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NATHUNI RAM
v
RAGHUPAT RAM AND ORS.

FEBRUARY 23, 2007

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[DR. ARIJIT PASAYAT AND R.V. RAVEENDRAN, JJ.]

Code of Civil Procedure, 1908; s.100:

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Suit for declaration of title and confirmation of possession over suit land—Dismissed by trial Court—First appellate Court accepting claim of the appellant in respect of part of the suit land confirming possession of defendants on remaining part—Appeal preferred by appellant and not by defendant—Dismissed by High Court reversing the relief granted by first appellate Court—Correctness of—Held: Relief granted by first appellate Court was reversed by High Court even without any challenge from defendants—Hence, appeal allowed to the extent confirming the relief granted to the appellant earlier by the first appellate Court—Practice and Procedure—Appeal.

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Appellant filed a suit for declaration of title and for confirmation of possession over the suit land. The suit was dismissed by the trial Court. On appeal, the first appellate Court allowed the appellant's claim in respect of 22 decimal of land and allowed the defendants to have possession over 14 decimals of land. Aggrieved, the appellant filed an appeal under Section 100 of the Code of Civil Procedure, questioning correctness of the view expressed by the first appellate Court. Though the defendants had not questioned correctness of the view expressed by the first appellate court, yet the High Court set aside the order of the first appellate Court and confirmed the judgment of the trial Court. The appeal filed by the appellant was allowed by the first appellate Court. Appellant still not satisfied with the judgment of first appellate Court filed an appeal, which was dismissed by High Court setting aside order of the first appellate Court. In fact, the relief that was granted to the appellant by the first appellate Court was reversed. Hence the present appeal.

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Appellant contended that the course adopted by the High Court is clearly contrary to law; and that in the absence of an appeal by the defendants it was not open to the High Court to take a contrary view.

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Allowing the appeal, the Court

HELD: There are confusions galore in the High Court's order; firstly the appeal was dismissed but the first appellate Court's order which was in favour of the appellant was set aside without any challenge from the defendants; secondly, in the appellant's appeal the relief which was not questioned by anybody could not have been nullified; thirdly, the High Court's ultimate conclusion was that the appeal was allowed while it was otherwise. Hence, the appeal is allowed to the extent that the relief granted to the appellant by the first appellate Court stands confirmed. [Paras 10 and 11]

[38-G-H; 39-A-B]

CIVIL APPELLATE JURISDICTION : Civil Appeal No. 910 of 2007.

From the Judgment and Final Order dated 14.9.2004 of the High Court of Jharkhand at Ranchi in Appellate Decree No. 37 of 2002.

Sunil Kumar, Anita Kanungo and Mridula Ray Bhardwaj for the Appellant.

Syed Ali Ahmad, Syed Tanweer Ahmad, S.S. Bandyopadhyay, Mohd. Shah Nawaz Hasan, Shabana Saifi and Mohan Pandey for the Respondents.

The Judgment of the Court was delivered by

DR. ARIJIT PASAYAT, J. 1. Leave granted.

2. Challenge in this appeal is to the judgment rendered by a learned Single Judge of the Jharkhand High Court. The plaintiff, who had filed the second appeal before the High Court under Section 100 of the Code of Civil Procedure, 1908 (in short the 'Code'), has filed this appeal.

3. Detailed reference to the factual aspect is really unnecessary.

4. Plaintiff had filed the suit for declaration of title as well as confirmation of possession over the suit land. The description of the property was given as plot No. 51 measuring 36 decimal of land appertaining to Khata No. 80 of Village Japla, Dhorhara, District Palamu. The suit was dismissed by the learned Munsif Daltonganj.

5. An appeal was carried before the first appellate court. In the appeal, learned VIII Additional District Judge, Palamau held that the appellant's claim was to be accepted in respect of 22 decimal of land and that the defendants

A had got possession over 14 decimals of land. Appellant filed appeal under Section 100 of the Code questioning correctness of the view expressed by the first appellate court.

B 6. The following question was formulated in the second appeal treating the same to be a substantial question of law.

“Whether the Court of appeal below erred in law in rejecting plaintiff’s claim over 14 decimals out of total 36 decimals land of plot No. 51, when Raiyati Settlement obtaining in 1342 Fasli was not negatived.”

C 7. It is to be noted that the defendants had not questioned correctness of the judgment and decree of the first appellate Court. Hereafter starts the confusion. Though the defendants had not questioned correctness of the view expressed by the first appellate court and even had not tried to support the conclusions during hearing of the second appeal filed by the appellate, yet the High Court set aside the order of the first appellant court and consequentially confirmed the judgment of the trial court. As if that was not enough, in the ultimate conclusion the High Court noted that the appeal filed by the appellant was allowed. In fact the relief that was granted to the appellant by the first appellate court was reversed.

E 8. In support of the appeal learned counsel for the appellant submitted that the course adopted by the High Court is clearly contrary to law. Admittedly there was no appeal questioning the first appellate court’s view regarding appellant’s entitlement to 22 decimals of land. In the absence of an appeal by the defendants it was not open to the High Court to take a contrary view.

F 9. Learned counsel for the respondents fairly conceded that there was no appeal filed by them so far as the relief granted by the first appellant court i.e. 22 decimals of land. It was also fairly conceded that there was no stand taken by them before the High Court to the effect that the relief granted to the appellant was not legal.

G 10. As noted above there are confusions galore in the High Court’s order; firstly the appeal was dismissed but the first appellate court’s order which was in favour of the appellant was set aside without any challenge from the defendants ; secondly in the appellant’s appeal the relief which was not questioned by anybody could not have been nullified; thirdly, the High Court’s ultimate conclusion was that the appeal was allowed while it was

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otherwise.

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11. Above being the position we allow the appeal to the extent that the relief granted to the appellant by the first appellate court stands confirmed. The High Court's order, directing that the appellate court's judgment is to be reversed and that of the trial court is to be restored, cannot stand to that extent.

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12. The appeal is allowed without any orders as to costs.

S.K.S.

Appeal allowed.