

(2019) 01 JH CK 0022
In the Jharkhand High Court
Case No : Writ Petition No. 5824 Of 2018

Awadh Kishore Pandey And Ors

APPELLANT

Vs

Lalmani Pandey And Ors

RESPONDENT

Date of Decision : 10-01-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 151, Order 1 Rule 10
Bihar Land Reforms (Fixation Of Ceiling Area And Acquisition Of Surplus Land) Act,
1961 — Section 16(3)
Constitution Of India, 1950 — Article 227

Citation : (2019) 01 JH CK 0022

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Manoj Kr. Choubey

Final Decision : Dismissed

Judgement

1. The writ petition has been filed under the Provision of Article 227 of the Constitution of India in its revisional jurisdiction, wherein the order dated 01.08.2018 passed in Original Suit No. 68 of 2017 has been challenged, whereby and whereunder, an application filed under Order-I, Rule-10 read with Section 151 of Code of Civil Procedure, has been rejected.

2. The brief facts of the case of the petitioner as per the pleading made in the writ petition is that the plaintiffs of the Original Suit No. 68 of 2017 have transferred the suit land to the defendant, through sale deed No. 405/393 dated 07.03.2017. The land of the petitioner is in adjacent to the northern boundary of the suit land, and as such, they are adjoining raiyats of it. So, under the Provision of Section 16(3) of Bihar Land Reforms (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1961 (Bihar Act XII of 1962), they have filed a pre-emption application before the Deputy Collector-in-charge Land Reforms, Garhwa, being L.C. Case No.01 of 2017-18 and they have claimed their right of pre-emption, as adjoining raiyat of suit land. It is further case of the petitioner

that the suit land has been transferred in favour of the petitioner, for which, the consideration amount has been paid, but in contravention of the agreement between the parties, the suit land has been transferred in favour of others and, hence, on this ground also, the petitioner is having right over the said land. Therefore, he is necessary party to the aforesaid original suit, but consiously the aforesaid suit has been filed without impleading him as party to the aforesaid suit, therefore, an application under Order-1, Rule-10 of Code of Civil Procedure has been filed.

3. The aforesaid application has been rejected by the trial court, against which, the instant writ petition has been filed under the revisional jurisdiction of this Court under Article 227 of the Constitution of India. Learned counsel for the petitioner has taken the ground, assailing the aforesaid order that since the pre-emption application has been filed in the capacity of being the adjoining raiyat of the land in question and earlier an agreement has been entered for transfer of the land in question, therefore, he being a necessary party, but has not been impleaded as one of the defendant in the aforesaid suit, the trial court ought to have been taken into consideration this aspect of the matter, but without doing so, the impugned order has been passed.

4. Heard learned counsel for the petitioner and upon going across the order dated 01.08.2018, wherein petition filed by the petitioner, under the provision of Order-1, Rule-10 of Code of Civil Procedure has been rejected. Before going into the legality and propriety of the order, the provision of Order-1, Rule-10 of Code of Civil Procedure needs to be referred, which stipulates as follows:-

"10. Suit in name of wrong plaintiff-(1) Where a suit has been instituted in the name of the wrong person as plaintiff or where it is doubtful whether it has been instituted in the name of the right plaintiff, the Court may at any stage of the suit, if satisfied that the suit has been instituted through a bona fide mistake, and that it is necessary for the determination of the real matter in dispute so to do, order any other person to be substituted or added as plaintiff upon such terms as the Court thinks just.

(2) Court may strike out or add parties- The Court may at any stage of the proceedings, either upon or without the application of either party, and on such terms as may appear to the Court to be just, order that the name of any party improperly joined, whether as plaintiff or defendant, be struck out, and that the name of any person who ought to have been joined, whether as plaintiff or defendant, or whose presence before the Court may be necessary in order to enable the Court effectually and completely to adjudicate upon and settle all the questions involved in the suit, be added."

5. It is evident from bare reading of the aforesaid provision that so far as striking out the claim of plaintiff or defendant or addition therein either by way of plaintiff or by defendant, the Court has to look into the fact that if without appearance of the aforesaid party, there is no likelihood of proper adjudication of the dispute in

question, meaning thereby, the Court is required to see the impleadment of party, who is necessary for the proper adjudication.

In the light of aforesaid provision, the factual aspect is needs to be examined. The scope of Order-1, Rule-10 of Code of Civil Procedure has been considered by the Supreme Court in a judgment rendered in the case of Bhogadi Kannababu & Ors. Vs. Vuggina Pydamma & Ors. as reported in AIR 2006 SC 2403 wherein it has been held that the Court would only decide whether the presence of applicant before the Court may be necessary in order to enable the Court effectually and completely adjudicate upon and settle all the questions involved in the suit. It has further been held in the judgment rendered in the case of Ruma Chakraborty Vs. Sudha Rani Banerjee and Another as reported in AIR 2005 SC 3557 where the impleadment would change the complex of the litigation he would not be considered as a necessary party. It is admitted case of the petitioner that he, being an adjacent raiyat, has filed a pre-emption case, which is lying pending before the competent authority. It is further admitted case of the petitioner that some consideration amount has been paid to the title holder for its transfer in his favour. But the same has not been complied with.

6. This admitted fact does suggest that the petitioner is having no right, merely by way of filing pre-emption application under the provision of Section 16(3) of Bihar Land Reform (Fixation of Ceiling Area and Acquisition of Surplus Land) Act 1961 (Bihar Act XII of 1962) or merely on account of fact that he has paid the consideration amount for transfer of land in his favour.

7. In view thereof, it cannot be said that the petitioner is necessary party, in absence thereof, there cannot be any proper adjudication of the issue, raised by the parties in the original suit and, therefore, his case will not come under the provision of Order-1, Rule-10 of Code of Civil Procedure.

8. The trial court after taking into consideration these factual aspects and considering the scope of provision under Order-1, Rule-10 of Code of Civil Procedure has rejected the aforesaid application.

9. Hence, in the considered view of this Court, the same does not warrant any interference by this Court in exercise of revisional jurisdiction, since there is no error.

10. Accordingly, the writ petition is dismissed.