

(2010) 05 JH CK 0074
In the Jharkhand High Court

Budhni Kui

APPELLANT

Vs

State of Jharkhnad, Commissioner, Kolhan Division,
Additional Deputy Commissioner and Chokro Gagrai

RESPONDENT

Date of Decision : 04-05-2010

Acts Referred:

Constitution of India, 1950 — Article 227
Evidence Act, 1872 — Section 45

Citation : (2010) 4 JLJR 509

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Judgement

D.N. Patel, J.—The present petition has been preferred under Article 227 of the Constitution of India against the orders passed by the Additional Deputy Collector, West Singhbhum dated 12th November, 2008 in Kolhan Title Suit No. 3/2002-2003(annexure 2 to the memo of petition) as well as against the order passed by Commissioner, Singhbhum, Kolhan Division, Chaibasa dated 19th March, 2009 in Kolhan Title Appeal No. 1 of 2008 (annexure 3 to the memo of petition).

2. The learned Counsel appearing on behalf of the petitioner submitted that the original plaintiff was the husband of the present petitioner who has expired during the course of Kolhan Title Suit No. 3/2002-2003 and the present petitioner being the widow, was substituted as plaintiff. In the said Kolhan Title Suit No. 3/2002-2003. Three registered sale deeds were to be declared as null and void as they were fabricated documents which bare the left hand thumb impression of the husband of the present petitioner and therefore, as the original plaintiff has already expired, handwriting expert opinion will be necessary to ascertain whether the sale deeds, which were to be declared as null and void, bare the left thumb impression of the original plaintiff or not. These disputed documents can be compared with undisputed documents like plaint and attendance given in the said Kolhan Title Suit. Thus, disputed left thumb impression can always be matched or compared with undisputed documents

where there is left hand thumb impression of original plaintiff and therefore, an application was moved before the Additional Deputy Collector, Chaibasa which was allowed vide order dated 29th November, 2006. An expert evidence was required to be taken on the aforesaid basis as per order dated 29th November, 2006, but, abruptly without there being any application by either of the parties, suo-motu, the Additional Deputy Collector, Chaibasa has recalled his earlier order and passed a fresh order on 12th November, 2007 and the application for getting opinion of hand-writing expert was dismissed. Against this order, an appeal was preferred bearing No. 1 of 2008 before Commissioner, Singhbhum, Kolhan Division, Chaibasa who has also not appreciated the aforesaid facts of the matter and dismissed the appeal vide order dated 19th March, 2009. Even if the original plaintiff has expired, thumb impression on the disputed documents namely registered sale-deeds can be compared With undisputed documents namely plaint and presence register in Kolhan title Suit No. 3/2002-2003. These two documents bare left hand thumb impression of original plaintiff. This aspect of matter has not been appropriately considered by both the authorities below namely by Additional Deputy Collector, Chaibasa, West Singhbhum as well as by the Commissioner, Singhbhum, Kolhan Division, Chaibasa and hence, the order dated 12th November, 2007 (annexure 2 to the memo of petition) and order dated 19th March, 2009(annexure-3 to the memo of petition, respectively deserve to be quashed and set-aside.

3. I have heard the learned Counsel for the respondents, who has vehemently submitted that the petitioner is not the original plaintiff, but, her husband was the original plaintiff, who has instituted Kolhan Title Suit No. 3/2002-2003. The husband of the petitioner has expired and therefore, there, is no question of now taking any evidence of the left thumb impression of the deceased plaintiff and therefore, the order dated 12th November, 2007 and order dated 19th March, 2009 (annexure-2 & 3 to the memo of petition respectively) passed by Additional Deputy Collector, Chaibasa, West Singhbhum as well as by the Commissioner, Singhbhum, Kolhan Division, Chaibasa are absolutely in consonance with the evidence of this case and therefore, both the orders not deserve to be quashed and set-aside.

