

S U P R E M E C O U R T O F I N D I A

RECORD OF PROCEEDINGS

CIVIL APPEAL NO(s). 3060 OF 2000

VIJAY LAXMI & ORS

Appellant (s)

VERSUS

HARE KRISHNA SINGH & ORS

Respondent(s)

Date: 04/05/2006 This Appeal was called on for hearing today.

CORAM :

HON'BLE MR. JUSTICE B.N. SRIKRISHNA

HON'BLE MR. JUSTICE R.V. RAVEENDRAN

For Appellant(s)

Mr. D.K. Thakur, Adv.

Mr. S. Prem Chander, Adv.

Dr. V.P. Appan, Adv.

Mr. Ravi Shankar, Adv.

Mr. Debasis Misra, Adv.

For Respondent(s)

Rr-Ex-Parte, Adv.

UPON hearing counsel the Court made the following

O R D E R

The Appeal is allowed in terms of the signed order. No costs.

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(Rajesh Dham)

(Radha R. Bhatia

Court Master

Court Master

(signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(s). 3060 OF 2000

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O R D E R

None appears for the respondents despite due service of notice. We have, therefore,

heard the learned counsel appearing for the appellants.

This Appeal is directed against the order dated 05.02.1998 made by the Patna High

Court dismissing application for review (Civil Review No. 210 of 1997) on the ground that none

appeared on behalf of the petitioners and also because no ground had been made for review of

the case. The Appellants have also sought a declaration that sale deed dated 02.07.1996 in

regard to sale of 2 khattha and 10 Dhurs as fraudulent, null and void. By this prayer, they have

impliedly challenged the order dated 05.08.1997 in Civil Revision No. 1539/1996.

We are somewhat surprised by the summary manner in which the application for

review has been thrown out. There is a Title Suit No. 12/92 filed by the respondents before the

Court of Sub-Judge III at Saharsa, State of Bihar. The suit was listed for 08.12.1995. However,

on 06.12.1995, the Advocate for the defendant set I applied for permission to sell a portion of

the suit property. On 06.12.1995, the trial court gave such order for selling. Subsequently, the

appellants (defendant II set) moved an application for recalling of the order dated 06.12.1995

alleging fraud and collusion on the part of the defendant set I and the plaintiff. This application

for recalling of the order dated 06.12.1995 was dismissed by an order of the trial court dated

03.08.1996.

We have been taken through this order. Surprisingly enough, although the trial court

made a clear finding that there was fraud as alleged and that it was a fit case in which the court

should, in the interest of justice, exercise its inherent jurisdiction under Section 151 of the Code

of Civil Procedure, instead of doing so, the trial court dismissed the application on the ground

that the property had already been sold and sale deeds had been executed.

This order was challenged by a Civil Revision application before the High Court.

Unfortunately, for the defendant II set, who were the petitioners in C.R. No. 1539 of 1996, the

High Court took the view that the principle of lis pendens would be attracted, and without going

into the factual finding as to fraud made by the trial court, dismissed the revision application.

This order of the High Court was sought to be reviewed in the Civil Review No. 210 of 1997, the

judgment in which is impugned before us.

In the light of the facts ascertainable from the record, and in view of the submissions

made before us, we are satisfied that there was a good case for review of the order of the High

Court dated 05.08.1997 dismissing C.R. No. 1539 of 1996. The High Court ought to have

examined the matter with reference to the allegation of fraud and collusion which was accepted by the trial court.

In the result, we set aside the impugned judgment of the High Court dated 05.02.1998

in Civil Review No. 210 of 1997 as well as the judgment dated 05.08.1997 in C.R. No. 1539 of 1996 and allow C.R. No. 1539 of 1996. As a result, the order of the trial court dated 03.08.1996 is

also set aside. The trial court shall now consider whether the order dated 06.12.1995 and sale

deeds of the land Khata No. 254, Khasra No. 739 measuring 2 Khattha 10 Dhurs out of the total

area of the land 4 Khattha executed on 02.07.1996 was obtained by fraud and collusion and

whether it should be set aside and what further orders are needed to protect the interest of the

parties in the suit before it.

The Appeal is accordingly allowed. No costs.

..J.

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( B.N. SRIKRISHNA )

..J.

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( R.V. RAVEENDRAN )

NEW DELHI;

MAY 04, 2006.