
(2017) 04 JH CK 0055
In the Jharkhand High Court
Case No : 2065 of 2015

Blichdan Kujur @ Bilisdan Kujur

APPELLANT

Vs

The State of Jharkhand

RESPONDENT

Date of Decision : 25-04-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 1 Rule 10](#) & [Order 1 Rule 10\(2\)](#)

Citation : (2017) 04 JH CK 0055

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : Indrajit Sinha, Krishanu Ray, ?A.K. Sahani, ?Shailendra Singh, J.J. Sanga

Final Decision : Disposed

Judgement

1. Heard counsel for the parties.

2. Petitioner herein is Plaintiff No. 2 amongst five plaintiffs who instituted Title Suit No. 265/2008 for a declaration that the lands described in Item No. (i) and (ii) to the Schedule of plaint are part and parcel of public path / road / passage / Gali of the locality Panchmandir Gali for use and enjoyment of public at large of the locality. They sought temporary injunction upon the defendants, restraining them from obstructing in any manner the road and also for finally granting permanent injunction on adjudication. They also sought mandatory injunction upon the defendants to demolish and remove construction and structures over the road and it

be made free from obstruction. Consequential decree with cost was prayed for accordingly.

3. The suit proceeded thereafter on appearance of the parties. Certain defendants Kedar Nath Burnwal and others approached this Court in WPC No. 7965/2011 seeking quashing of order dated 30.08.2011 passed by the Learned Sub

Judge-V, Giridih in Title Suit No. 265/2008, whereby their application for recall of the order of injunction in view of the report of Pleader Commissioner, appointed as

per the direction of this Court in WPC No. 3779/2010, have been rejected. The Learned Single Judge took note of the submission of the learned counsel for the then

petitioners that the Trial Court may itself be directed to dispose of the suit expeditiously as the matter is at the evidence stage. Writ petition was disposed of by

order dated 31.01.2013 directing the Learned Trial Court to make endeavour for expeditious disposal of the suit, preferably within a period of five months from the date of the order. Parties were directed to cooperate in the proceedings before the Court below and not take unnecessary adjournment in the matter. The matter progressed thereafter. However, in between, the Government Pleader made a prayer

for impleadment of the Deputy Commissioner, Giridih through a petition dated 18.07.2013. That prayer was declined by order dated 06.08.2013 by the Learned Trial Court, which has remained unchallenged. The present petitioners thereafter made a prayer for impleadment of certain persons as defendant nos. 5 to 9 under Order 1 Rule 10(2) of Civil Procedure Code on 11.12.2013. On being unsuccessful in seeking impleadment of new parties in the suit, petitioner approached this Court

in WPC No. 296/2014. They however did not press their challenge to the rejection of the application made on behalf of Government Pleader for impleadment of Deputy Commissioner, Giridih contained in order dated 06.08.2013 passed by the Learned Trial Court. Learned Single Judge by order dated 18.07.2014 passed in

WPC No. 296/2014, allowed their prayer, so far as impleadment of new private parties were concerned, but the challenge to the order dated 06.08.2013 was not pressed. Only one plaintiff i.e. present petitioner had preferred WPC No. 296/2014

and thereafter Civil Review No. 72/2015 seeking to press the challenge to the order

dated 06.08.2013 passed in Title Suit No. 265/2008 for impleadment of Deputy Commissioner, Giridih. The Learned Single Judge by order dated 03.09.2015 (Annexure-5 to the supplementary affidavit dated 06.03.2017), did not find any grounds to review the order dated 18.07.2014 passed in WPC No. 296/2014.

However, the review application was disposed of giving liberty to the petitioner to file a fresh writ application. The order dated 06.08.2013 however remained unchallenged thereafter. It has neither been challenged in the present writ application.

4. Petitioner's application for impleadment of Deputy Commissioner, Giridih dated 25.11.2014 has been declined by the impugned order dated 16.02.2015 passed

by the Learned Trial Court. The Learned Trial Court has taken note of the background facts also, noticed herein-above. It has also referred to the rejection of

the application for impleadment of Deputy Commissioner, Giridih moved by the Government Pleader earlier under Order 1 Rule 10(2) of Civil Procedure Code. The

Court was proceeding with the trial under bounden obligation to conclude it in view

of orders passed in WPC No. 7695/2011 within a time frame.

