Both the parties will bear their own costs. Let the decree be drawn accordingly.

30. Registrar General is directed to circulate a copy of the judgment amongst all the judicial officers of Bihar including presiding officers of the Family Courts and send a copy to Director of Bihar Judicial Academy for needful.

(Jitendra Kumar, J)

( P. B. Bajanthri, J)

Skm/chandan/-

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