(2023) 01 PAT CK 0011

Patna High Court

Case No: Second Appeal No. 233 Of 2017

Parmanand Jha		APPELLANT
	Vs	
Sridhar Narayan Chaudhary		RESPONDENT

Date of Decision: Jan. 13, 2023

Acts Referred:

- Code of Civil Procedure, 1908 - Section 2(11), 100

Hon'ble Judges: Sunil Dutta Mishra, J

Bench: Single Bench

Advocate: J.K. Verma, Anjani Kumar, Jitendra Kumar

Final Decision: Dismissed

Judgement

In re: I.A. No. 3 of 2022 :

1. This interlocutory application has been filed for deleting the names of deceased-appellant Nos. 3 and 4 and respondent No. 1, who died on 19.10.2020, 14.02.2022 and 12.04.2019 respectively and for substituting the name of their heirs and legal representatives in their place in the cause title.

2. It is submitted that heirs of deceased appellant No. 3 may be transposed to the category of respondents at the risk of remaining appellants as the Vakalatnama of the heirs is not available to be filed as they are not presently available at their residence and have gone outside to different City. It is also stated that class II heirs (appellant Nos. 1, 2 and 5) of deceased appellant No. 3 are already on record representing his interest and estate and as such there is no question of abatement or limitation arises when the case of all these parties are common and all are heirs of respondent No. 3 and there is no clash / conflict of interest which is common and not adverse to each other.

3. It is next submitted that the heirs of deceased appellant No. 4 are already on record as appellant No. 1, 2 and 5 as such name of appellant No. 4 is required to be deleted.

4. Further it is submitted that two heirs (sons) of respondent No. 1 are already on record as respondent No. 2 and 3 and rest heir, (detail given in para 6 of the application) who is daughter of respondent No. 1 be substituted in place of respondent No. 1.

5. Learned counsel for the appellants has submitted that there is no question of abatement or limitation arises in the fact and circumstances and there is no delay or laches in filing this application. He has referred and relied on the judgments of Full Bench of this Court in Jagarnath Singh Vs. Smt. Singhasan Kuer (1984 PLJR 217),

Yogendra Bhagat Vs. Prit Lal Yadav (2009 (3) PLJR 697), Sudama Devi Vs. Yogendra Chaudhary & Ors. (1987 PLJR 793) and the judgment of Hon'ble Supreme Court in Mahabir Prasad Vs. Jage Ram & Ors. (AIR 1971 SC 742).

6. Learned counsel for the respondents has opposed the application and submitted that appellants have made different prayers under different provisions of law in single application which is against the practice and provisions of law. It is further submitted that there is delay and laches in filing the substitution application without any plausible and satisfactory reason and the appeal has abated in whole.

7. The full Bench of Patna High Court in Jagarnath Singh Vs. Smt. Singhasan Kuer (1984 PLJR 217) after discussing several Supreme Court decisions, held that when one or more heirs of the deceased defendant or respondent are on record, then the estate is fully represented in the suit or the appeal, as the case may be, and the suit or the appeal will not abate for not bringing on record the other left out side.

8. The full Bench of Patna High Court in judgment of Yogendra Bhagat Vs. Pritlal Yadava 2009 (3) PLJR 697 held that the definition of word "Legal Representative" as provided under Section 2(11) of the Code is inclusive in character and its scope is wide. It is not confined to a preferred class of heirs only but also includes even intermeddlers. Counsel has referred to a full Bench decision of Patna High Court in Sudama Devi and others Vs. Yogendra Chaudhary and others reported in 1987 PLJR 793, wherein it has been held that even an intermeddler to the estate of the deceased can represent heirs as his legal representatives as per the wide spectrum definition of legal representative, provided in Section 2 (11) of the Code.

