

STATE OF BIHAR (NOW JHARKHAND) AND ORS. A

v.

BOKARO AND RAMGUR LTD. AND ORS.

(Civil Appeal No.1139 of 2002)

APRIL 09, 2008

[DR. ARIJIT PASAYAT, P. SATHASIVAM AND
AFTAB ALAM, JJ.] B

Appeal – High Court dismissed appeal even after setting aside the findings recorded by Trial Court – Propriety of – Held: Not proper – Conclusions and findings of the High Court did not go together – The appeal deserved to be allowed. C

Disputes arose as to whether the premises in question (Raja Bunglow) was being used for residential purpose of the Raja at the time of vesting or as a office-cum-kutchery for collection of rent of the Ramgarh Estate. D

The High Court set aside the Trial Court's finding that the suit premises was not primarily an office or kutchery for collection of rent, and yet thereafter dismissed appeal against the judgment of Trial Court. Hence the present appeal. E

Allowing the appeal, the Court

HELD: The High Court held that the Trial Court's finding that the suit premises was not primarily an office or kutchery for collection of rent, cannot be maintained. Accordingly, the Trial Court's finding was set aside. If that be so, the only conclusion that could have been arrived at was to allow the appeal. Strangely, the High Court dismissed the appeal, without costs. The conclusions and the findings do not go together. The High Court's findings are clearly to the effect that the suit premises was used as an office or kutchery for collection of rent. In the circumstances, the conclusion of the High Court about F
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A the appeal being without merit is set aside. As a consequence, the plaintiff's suit stands dismissed. The appeal deserves to be allowed in terms of the findings recorded in the impugned judgment of High Court. [Paras 4, 5] [333-B, C, D, E]

B CIVIL APPELLATE JURISDICTION : Civil Appeal No. 1139 of 2002.

From the Judgment and Order dated 12.10.1999 of the High Court of Patna in A.O.D. No. 431/1968.

C Ratan Kumar Choudhuri for the Appellants.

R.C. Kohli, (NP), Ashok Mathur (NP) for the Respondents.

The Judgment of the Court was delivered by

D **DR. ARIJIT PASAYAT, J.** Heard learned counsel for the State of Bihar (now Jharkhand) and its functionaries.

2. None appears on behalf of the respondents.

E 3. Challenge in this appeal is to the judgment of a Division Bench of the Patna High Court in First Appeal No.431 of 1968. The basic issue involved in the appeal was whether the suit premises was used as an office or kutchery for collection of rent. We find that upto paragraph 25, the Division Bench noted the contentions of the parties and the evidence of the witnesses examined by them. In paragraph-26, the reliability of witnesses examined by the State of Bihar (now Jharkhand) and its functionaries was examined and it was held that they were reliable witnesses. After that, the confusion in the judgment starts. In paragraphs 27 to 29, it has been noted as follows:

G "27. On proper analysis of the aforesaid oral evidence of the parties, I come to conclusion that the plaintiff failed to prove that Raja Bunglow was being used only for residential purpose of Raja at the time of vesting and it was unconnected with either office of Zamindari Kutchery, H whereas on the other hand, the contesting defendant was

able to prove that the said Bungalow i.e. the suit premises was being used as office-cum-kutchery connected with collection of rent of the Ramgarh Estate. A

28. I, therefore, set aside the trial Court's finding that the suit premises was not primarily an office or kutchery for collection of rent. B

29. In the result, the appeal fails and is dismissed, but without costs."

4. A conjoint reading of paragraphs 27 and 28 makes the position clear that the High Court held that the Trial Court's finding that the suit premises was not primarily an office or kutchery for collection of rent, cannot be maintained. Accordingly, in paragraph-28, the Trial Court's finding was set aside. If that be so, the only conclusion that could have been arrived at was to allow the appeal. Strangely, the High Court dismissed the appeal, without costs. C D

5. The conclusions and the findings do not go together. The High Courts' findings at paragraphs 27 and 28 are clearly to the effect that the Suit premises was used as an office or Kutchery for collection of rent. In the circumstances, we set aside the conclusion of the High Court about the appeal being without merit. As a consequence, the plaintiff's Suit stands dismissed. The appeal deserves to be allowed in terms of the findings recorded at paragraphs 27 and 28 of the impugned judgment which we direct. E F

B.B.B.

Appeal allowed.