

CRP 263/2010

BEFORE

THE HON'BLE MR JUSTICE B.P.KATAKEY

Heard Mr C Baruah, learned senior counsel for the petitioner. Also, heard Mr P U padhaya, learned counsel for the respondents.

The petitioner who is the respondent in Title Suit No.82/2006, by the present petition, has sought to invoke jurisdiction of this Court under Article 227 of Constitution of India in challenging order dated 19th June 2010 passed by the learned District Judge, Dibrugarh, in Misc Appeal No.1/2009, dismissing the same on the ground that such appeal is not maintainable.

It appears that against the judgment & decree dated 7th June 2009 passed by learned Munsiff No.1, Dibrugarh, in TS No.82/2006, an appeal, Title Appeal No.23/2007 was preferred by the present respondents/judgment-debtors in the Court of learned District Judge, Dibrugarh, which was dismissed on 11th April 2008. An application was thereafter filed by the respondents-herein (appellants in Title Appeal), under Order 41 Rule 19 of CPC, for readmission of appeal that was dismissed for default, together with an application seeking condonation of delay. The learned first appellate Court, after condoning the delay, readmitted the appeal for hearing.

The said order was put to challenge by the present petitioner (respondent in Title Appeal No.23/2007), in the Court of the learned District Judge, Dibrugarh, i.e. the in the same Court, which was dismissed on the ground that the appeal is not maintainable under Order 43 Rule 1 CPC.

Order 43 Rule 1 of Code of Civil Procedure provides for the orders that are appealable. An order passed under Order 41 Rule 19 of the said Code is, admittedly, not an appealable order. That apart, the Court, who passed the order under Order 41 Rule 19 of CPC, cannot scrutinize the legality and validity of its own order.

Since such an appeal is not provided under Order 43 Rule 1 of CPC, learned District Judge had rightly dismissed the appeal preferred by the petitioner-herein. Such appeal being not maintainable, the learned District Judge ought not to have made any observation on the merit of appeal.

In view of above, I do not find any plausible ground to interfere with the impugned order dated 19th June 2010 passed by the learned District Judge, Dibrugarh, in Misc Appeal No.1/2009.

The present revision is accordingly dismissed. No costs.