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IN THE COURT OF ADDITIONAL DISTRICT JUDGE
RAGHUNATHPUR, PURULIA

Present : *Sri Chinmoy Chattopadhyay,*
Additional District Judge,
Raghnathpur, Purulia +

Misc Appeal No. 01/2017

Smt. Sabitri Debi

..... Appellant .

: VERSUS :

Bijoy Kr. Yadav & others

..... Respondents.

Sri Rahul Acharya

Ld. advocate

..... For the Appellant.

Sri Priyabrata Mukherjee

..... For Respondents

Ld. Advocate

The judgment delivered on : 27th day of January, 2020

J U D G M E N T

In this Misc appeal the order no. 180 dt. 19.09.16 passed by Ld. Civil Judge (Sr.Divn), Addl. Court, Purulia in Title Suit no. 74/91 has been assailed by the appellant.

The contention of appellant for such institution of this Misc. Appeal is that one Sheo Shankar Prasad (Yadav) filed Title Suit No. 74/91 against respondent nos. 7 to 11 making them defendants in that suit, but subsequently said Sheo Shankar Prasad (Yadav) had died leaving behind his four sons, the respondent nos. 1 to 4 and two daughters, respondent nos. 5 and 6 respectively as his legal heirs and they have been substituted as plaintiffs in that suit and thereafter the parties to that suit with their ulterior motive continued with the proceeding behind the knowledge of the present appellant. It is the case of the appellant that Sheo Shankar Prasad (Yadav) also filed another suit against respondent nos. 7 to 11 behind the knowledge of the appellant, being the daughter of Ramshakal Yadav. It is also the case of the appellant that Ramshakal Yadav possessed the suit plot i.e.

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RS Plot no. 3960 corresponding to CS Plot no. 5531 measuring 0.26 decimal within mouza Arrah appertaining to khatian no. 1658 having valid right, title and interest and the said land belonged to Ramshakal Yadav and Jamunaram Goala as joint family property and during the lifetime Ramshakal Yadav paid rent to the Government and after his death the right, title and interest of said property devolved upon his sons and daughters, but the respondents started denying the same after suppressing all the material facts. It is also the case of the appellant that coming to know the fact she filed a petition before Id. Trial Court with a prayer to add her a party to the suit, but after hearing the application Id. Trial Court hurriedly and without giving any opportunity passed the order and being aggrieved by and dissatisfied with the said order this Misc. Appeal has been preferred on the ground that Id. Trial Court failed to understand the provision of law U/O 1 Rule 10 read with section 151 CPC and Id. Trial Court failed to appreciate the interest of the appellant in respect of the suit land inspite of the fact that sufficient documents had been placed to justify the right, title and interest of deceased Ramshakal Yadav and Id. Trial Court also failed to appreciate the necessity to add party in that suit and abruptly curtailed the opportunity of her while disposing of the prayer and Id. Trial Court also failed to appreciate that the appellant has/had right, title and interest over the suit property which she inherited from her deceased father and by denying all the factual matrix the order was passed arbitrarily and the order of Id. Court below was not a speaking order which was based on surmise and conjecture and thus the order is liable to be set aside.

At the time of advancing argument Id. counsel representing the appellant argued within the core of the memo of appeal. It was the moot contention that Id. Trial Court did not appreciate the prayer of the appellant and arbitrarily passed the order rejecting the prayer to add her as party to the suit and thus he prayed for rejection of the order challenged in this Misc Appeal.

Id. Counsel for contesting respondents on the other hand

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simply advanced his argument on the point that U/O 43 of CPC it is made clear which orders are appealable. It was his argument that the prayer of the appellant being misconceived as per the provision of law and the Misc Appeal since not maintainable is liable to be dismissed on the sole ground.

Now the point for consideration :-

Whether the order order no. 180 dt. 19.09.16 passed by Ld. Civil Judge (Sr.Divn), Addl. Court, Purulia in Title Suit no. 74/91 suffers from any irregularity, illegality or impropriety or whether any interference of this Court is required or not and whether the appeal is at all maintainable in the eye of law?