9. In Mahabir Prasad Vs. Jage Ram and others reported in AIR 1971 SC 742, it has been held that "where in a proceeding a party dies and one of the legal representatives is already on the record in another capacity, it is only necessary that he should be described by an appropriate application made in that behalf that he is also on record as an heir and legal representative. Even if there are other heirs and legal representatives and no application for impleading them is made within the period of limitation prescribed by the Limitation Act, the proceeding will not abate.

10. Having heard the learned counsel for the parties and considering the averments made in the interlocutory application, let the names of deceased- appellant Nos. 3 and 4 and respondent No. 1 be deleted from the cause title of the memo of appeal and the heirs and legal representatives of respondent No. 3 and respondent No. 1 as stated in paragraph 6 of the interlocutory application be substituted in their place.

11. Let the name of heirs and legal representatives of deceased appellant No. 3 be transposed to the category of respondent at the risk of remaining appellants. The abatement, if any, is set aside in fact and circumstances of the case and in the interest of justice.

12. I.A. No. 3 of 2022 is, accordingly, disposed of.

In Re: Second Appeal No. 233 of 2017:

13. Heard learned counsel for the appellants on admission.

14. The instant Second Appeal under Section 100 of Civil Procedure Code has been preferred by the appellants against the judgment and decree dated 21.02.2017 passed by learned Additional District Judge – II, Madhubani in Title Appeal No. 39 of 2012 affirming the judgment dated 26.09.2012 passed by learned 1st Munsif, Madhubani in T.S. No. 53 of 2000, wherein the suit of the plaintiff was dismissed and the counter claim of the defendants was allowed.

15. The appellants are the heirs and legal representatives of plaintiff in the suit. The original plaintiff Upendra Jha had filed the suit for declaration of title and confirmation of possession and issuance of permanent injunction against the defendants alongwith other ancillary relief.

16. The claim of the plaintiff is that the grand father of the plaintiff on behalf of plaintiff brought the suit land in his possession in the year 1938 within the knowledge of ex-landlord and allowed the ex-landlord to settle the same vide Hukumnama No. 538 dated 15.03.1938 (Exhibit 10) and jamabandi No. 1427 was created in his name. A thatched hut was put over the same by him and later on that thatched hut was removed and the petitioner constructed a pucca house under the supervision of his mother and Nana (maternal grand father). After abolition of Zamindari, the ex-landlord submitted return in his favour and State of Bihar, after verifying his title and possession also created jamabandi in his name. The plaintiff is paying the rent regularly earlier to ex-landlord and at present to the State of Bihar. During Durga Puja in the year 2000 the defendants tried to dispossess the plaintiff from the land of Schedule-I and threatened him. Hence the suit was filed by the plaintiff.

17. The case of the defendant is that the suit land is a part of big chunk of land of plot No. 566, 567, 570 and 577 of mouza Chakdan of Madhubani Town acquired by the Government of Bihar and the same was sold in auction on 19.05.1941 by Collector, Darbhanga to Chaudhary Parmeshwar Narain Singh (grand father of defendant No.1) which was confirmed and possession was delivered to the purchasers. The said purchased land bearing plot No. 570, 566, 567 and 577 were amicable partitioned between the purchasers. After death of Chaudhary Parmeshwar Narain Singh his sole son Rajendra Narain Chaudhary came in possession of the said plots who constructed huge structure in year 1970 and let out the same on rent to different persons including the original plaintiff and others. The suit premises occupied by the plaintiff is the part of the suit plot and the plaintiff is the tenants of defendant as a monthly rent of Rs. 480/- and the plaintiff is not paying rent from August, 2000. Rent Fixation Case No. 8/91-92(Exhibit F) was allowed in his favour by DCLR, Madhubani vide order dated 03.08.1993. The defendants made prayer for passing the decree for realization of the arrears of rent detailed in Schedule– B of the written statement besides the decree for the eviction of the plaintiff from the suit premises.

18. The plaintiff has resisted the counter claim. It is stated that the suit land was never sold in auction and there is no question of any partition of it. The land of plaintiff is outside the land sold in auction and the defendants were never in possession of any portion of the suit land. The defendants have never constructed any house over the said plots or rented it to any tenant.

