(2014) 4 PLJR 115

Patna High Court

Case No: Civil Revision No. 53 of 2011

Sheoratri Choudhary		APPELLANT
	Vs	
Ram Parvesh Choudhary		RESPONDENT

Date of Decision: Feb. 7, 2014

Acts Referred:
Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 â€" Section 26A, 3, 4(c), 9#Civil Procedure Code, 1908 (CPC) â€" Order 14 Rule 2, Order 14 Rule 2(2), Order 7 Rule 11

Citation: (2014) 4 PLJR 115

Hon'ble Judges: Mungeshwar Sahoo, J

Bench: Single Bench

Advocate: Din Bandhu Singh, Advocate for the Appellant; Rang Nath Choubey, Advocate for the Respondent

Judgement

@JUDGMENTTAG-ORDER

Mungeshwar Sahoo, J.
Heard learned counsel Mr. Dinbandhu Singh for the petitioners and learned counsel Mr. Rang Nath Choubey,

appearing for the Opposite Parties. This revision application has been filed by the defendant against the order dated 17th of January, 2011 passed

by the learned Munsif-II, Vikramganj, Rohtas in Title Suit No. 35 of 1997 whereby the court below rejected the application, filed by the

petitioner, for deciding the two issues as preliminary issues, and for rejecting the plaint under Order 7, Rule 11 CPC.

2. Learned counsel, appearing for the petitioner submitted that the suit has been filed by the plaintiff-respondent for declaring the sale deed of the

year 1972 as executed by the plaintiff"s mother, is void, illegal and not binding upon the plaintiff. Since the suit has been filed in the year 1997,

apparently, the suit is barred by law of limitation because the plaintiff was born in the year 1963 and therefore, he attained the majority in the year

1980-81. The plaintiff has filed the suit within three years after attaining of majority. Secondly, learned counsel submitted that the notification has

already been issued under Section 3 of the Bihar Consolidation of Holdings and Prevention of Fragmentation Act, 1956 and still there has been no

de-notification under Section 26-A of the Consolidation Act and, therefore, the suit is barred. The learned court below wrongly held that the

question of limitation is not pure question of law and so far Consolidation Act is concerned, the court below has said that the question/relief,

claimed by the plaintiff, cannot be granted by the Consolidation Authority, and therefore, rejected the application and refused to decide the two

issues as preliminary rejecting the application filed under Order 7, Rule 11 CPC.

3. Order 14, Rule 2(2) CPC provides that where/whether issues both of law and of fact arises in the same suit, and the Court is of opinion that the

case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to--

(a) The jurisdiction of the Court, or

(b) A bar to the suit created by any law for the time being in force.

4. In the present case, the petitioner has quoted the two; issues to try as preliminary issues for the purpose of rejecting the plaint; the first is

whether the suit is barred by law of limitation and the second is whether the suit, is maintainable, in view of the notification under Section 3 of the

Bihar Consolidation Act.

5. So far the first issue is concerned, according to the learned counsel, plaintiff was born in the year 1963 and he attained the majority in the year

1980-81 whereas; according to the plaintiff-respondent, it is not the fact that he was born in the year 1963 or that he attained the majority in the

year 1980-81.

6. A rejoinder application was filed to the said application. Now, therefore, it becomes a disputed question of law and fact. Here the limitation is

not admitted and this question is dependent on the facts as to when the plaintiff attained the majority and when he came to know about the

existence of the exchange deeds or the sale deeds. Therefore, the court below has rightly held that it is a mixed question of law and fact and not a

pure question of law. So far issue No. 2 is concerned; the issue is whether the suit is maintainable in view of the notification under Section 3 of the

Consolidation Act. It is not the case that the plaintiff''s suit is barred under the said provision of the Consolidation Act. The relief, claimed in the suit

by the plaintiff, is to declare the exchange deeds and the sale deeds as void on the ground of fraud and illegality.

7. In my opinion, so far this relief is concerned; the Consolidation Authority have no jurisdiction to grant this relief. No provision has been quoted

or raised by the defendant to show that under which provision of Consolidation Act, the jurisdiction of the Civil Court is barred.

8. The Hon''ble Supreme Court in the case of Ramesh Gobindram (dead) through Lrs. Vs. Sugra Humayun Mirza Wakf, has held that the

jurisdiction of Civil Court to try suits of civil nature, is very expansive. Any statute, which excludes such jurisdiction is, therefore, an exception to

the general rule that all disputes shall be triable by Civil Courts. Any such exception cannot be readily inferred by the Courts. The Court would,

lean in favour of a construction that would uphold the retention of jurisdiction of the Civil Courts and shifts the onus of proof to the party that

asserts that Civil Court''s jurisdiction is ousted. No provision has been shown before this court that the Consolidation Authority can, on the

grounds of fraud or illegality, set aside the registered sale deeds or the exchange deeds.

9. Admittedly, in this case, plaintiff has not prayed for declaration of title. Recently the Hon''ble Supreme Court in 2012 Volume-2 BU page 1 has

held that Revenue Courts are neither equipped nor competent to effectively adjudicate on allegations of fraud that has overtone of criminality. The

court really skilled and experienced to try such issues, are courts, constituted under the Code of Civil Procedure. Under Section 9, Civil Court has

inherent jurisdiction to try all types of civil dispute, unless its jurisdiction is barred, expressly or by necessary implication.

10. According to Section 4(c) of the Consolidation Act, the proceeding must be in respect of declaration of rights or interest, in any land, lying in

the area or in declaration or adjudication of any other right, in regard to which, the proceeding can or ought to be taken under this Act, then, only

this provision will be applicable. In other words, the suit will abate in view of this provision. As stated above, the plaintiff is not claiming for

declaration of title and is not. praying for setting aside the registered sale deed on the ground that without permission, the sale deed has been

obtained. The only ground, taken by the plaintiff, in the plaint is for declaring the sale deed as illegal and fraudulently obtained, and, so far the

question of fraud is concerned, the Consolidation Authority have no jurisdiction to decide. Order 14, Rule 2 mandates that the court shall

pronounce the judgment on all issues, subject to sub-rule 2, which has been quoted above.

11. So far the question raised by the learned counsel for the petitioner regarding cause of action is concerned; it appears that no such plea was

raised before the court below. Therefore, at this stage, while hearing Civil Revision, the same cannot be decided in Civil Revisional Jurisdiction.

Therefore, I find no merit in this Civil Revision. The application is dismissed.