

(2005) 04 JH CK 0012
In the Jharkhand High Court
Case No : Writ Petition (C) No. 272 of 2004

Ghanshyam Dusadh and Others

APPELLANT

Vs

Kishun Dusadh and Others

RESPONDENT

Date of Decision : 12-04-2005

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2005) 3 JCR 160

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Advocate : P.K. Prasad, V.K. Prasad and P. Kumar, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—Heard learned counsel for the petitioner.

2. This writ application filed under Article 227 of the Constitution of India is directed against the order dated 18.11.2003 passed by District Judge, Hazaribagh in Title Appeal No. 9 of 2000 whereby amendment application filed by the petitioner/plaintiff has been rejected.

3. The original plaintiff/petitioners filed a suit being Title suit No. 21 of 1994 for the following reliefs :

(a) That the wrong entry in register II be declared illegal, in-operative and rent receipt be stopped issuing in the name of defendants.

(b) To declare all the documents of the "defendants as forged, fabricated, illegal and in-operative.

(c) To declare the defendants illegal in the interfere of possession and for the defendants to interfere in the possession of the plaintiffs.

(d) That cost of the suit be awarded to the plaintiff.

(e) Any other relief and reliefs be awarded to the plaintiffs as your honour deem fit and proper.

4. The suit was decreed and aggrieved by the decree the defendants/respondents filed Title Appeal being T.A. No. 9 of 2000. At the appellate stage an application was filed by the petitioner dated 24.3.2003 for the following reliefs ;

(A) That on adjudication it be declared that the defendants have got no interest of any kind in the suit lands described in Schedule "C of the plaint and they are not entitled to any benefit of the entries of their names appearing in Register-II of Village-Malkana, Police-Station-Chouparan, District Hazaribagh relating to the suit lands which are incorrect, unauthentic, void, unsustainable, not operative in law and not binding on the plaintiffs.

(B) Plaintiffs' title to the suit lands described in Schedule "C of the plaint be declared and their possession on the suit lands be confirmed or in the alternative they are deemed to have been dispossessed therefrom then their possession be recovered through the process of the Court after dispossessing the defendants.

(C) By a decree the defendants be restrained permanently from going upon the suit lands and disturbing the plaintiffs in their possession of the suit lands.

5. The learned District Judge considering the nature of the amendment sought for by the petitioner held that by the proposed amendment the plaintiffs seek relief of declaration of title and confirmation of possession and/or recovery of possession and also relief of injunction against the defendants which will change the nature of, the suit as the defendants were not supposed to lead evidence on that score. I find full force in the reasoning given by the Court below.

6. Mr. Prasad learned counsel appearing for the petitioner submitted that petitioner is ready to pay advalorem Court fee. In my opinion, merely because advalorem Court fee is paid, the relief cannot be amended, that too at the appellate stage. It is rather surprising that appeal was filed in 2000 when the new amended provision of CPC came in force, which provides inter alia that when hearing commenced parties cannot be allowed to amend the pleadings. Notwithstanding the aforesaid amending provision the amendment petition was filed for amendment in appeal 2003.

7. For these reasons, I do not find any illegality or infirmity in the impugned order. This writ application is dismissed.