

(2010) 02 JH CK 0116
In the Jharkhand High Court

Dipak Bachelor, Mrs. Reeta Saha alias Reeta Bachelor and
Mrs. Geeta Saha alias Geeta Bachelor

APPELLANT

Vs

Mary Bachelor and Ashim Bachelor

RESPONDENT

Date of Decision : 17-02-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 02 JH CK 0116

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 an order passed by the learned 3rd Additional District Judge, Jamshedpur dated 31st January, 2008 in Title Suit No. 1 of 2000 (convened from Probate Case No. 17 of 1998) whereby, an application preferred by the present petitioners (original defendants) to examine their witnesses has been rejected and therefore, by the original defendants, this writ petition has been preferred.

2. Having heard learned Counsel for both the sides, at length and looking to the facts and circumstances of the case and looking to the impugned order passed by the trial court, it appears that:

(i) originally a Probate case No. 17 of 1998 was instituted by respondent No. 1 (original plaintiff) on the basis of a will executed by her mother. Thereafter, objections were raised by the present petitioners in the probate case and therefore, ultimately, the probate case was converted in Title Suit No. 1 of 2000 wherein, the present petitioners are original defendants.

(ii) the evidences were taken by the original plaintiffs and thereafter, some evidences by the defendants was also taken, but, the stage of taking further evidence by the original defendant was closed down on 22nd September, 2007.

(iii) thereafter, the present petitioners (original defendants) preferred an

application dated 24th January, 2008 whereby, the original defendants want to examine two witnesses namely, Geeta Saha and Reeta Saha. These two old aged ladies are parties; to the objections raised in the probate case and they are the legal heirs of the original executor of the will and the plaintiff in Probate Case No. 17 of 1998 or plaintiff in Title Suit No. 1 of 2000, are heavily relying upon the will executed by the mother. In view of these facts evidences of Geeta Saha and Reeta Saha are very much relevant. Their evidences will affect the very root of the matter and this aspect of the matter has not been properly appreciated by the trial court. Stage of taking evidence has been closed down on 22nd September, 2007 and the application, for taking evidences, has been given on 24th January, 2008. Thus, there is no much delay in preferring the application for further examination of the witnesses by the original defendants and as stated hereinabove, the evidence of the aforesaid two witnesses will facilitate the trial court in arriving at the correct conclusion of the dispute between the parties and therefore also, the original defendants ought to have been allowed to take evidence of the aforesaid two witnesses.

It is assured by the learned Counsel for the original defendants that they will not ask for unnecessary adjournments and within one month, the examination of the witnesses and their cross examinations may be over and thereafter, the matter will be finally argued out and thus, let a time bound schedule may be given, as per submissions of the learned Counsel for both the parties, to dispose of Title Suit No. 1 of 2000 passed by the learned 3rd Additional District Judge, Jamshedpur.

3. In view of the aforesaid facts and reasons, I hereby, allow the application, preferred by the original defendants to examine their witnesses namely, Geeta Saha and Reeta Saha, with a cost of Rs. 1,000/- (Rs. one thousand only). This amount shall be deposited by the petitioners before the trial court and on proper application and verification, the same will be allowed to be withdrawn by the original plaintiff. The petitioners (original defendants) will examine their witnesses within a period of 30 days, from today. The trial court is directed to dispose of Title Suit No. 1 of 2000 (converted from Probate Case No. 17 of 1998) as expeditiously as possible and practicable, preferably on or before 30th December, 2010, in accordance with law and evidence on record.

4. In view of the aforesaid observations and directions, this writ petition is disposed of.