Decision With Reasons:-

Before Id. Trial Court on 19.09.2016, as found from the impugned order, the suit was fixed for hearing of argument and on the date the appellant, being petitioner submitted a petition U/O 1 Rule 10 read with section 151 CPC with a prayer to add her a party to the suit and accordingly she was given the opportunity to be heard on the same date and Id. Trial Court passed the order accordingly thereby dismissing her such prayer. From the said impugned order it would transpire that the plaintiffs in that suit prayed for a declaration regarding right, title and interest upon the suit property with analogous prayer for recovery of possession against the contesting defendants with the view that the plaintiffs let out only two rooms within schedule – I in favour of defendant nos. 1 to 4 on temporary basis with a monthly rent of Rs. 200/- and due to defaulter another suit for eviction was instituted against the defendants being TS No. 146/1979. I find from the order impugned in this Misc Appeal, that the contesting defendants at the time of submitting the written statement denied the allegation made against them by the plaintiffs of that suit and they claimed that one Jamuna Prasad Goala took the settlement of CS Plot No. 3960 measuring 26 decimals, described in schedule – I property in that suit, as permanent raiyat and there was another prayer of adverse possession over the suit plot, but surprisingly the

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defendants did not raise any doubt that the suit is/was ever defective in nature due to non joinder of necessary parties.

Ld. Trial Court accordingly after a thorough discussion did not fit the prayer of the appellant as tenable and accordingly dismissed the same.

Now as per the point of argument of ld. counsel for the respondents, whether the order of ld. Trial Court is appealable U/O 43 CPC.

According to Rule 1 of Order 43 of CPC, an appeal shall lie from the orders under the provision of Section 104, as envisaged in that rule. Order 43 Rule 1 of CPC itself specifies the nature of the orders which are appealable. An appeal to be maintainable U/O 43 Rule 1 of CPC must be from the orders which are contemplated under that provision. All orders passed by the Court are not *ipso facto* appealable, under the provisions of Order 43 Rule 1 of CPC, but may be under the provisions of special statute itself. If the judicial record testifies to the existence of a state of facts, the Court shall be extremely reluctant in entertaining any submission, which may attempt to belie such facts.

So on careful reading and perusal as well as scrutiny of Order 43 of CPC one may get the idea which order is appealable under the provision of law.

In the present Misc Appeal what we find that the same has been instituted by the appellant challenging the order no. 180 dt. 19.09.2016 of ld. Trial Court against the petition U/O 1 Rule 10 CPC, as submitted by her before ld. Trial Court with a simple prayer to add her as a party to the suit, though she failed to justify any reason for her such incorporation to this suit as a valuable party.

Since the provision of law, as laid down U/O 43 CPC does not entertain any appeal against any order passed U/O 1 Rule 10 CPC, I am of the view that on the sole ground this Misc Appeal should be dismissed as not maintainable.

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Upon my above observation the misc appeal thus fails to succeed.

C.F. paid is found correct.

Hence, it is

O R D E R E D

that the Misc Appeal No. 01/2017 be and same is dismissed on contest being non maintainable and also without any cost.

The impugned order no. 180 dt. 19.09.16 passed by Ld. Civil Judge (Sr.Divn), Addl. Court, Purulia in Title Suit no. 74/91 is hereby affirmed.

Let a copy of judgment be forwarded to the Ld. Court below for information at once.

Dict. & Corrected by me

Addl.D.J.

Additional District Judge,
Raghunathpur, Purulia

Civil Misc Appeal no. 01/17

28.01.2020

Appellant is found present and represented by his ld. advocate.
Respondents are also found present and represented by their ld. advocate.

Today is fixed for judgment and the record is taken up for that.

Judgment is ready and delivered in open court today in presence of both the sides.

Hence, it is

O R D E R E D

that the Misc Appeal No. 01/2017 be and same is dismissed on contest being non maintainable and also without any cost.

The impugned order no. 180 dt. 19.09.16 passed by Ld. Civil Judge (Sr.Divn), Addl. Court, Purulia in Title Suit no. 74/91 is hereby affirmed.

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Addl.D.J.

Additional District Judge,
Raghunathpur, Purulia