
(2011) 03 JH CK 0045

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1630 of 2009

Gokhul Kumhar and Others

APPELLANT

Vs

Bimal Madhav Roy and Others

RESPONDENT

Date of Decision : 08-03-2011

Acts Referred:

Citation : (2011) 03 JH CK 0045

Hon'ble Judges : Poonam Srivastava, J

Bench : Single Bench

Judgement

Poonam Srivastav, J.—Heard respective counsels on behalf of the Petitioners and the Respondents.

2. The order impugned in the instant writ petition is dated 2nd March 2009 arising out of a Gokhul Kumhar v. Bimal Madhav Roy Title Suit No. 60 of 1994). The order was passed on an application moved at the behest of the Plaintiff dated 9.1.2009 under Order XI Rule 14 read with Section 151 of the CPC praying therein to direct Defendant No. 2 Ramta Prasad Sharma to produce the original sale deed No. 4033 dated 2nd September 1943 to ascertain the genuineness of the documents. The trial Court after hearing the parties rejected the prayer by means of the impugned order.

3. The submission on behalf of the Defendant-Respondent No. 2-is that the sale deed No. 4033 dated 2nd September 1943 had not been handed over to him, so, the original sale deed is not in his possession. The Plaintiff has also not been able to bring anything on record to substantiate the claim that the sale deed pertaining to the year 1943 is in the possession of the Defendant, though reliance was placed on an order dated 17th September, 2008 passed in W.P.(C) No. 4957 of 2007, wherein assertion was made by one Advocate Sri Srijit Choudhary, appearing on behalf of Bimal Madhav Roy. The submission on behalf of Respondent No. 1 in the said writ petition made by learned Counsel was that the Respondent was very old and ailing man of 94 years. The assertion of learned Counsel was incorporated in the said order by this Court, which is

reproduced herein below:

Respondent No. 1 Bimal Madhav Rai, submitted that Respondent No. 1 is aged 94 years, and therefore, he could not file affidavit, but he has instructed him to say before this Court that he has already sold the property in question by sale deed No. 10508 dated 11/9/1979 to Respondent No. 2 (Ramta Prasad Sharma) and handed over all the documents related to the piece of land at the time of execution of the sale deed

4. Thus, the Plaintiff stated that unequivocal submission made before the Court on behalf of ailing Defendant Bimal Madhav Roy that the sale deed No. 4033 dated 2nd September 1943 was in possession of Ramta Prasad Sharma, Defendant-Respondent No. 2 in the instant writ petition. However, the said submission made in a previous writ petition cannot bind the Defendant-Respondents and it cannot be said that the sale deed is in his possession without there being any other documents or any other circumstance to corroborate this assertion made on behalf of the Plaintiff- Petitioners.

5. In the circumstance keeping pending this writ petition will not yield any good result and it is futile to direct the Defendant-Respondents to produce the said sale deed, which he has stated on oath by filing a counter affidavit that the same is not in his possession.

6. In view of what has been stated above, the Court below is directed to proceed with the suit on other evidence and not to linger the same as the suit pertains to the year 1994. The trial Court should make every effort for disposal of the suit as early as possible.

7. Accordingly, the instant writ petition is disposed of.