19. The trial Court on analysis of evidence given finding that the plaintiff has failed to prove his title over the suit premises as described in schedule-I of the plaint and the Hukumnama (Ext. 10) relied upon by the plaintiff as document of his title was found forged, fabricated and ante-dated document. Further, it was held that there is a relationship of landlord and tenant in between both the parties and the defendant has not paid rent for two years of suit premises and accordingly, the suit was dismissed with cost while counter claim of the defendants was allowed in his favour.

20. In appeal, the appellate court observed that the very basis of the title is Hukumnama but its original has not been filed in the trial court and the trial court has rightly concluded that Ext. 10 is not worth reliable. The basis of the title of the plaintiff fails and so his suit also fails on this score. It was also observed that the plaintiff has claimed that settlement was made through Rasidi Bandovasti as well as through Hukumnama. In the case of trespasser as claimed by the plaintiff, there was only one

mode of settlement that is Rasidi Bandovasti and landlord used to recognized the trespasser as raiyat by accepting fare rent and granting receipt for the same and on the other hand, Hukumnama is an authority to the raiyat to go and take possession over settled land. In the case of trespass, since the trespasser is already in possession, hence no question of issuance of Hukumnama arises. Hence, the story of trespass and issuance of Hukumnama cannot co-exist.

21. The appellate court also held that once the document of title becomes unbelievable, the challan (Ext. 8) showing payment of so called consideration loses its significance. Moreover, in absence of the documents of so called title and the return submitted by outgoing intermediaries at the time of vesting of Zamindari, the rent receipt also becomes irrelevant.

22. The appellate court further held that there is sufficient and unimpeachable evidence on record to prove that the defendant is the owner of the suit property and they are landlord of the plaintiff who was in possession of the suit house as his tenant. The appellate court dismissed the appeal and confirmed the findings of the trial court.

23. Learned counsel for the appellants has submitted that the trial court as well as the appellate court are not justified in holding that the plaintiff failed to prove his title i.e. creating the raiyati interest specially when the case of plaintiff is based on settlement followed by grant by rent receipt by ex-landlord and the same was followed by opening Jamabandi in the State's records after vesting and grant of continuous rent receipt by the State also and the admitted possession of the plaintiff.

24. It is further submitted that the judgments impugned are not sustainable on account of wrongful discarding of Ext. 10, the memorandum of settlement dated 15.03.1938. Further, it is submitted that the title of defendant has been set up on the basis of auction could not have been upheld when the suit plot having described boundry and its corresponding municipal plot having been not included in the auction sale which is source of alleged title of defendant. Further, it is submitted that the decree of counter claim is not justified in absence of any admissible evidence proving relationship of landlord and tenant between the plaintiff and the defendant and findings of appellate court and trial court are perverse.

25. In my considered opinion the appellate Court has rightly stated that it is well settled principle of law that plaintiff is bound to prove his title to the suit property for claiming any relief to the same. He is not entitled to take advantage of weakness, if any, of his adversary.

26. Both the Courts below, trial court and appellate court, on scrutiny of pleadings and evidence on record held that Hukumnama forming basis of title of plaintiff is forged, fabricated and ante-dated document and the basis of title of the plaintiff fails and it is proved that defendant is the owner of the suit property and they are landlord of the plaintiff who was in possession of suit house as his tenant. The appellate court concluded that there is no force in the argument of learned counsel for the appellant that the suit land as given in the plaint is not part and parcel of the land sold in auction sale which was allotted to the share of defendant no.1.

27. The law is well settled that this Court cannot entertain a second appeal under Section 100 of the Civil Procedure Code unless a substantial question of law is involved. In this case, there is concurrent finding of facts and there is no perversity in the findings of the courts below.

28. As discussed above, there is no substantial question of law arises in this Second Appeal. Accordingly, this Second Appeal is dismissed at the stage of admission itself.

The pending I.As. are disposed of.