

MANTI DEVI & ANR.

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v.

KISHUN SAH @ KISHUN DEO SAO & ORS.

(Civil Appeal No. 2014 of 2009)

MARCH 23, 2017

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[KURIAN JOSEPH AND R. BANUMATHI, JJ.]

Code of Civil Procedure, 1908 – ss. 99 and 141 – Applicability of s. 99 to revision, in view of s.141 – Eviction suit by appellant-plaintiff decreed by trial court – Reversed by High Court in revision on account of non-joinder/misjoinder of parties – Held: U/s. 99, CPC no decree can be reversed or substantially varied in appeal on account of any misjoinder or non-joinder of parties not affecting merits of the case – By virtue of s.141, procedure under the CPC in regard to suit shall be followed as far as it can be made applicable to proceedings in any Court of Civil jurisdiction – Therefore, what is provided u/s.99 in respect of appeal would apply to revision as well – Judgment of High Court passed in revision, setting aside the decree of trial court on ground of misjoinder or non-joinder of parties, not affecting the merits of the case, is set aside – Respondents/tenants granted time to surrender vacant and peaceful possession, subject to filing of usual undertaking within six weeks.

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Allowing the appeal, the Court

HELD: Section 99, CPC is crystal clear. No decree can be reversed or substantially varied in appeal on account of misjoinder or non-joinder of parties. Under Section 141 of the CPC, procedure under the Code in regard to suit shall be followed as far as it can be made applicable to proceedings in any Court of Civil jurisdiction. Therefore, what is provided under Section 99 of the CPC in respect of appeal would apply to revision as well. [Para 5] [938-B-C]

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CIVIL APPELLATE JURISDICTION: Civil Appeal No. 2014 of 2009.

From the Judgment and Order dated 08.09.2006 of the High Court of Judicature at Patna in Civil Revision No. 115 of 2006.

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A Nagendra Rai, Sr. Adv., Ms. Prerna Singh, T. Mahipal, Advs. for the Appellants.

Gaurav Agrawal, Adv. for the Respondents.

The Judgment of the Court was delivered by

B **KURIAN, J. 1.** The appellants filed a suit before the Munsif Court, Patna City for ejection of two katras on the ground of personal need. The appellants are mother and son. The suit was decreed on the following terms:-

C “27. Issue No.II:- Have the plaintiff got valid cause of action for the suit.

D The plaintiffs have sought for eviction of the defendants from the suit katras on the ground of their personal necessity. The plaintiffs have purchased the suit katra from the original landlord of the defendant no.1. The defendant no.1 denied to accept the plaintiff as his landlord and refused to pay the monthly rent to the plaintiffs. The defendant No.1 refused to pay rent to the plaintiffs on the ground that the plaintiffs were not landlord of the suit katra. The defendant no. 1 also denied the relationship of tenant and landlord with the plaintiffs. It has been concluded above that the plaintiffs being the purchaser of the suit property stepped into the shoes of their vendors and by the fiction of law they become the landlord. In this view of the matter I find that the plaintiffs have got valid cause of action for the suit. In this way, Issue NO. II is also decided in favour of the plaintiffs.

E 28. Issue No.7:- Are the plaintiffs entitled to a decree for eviction as sought for or to any other relief or reliefs.

F It has been concluded above that the plaintiffs require the suit katras for their personal necessity and as such they are entitled to get the suit katras vacated by the tenants. It has also been concluded that the plaintiffs have purchased the suit katras from the real owners and they become the landlord or the aforesaid katra. In view of the above conclusion I also come to the conclusion that the plaintiff is entitled to get eviction decree against the defendants. In the facts and circumstances of the case the plaintiffs are also entitled to the cost of the suit.

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29. In view of the above conclusion I find and hold that the defendants are liable to be evicted from the suit katras. Accordingly, the defendants are directed to vacate the suit katras within two months from the date of this order and to hand over the vacant possession thereof failing which the plaintiff shall be entitled to vacant possession of the suit katras by the process of law.”

2. The respondents/tenants pursued the matter in revision before the High Court. The High Court took the view that the suit was liable to be dismissed for misjoinder of parties. The relevant consideration reads as follows:-

“In my view, the present case is not saved for the simple reason that where the plaintiffs had jointly petitioned to be the landlord and it is found that they are not “landlord” for the purposes of the suit in question, then jointly they has no causes of action. Further individually they had distinct causes of action as against distinct properties. The evidence does not distinguish the properties. It deals with the property as co owner which is incorrect. Their suit was instituted on a wrong and misconceived premise of joint/co ownership of premises. They had no joint personal necessity. In my view, it materially affects the merit of the case and is accordingly not saved by Section 99 of the Code of Civil Procedure. The decree of eviction is thus liable to be reversed and is accordingly set aside and the suit is dismissed.”

3. We have heard Mr. Nagendra Rai, learned senior counsel appearing for the appellants and Mr. Gaurav Agrawal, learned counsel appearing for the respondents.

4. Learned senior counsel, inviting our attention to Section 99 of the Code of Civil Procedure, contends that no decree shall be reversed or varied substantially on account of non-joinder or misjoinder of parties. Section 99 of the Code of Civil Procedure reads as follows:-

“99. No decree to be reversed or modified for error or irregularity not affecting merits or jurisdiction.- No decree shall be reversed or substantially varied, nor shall any case be remanded, in appeal on account of any misjoinder or non-joinder of parties or causes of action or any error, defect or irregularity in any proceedings in

A the suit, not affecting the merits of the case or the jurisdiction of the court:

Provided that nothing in this section shall apply to non-joinder of a necessary party.”

B 5. The provision, in our view, is crystal clear. No decree can be reversed or substantially varied in appeal on account of misjoinder or non-joinder of parties. Under Section 141 of the Code of Civil Procedure, procedure under the Code in regard to suit shall be followed as far as it can be made applicable to proceedings in any Court of Civil jurisdiction. Therefore, what is provided under Section 99 of the Code of Civil Procedure in respect of appeal would apply to revision as well.

C 6. The judgment of the High Court is set aside and the judgment and decree of the Trial Court is restored. The appeal is allowed.

D 7. However, the respondents/tenants are granted time till 30.09.2017 to surrender vacant and peaceful possession, subject to their filing usual undertaking within six weeks. If the undertaking, as above, is not filed the respondents shall not be entitled for this extension of time for surrendering vacant possession.

8. Pending application(s), if any, shall stand disposed of.

E 9. There shall be no orders as to costs.