

(1966) 11 PAT CK 0030

Patna High Court

Case No: Civil Revision No. 226 of 1965

Smt. Ramrati Devi

APPELLANT

Vs

Ahmad Behari and Others

RESPONDENT

Date of Decision: Nov. 11, 1966

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 22 Rule 3, Order 22 Rule 9, Order 9 Rule 3, 115, 151

Citation: AIR 1968 Patna 112

Hon'ble Judges: N.L. Untwalia, J

Bench: Single Bench

Advocate: D. Goswami, for the Appellant; B.B. Sen and Gobind Prasad, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

N.L. Untwalia, J.

The facts of this case are rather peculiar, which demand a suo motu exercise of the inherent powers of the Court for restoration of Title Suit No. 14 of 1958, instituted in the Munsifs First Court at Patna. Mosammat Balkeshia was the sole plaintiff in that case and the sole defendant was Ahmad Bihari, Opposite Party No. 1 in this Civil Revision Application. Balkeshia died on 25-1-1962, during the pendency of the suit in the Court below. Nobody brought this fact of the death of Balkeshia to the notice of the Court. The suit was dismissed on 28-3-1962 as neither party appeared on that date. Apparently, it was dismissed under Order 9, Rule 3 of the CPC (hereinafter called the Code). A few months after, on 24-7-1962, Miscellaneous Case No. 75 of 1962 was filed by Opposite Party Nos. 2 to 4 for restoration of the suit and their substitution as plaintiffs in it. More than a year after that, Shrimati Ramrati Devi, the petitioner in this Civil Revision Application, filed Miscellaneous Case No. 103 of 1963

for almost the same reliefs as were prayed for in the Miscellaneous Case No. 75 of 1962, and asking the Court in express terms to set aside the abatement, if any, on the ground that she got knowledge of the necessary facts on 3-9-1963.

2. The learned Munsif, on the facts and in the circumstances of this case, ought to have restored this suit first in exercise of the inherent power and then ought to have proceeded to the disposal of the two Miscellaneous Cases for setting aside abatement and substitution. But, since the prayers in the two applications were of a composite nature made by parties putting forward their respective claims to be the heirs and legal representatives of the sole deceased plaintiff, he proceeded to take up all the matters together after taking evidence. Of course, the position was not free from difficulty and doubt and I am not prepared to say that the learned Munsif was obviously in the wrong in adopting the procedure he had adopted. But, it is clear to me that, on the facts and in the circumstances of the case, when the fact that the sole plaintiff died on 25-1-1962 was undisputed and was brought to the notice of the Court, may be through any source, it was necessary for the Court to see that the dismissal of the suit on 28-3-1962 on the ground of non-appearance of the party was without jurisdiction.

The suit on that date could not be dismissed on that ground. The plaintiff was not in this world to appear, nor could her lawyer, either in absence of any information about her death to him or even, otherwise, appear because in the eye of law his power came to an end on the happening of the event of the death of the sole plaintiff. Of course, on the peculiar facts of this case, after restoring the suit to its original file by exercising the inherent power suo motu, the Court should have proceeded to the disposal of the two Miscellaneous Cases treating those cases as applications by the respective parties for setting aside the abatement and substitution in place of the sole deceased plaintiff. But without the restoration of the suit, the proceeding under Order 22, Rule 3, read with Rule 9, of the Code was incompetent and any evidence recorded in that proceeding without the restoration of the suit has got to be ignored.

3. In the result, I allow the application in revision and, if I may say so, on the peculiar facts of this case, again acting suo motu in exercise of the powers of this Court, because the petitioner in this Civil Revision Application has got no locus standi to move this Court against the order made by the Court below, direct the learned Munsif to recall the order dated 28-3- 1962 dismissing Title Suit No. 14 of 1958 for default and to restore that suit to its original file. He is further directed to treat the two Miscellaneous cases, namely Miscellaneous Case No. 75 of 1962 and Miscellaneous Case No. 103 of 1963 as applications filed in Title Suit No. 14 of 1958 under the requisite provisions of Order 22 of the Code for setting aside abatement and substitution. The learned Munsif is to proceed to the disposal of those two cases after recall of the order dated 28-3-1962, on taking fresh evidence as may be adduced before him in the two Miscellaneous Cases by the parties concerned.

Obviously, there will be no order as to costs in this Revision.