
(2019) 03 JH CK 0039
In the Jharkhand High Court
Case No : Writ Petition(C) No. 330 Of 2019

Guru Munda And Ors

APPELLANT

Vs

State Of Jharkhand And Ors

RESPONDENT

Date of Decision : 27-03-2019

Acts Referred:

Chotanagpur Tenancy Act, 1908 — Section 87, 89
Code Of Civil Procedure, 1908 — Order 6 Rule 17
Constitution Of India, 1950 — Article 227

Citation : (2019) 03 JH CK 0039

Hon'ble Judges : Sujit Narayan Prasad, J

Bench : Single Bench

Advocate : Subhash Kumar Mishra

Final Decision : Dismissed

Judgement

1. This writ petition is filed under Article 227 of the Constitution of India wherein order dated 10.12.2018 passed in Title Appeal No.39/2012 whereby and whereunder the petition has filed under Order VI Rule 17 of the Code of Civil Procedure for seeking amendment at the appellate stage by allowing the petitioners to bring on record the assertion to the effect of dismissal of the Title Suit No.03/1999 vide order dated 13.08.2010.

2. The brief facts of the case as per the pleading made in the writ petition is that the suit for declaration of right to entitle, has been filed by the respondents/defendants after losing before the revenue authority wherein the record of rights the grievance has been agitated about making wrong entry as per the provision of Section 87 of the Chhotanagpur Tenancy Act, against which the petition was filed under Section 89 of the Chhotanagpur Tenancy Act, but the revenue authority has refused to make necessary correction and thereafter the aforesaid Title Suit No.03/1999 has been filed which has also been dismissed vide order dated 13.08.2010.

The petitioners has also filed a Suit being Partition Suit No.219/1999 in the year

1999 which was finally decided against the petitioners in the month of May, 2012 against which the appeal has been preferred sometime in the year 2012.

So far as, the order is concerned and it is admitted case of the petitioner that the document pertaining to order passed by the revenue authority under Section 89 of the Chhotanagpur Tenancy Act.

3. The petitioners has filed a petition under Order VI Rule 17 of the Code of Civil Procedure for seeking a leave of the Court for making necessary amendment in the plaint by inserting the order passed by the competent court of the civil jurisdiction dated 13.08.2010 passed in Title Suit No.03/1999 but the same has been rejected by the appellate court on the ground that the petitioners has failed to make out a case by showing instead of due diligence. The aforesaid aspect of the matter could not have been brought on record at the time of filing of the appeal against which the present writ petition has been filed by invoking the jurisdiction conferred under Article 227 of the Constitution of the India.

4. Learned counsel for the petitioners has urged before this Court that the amendment if sought for can be allowed at any stage of the trial and since the appeal is continuation of the original trial and hence the aforesaid petition ought to have been allowed instead of going into the technicality for proper adjudication of the issues.

5. Having heard the learned counsel for the petitioners and going across the pleading made in the writ petition as also the impugned order wherefrom it describes to this Court the factual aspect that for making necessary correction in the record of rights the respondents/defendants has made a petition under Section 89 of the Chhotanagpur Tenancy Act, being Settlement Revision No.28 of 1992 but the same was rejected by the revisional authority and thereafter a declaratory suit has been filed for declaration right and title by the respondents/defendants being Title Suit No.03/1999, however, the same has been dismissed for default vide order dated 13.08.2010.

The petitioner has filed Partition Suit No.219/1999 which was decided against the petitioner in the month of May, 2012, appeal has been preferred against the aforesaid decree and at that stage a petition under Order VI Rule 17 has been filed for seeking amendment of insertion of the fact about the dismissal of the Title Suit No.03/1999.

Admittedly, the appeal has been filed sometime in the year 2012 and the Title Suit No.03/1999 was dismissed for default vide order dated 13.08.2010, hence the amendment which has been sought for by the petitioner prior to the date of institution of appeal.

It is not in dispute that appeal is the continuation of the original suit but so far as it relates to pass the order under Order VI Rule 17, the stage is necessarily to be seen and therefore, it would be said as has been submitted by the learned counsel for the petitioners that since the appeal is the continuation of the original

trial the date of filing of the original suit will be treated to be the date for considering the subsequent development occurred during the pendency of the suit, here, the decree in the Title Suit No.03/1999 dated 13.08.2010 which is before the filing of the appeal i.e. the year 2012 and hence it would be said to be subsequent development occurs in course of pendency of the appeal, therefore, the provision of Order VI Rule 17 containing therein, the condition regarding the due diligence to be shown by the party is to be concerned for allowing the amendment at any stage of the proceeding.

6. This Court has gone across the petition filed by the petitioner under Order VI Rule 17 but only the ground has been taken regarding the ignorance and on that ground the trial court has tried to be impressed that the same will come under the fold of due diligence but that aspect of the matter cannot be said to be true meaning of due diligence signifies i.e. in spite of sincere endeavors if the facts of the document which was not within the reach of the charge and ignorance of law cannot be said to be the due diligence otherwise, each and every amendment is to be allowed on the garb of ignorance of law.

The trial court after taking into consideration these aspect of the matter, has rejected the said petition, therefore it is not a case to exercise the jurisdiction conferred to this Court under Article 227 of the Constitution of India. In view of the fact that there is no error apparent on the face of record.

7. This writ petition lacks merit and is accordingly, dismissed.