

Patna High Court - Orders

Bhubneshwari Devi vs Isak Lal Yadav & Ors on 12 July, 2010

IN THE HIGH COURT OF JUDICATURE AT PATNA

MA No.100 of 2003

BHUBNESHWARI DEVI

Versus

ISAK LAL YADAV & ORS

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20. 12.07.2010 Heard learned counsel for both sides, who are in agreement that this appeal be disposed of at the admission stage itself.

This appeal has been preferred against order of the lower appellate court, remanding the Title Appeal No. 01 of 1998, for a fresh decision on the materials available on record and in Para 19 of the judgment, it is said that issue of adverse possession is required to be framed and if at all it is necessary further evidence may be taken up.

After some arguments, learned counsels representing the parties arrived at agreement that there was ample evidence, oral and documentary on the record for determination of all relevant issues, there is nothing to adduce any more.

The court below appears, discussing the finding of the trial Court in casual manner and arriving at the conclusion that some relevant points for determination of particular issue, that is question of title of plaintiff and his vendors had not properly been considered.

If there is pleading of the parties and evidence available on record, the lower appellate court may frame or modify the relevant issues, and arrive at its finding, but only because some of the points upon which decision on main issues was dependent there is no specific finding of the trial Court, the lower appellate Court has got no right to remand the case, all endeavours must have been more to decide the appeal on its merit, this is what Rule 24 of Order 41, Code of Civil Procedure requires, it reads as such:-

24. Where evidence on record sufficient, Appellate Court may determine case finally -

Where the evidence upon the record is sufficient to enable the Appellate Court to pronounce judgment, the Appellate Court may, after resettling the issues, if necessary, finally determine the suit, notwithstanding that the judgment of the Court from whose decree the appeal is preferred has proceeded wholly upon some ground other than that on which the Appellate Court proceeds.

As stated earlier, the learned counsels representing the parties had frankly submitted that no more evidence is required to be adduced by either of the side. I find no reason to concur order of the court below, remanding the appeal.

In the result, impugned order is set-aside and matter is remitted to the lower appellate court for fresh decision on the materials available on record. Simultaneously, it is also directed that lower

appellate court shall preferably decide the appeal on its merit, within six months of receipt of copy of this order.

The parties shall appear before the lower appellate court for further endeavours on 30th July 2010, i.e. Friday, accordingly, this appeal stands disposed of.

Let, this order be communicated to the lower appellate court through Fax, at the cost of appellant.

As state

Praveen

(Akhilesh Chandra,J.)