5. It would not be out of place to mention that the present petitioner had also preferred another writ petition WPC No. 3803/2013 seeking quashing of the order dated 13.06.2013 passed by the Learned Trial Court whereunder, petition to recall the order dated 11.06.2013 by which the evidence of plaintiffs have been closed, had

been rejected. It however appears from perusal of the impugned order that order

of

closure of the evidence of plaintiffs was recalled and the case is at the stage of production of evidence of plaintiffs, as per the impugned order and also as per order

dated 05.01.2017 of the Learned Trial Court (Annexure-2 to the I.A. No. 633/2017).

Plaintiffs evidence is still going on. The said writ petition WPC No. 3803/2013 was therefore allowed to be withdrawn by order dated 27.02.2017.

6. Learned counsel for the petitioner, in the aforesaid background facts, noticed herein-above in some details, submits that the Learned Trial Court however has not

considered the merits of the plea taken by the petitioner herein for impleadment of

the Deputy Commissioner, Giridih as a necessary party in the suit. The rejection of

the prayer for impleadment of Deputy Commissioner, Giridih by earlier order dated

06.08.2013, was guided by the consideration that it had been moved after considerable delay. Since the issue involved is in relation to the road, plaintiff has considered it proper to seek impleadment of Deputy Commissioner, Giridih as a necessary party. This aspect has not been properly dealt in the impugned order. Therefore, it requires interference.

7. Counsel for the private Respondents have opposed the prayer. It is submitted that repeated journeys to this Court mostly on behalf of the plaintiff, do indicate that

there is tendency to delay the adjudication of the matter despite specific observation

made by this Court in WPC No. 7695/2011. Learned counsel submits that Learned Trial Court did not find any overwhelming reason to allow such impleadment at the

advance stage of trial. Therefore, there is no infirmity in the impugned order.

8. Considered the submissions of the counsel for the parties and relevant material facts noted herein-above. I have also gone through the impugned order.

Sequence of facts, narrated herein-above, obviously do not dispel the impression that the plaintiffs being fully conscious of their cause of action and relief that they sought in the suit instituted in 2008, have moved an application for impleadment of

Deputy Commissioner, Giridih at an advance stage of trial, though they themselves

had sought impleadment of certain new private parties successfully by virtue of order passed by the Learned Single Judge of this Court in WPC No. 296/2014.

Learned Trial Court was in seisin of the application for impleadment of Deputy Commissioner, Giridih at the behest of the Deputy Commissioner himself through Government Pleader which was comprehensively declined by order dated 06.08.2013, which has remain unchallenged by any of the parties. Despite such order of rejection being made a subject matter of challenge in WPC No. 296/2014 by the petitioner himself, for strange reasons he failed to press such a prayer. The civil review petition preferred thereafter by him also failed on that count. Though liberty was granted by the Review Court to assail the said order in a fresh writ petition, but for reasons unknown, the writ petitioner has not assailed it even in the

present matter. The approach of the Learned Trial Court, in those circumstances, cannot be faulted or said to be suffering from errors of jurisdiction. There cannot be

any infirmity on those count in the impugned order. This Court is not persuaded by

the submission advanced by the learned counsel for the petitioner.

9. Provisions of Order 1 Rule 10 is quoted hereunder:

"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. (3) No person shall be added as a plaintiff suing without a next friend or as the next friend of a plaintiff under any disability without his consent. (4) Where defendant added, plaint to be amended.- Where a defendant is added, the plaint shall, unless the Court otherwise directs, be amended in such manner as may be necessary, and amended copies of the summons and of the plaint shall be served on the new defendant and, if the Court thinks fit, on the original defendant. (5) Subject to the provisions of the [Indian Limitation Act, 1877 (15 of 1877), section 22], the proceedings as against any person added as defendant shall be deemed to have begun only on the service of the summons."

It is clear from perusal thereof that it is within the discretion of the Court 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, direct a party to be impleaded 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. The Learned Trial Court has not found any good reasons till now on the application of the parties for allowing such an impleadment. However, rejection of such application does not denude the Learned Trial Court from directing

impleadment of any party for effectually and substantially adjudicating the issues involved at any stage of trial if it considers it necessary. Therefore, though this Court

is not inclined to interfere in the impugned order, but discretion is left with the Trial

Court to exercise the power under Order 1 Rule 10(2) of Civil Procedure Code, as may be deemed fit and proper, at any stage of trial. It goes without saying that the

Learned Trial Court is already under bounden obligation to make endeavour to dispose of the suit itself as expeditiously as possible and within a time frame.

10. Writ petition is accordingly disposed of with the aforesaid observations.