4. Having heard the parties and looking to the facts and circumstances of the case, I hereby quash and set-aside the order passed by Additional Deputy Collector, Chaibasa, West Singhbhum dated 12th November, 2007 in Kolhan Title Suit No. 3/2002-2003 as well as by the Commissioner, Singhbhum, Kolhan Division, Chaibasa in Kolhan Title Appeal No. 1/2008 dated 19th March, 2009 (annexure-2 and 3 to the memo of petition respectively) for the following reasons:

(I) Husband of the present petitioner is the original plaintiff, who has instituted Kolhan Title Suit No. 3/2002-2003 wherein three sale-deeds are under challenge on the ground that there is no signature and no thumb impression of the plaintiff and these documents are false and fabricated documents and for the said

reason, Kolhan Title Suit No. 3/2002-2003 was instituted by the husband of the present petitioner against the present respondents.

(II) It also appears that original plaintiff has expired in January, 2006 and therefore, the present petitioner being widow, was substituted as plaintiff.

(III) Now the question remains that whether the thumb impression in the disputed sale-deeds bare the thumb impression of the original plaintiff or not and that comparison can be made with another disputed documents. This aspect has not been properly appreciated by the Additional Deputy Collector, Chaibasa, West Singhbhum as well as by the Commissioner, Singhbhum, Kolhan Division, Chaibasa. Even if the original plaintiff has expired, still his thumb impression can be matched with the undisputed documents so that it can be decided by the concerned authorities whether in disputed document or documents, there is any thumb impression of original plaintiff or not. This task can be done through hand-writing expert as per Section 45 of the Evidence Act, 1872.

(IV) Looking in to the order passed by both the authorities below, it appears that they were committed an error apparent on the face of the record that once the original plaintiff has expired, matching of the left hand thumb impression of the original plaintiff is impossible or is not required. They have lost sight of the fact that even if the original plaintiff has expired, the thumb impression of the original plaintiff on a disputed document can always be matched with undisputed documents like plaint as well as the presence register maintained in Kolhan Title Suit No. 3/2002-2003.

(V) It further appears that initially an order was already passed in favour of the present petitioner by Additional Deputy Collector, Chaibasa, West Singhbhum on 29th November, 2006(annexure-1 to the memo of petition). By this order hand-writing expert opinion was ordered to be taken and without being made any application by either of the parties, suo-motu, on his own, the Additional Deputy Collector, Chaibasa, West Singhbhum has recalled his earlier order dated 29th November, 2006 and unnecessarily passed another order dated 12th November, 2007, which is the impugned order under challenge in this writ petition(annexure 2 to the memo of petition). Perhaps, there is no need by Additional Deputy Collector, Chaibasa, West Singhbhum to recall his earlier order. This recalling of the order has created difficulties for the substituted plaintiff. The authorities below ought to have appreciated that once the order is passed in favour of the petitioner, it ought not to have been recalled without justifiable reasons.

5. As a cumulative effect of the aforesaid facts and reasons. I, hereby, quash and set-aside the order dated 12th November, 2007 passed by Additional Deputy Collector, Chaibasa, West Singhbhum in Kolhan Title Suit No. 3 of 2002-03 (annexure-2 to the memo of petition) as well as the order dated 19th March, 2009 passed by the Commissioner, Singhbhum, Kolhan Division, Chaibasa in Kolhan Title Appeal No. 1/2008 (annexure-3 to the memo of petition). I, hereby, revive the order dated 29th November, 2006 passed by the Additional Deputy

Collector, Chaibasa, West Singhbhum (annexure-1 to the memo of petition) passed in Kolhan Title Suit No. 3/2002-2003. I, hereby, also direct the Additional Deputy Collector, Chaibasa, West Singhbhum to hear and dispose of the Kolhan Title Suit No. 3/2002-2003 as expeditiously as possible and practicable, preferably on or before 30th December, 2010 without granting unnecessary adjournments to the parties. The learned Counsel for both the parties have assured that they shall cooperate, in early disposal of the aforesaid Suit before the Additional Deputy Collector, Chaibasa, West Singhbhum.

This writ petition is allowed and disposed of.