

CASE NO.:
Appeal (civil) 1139 of 2002

PETITIONER:
STATE OF BIHAR (NOW JHARKHAND) AND ORS.

RESPONDENT:
BOKARO AND RAMGUR LTD. AND ORS.

DATE OF JUDGMENT: 09/04/2008

BENCH:
DR. ARIJIT PASAYAT & P. SATHASIVAM & AFTAB ALAM

JUDGMENT:
JUDGMENT

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.

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:

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

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.

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.

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.