

Patna High Court - Orders

Jagrano Kunwar & Ors vs Smt.Nirmala Devi & Ors on 13 September, 2010

IN THE HIGH COURT OF JUDICATURE AT PATNA

FA No.101 of 2007

JAGRANO KUNWAR & ORS

Versus

SMT.NIRMALA DEVI & ORS

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24. 13.09.2010 Heard learned counsels for the parties on Interlocutory Application No.2064 of 2010.

This application has been filed under Order 41 Rule 27 C.P.C. praying therein to produce as additional evidence the certified copy of the sale deed dated 9.6.1965 executed by original plaintiff Indrasna Kunwar in favour of Sheovachan Chaudhary, Ramvachan Chaudhary and Sheopujan Chaudhary and further to call for the original register of registration office at Ara, Bhojpur.

It appears that in the court below during the pendency of the suit, an application was filed under Order 41 Rule 27 C.P.C. which was rejected. In the court below also an application was filed for taking this sale deed as evidence in the case. The said application was rejected by the court below on the ground that the application for taking the sale deed into evidence has been filed at belated stage. Thereafter the review application was filed which was also rejected. Subsequently another application was filed for taking sale deed as evidence which was again rejected. Thereafter civil revision application was filed before this court which was dismissed for default and then M.J.C. application was filed for restoration of civil revision but during the pendency of the restoration application the suit itself was disposed of and the defendants have filed this appeal against the judgment and decree passed in favour of plaintiffs-respondents decreeing the plaintiffs-respondents' suit.

In this appeal, a fresh application under Order 41 Rule 27 C.P.C. has been filed. Learned counsel appearing for the appellant submitted that the learned court below has wrongly rejected the prayer during the pendency of the suit and refused to take the sale deed in evidence and, therefore, it is one of the grounds for taking the sale deed as additional evidence before the appellate court. So far this ground is concerned, in my opinion the appellant can raise this ground according to the provisions as contained under Section 105 of Code of Civil Procedure before this court and show that the order by which the court below refused to take sale deed in evidence is illegal and is liable to be set aside. Since this ground is available to the appellant in the appeal itself, no separate order is necessary on the application filed by the appellant under Order 41 Rule 27 C.P.C. The appellant, if so advised, move this application at the time of final hearing of this appeal.

In such view of the matter this interlocutory application may be tagged with the appeal so it may be considered at the time of final hearing of this appeal.

(Mungeshwar Sahoo, J.) S.S.