

(2009) 12 JH CK 0042
In the Jharkhand High Court

Jay Mangal Kumar @ Jai Mangal Kumar	APPELLANT
Vs	
The State of Jharkhand and Others	RESPONDENT

Date of Decision : 09-12-2009

Acts Referred:

Citation : AIR 2010 Jhar 124

Hon'ble Judges : Gyan Sudha Mishra, C.J.; Rakesh Ranjan Prasad, J

Bench : Division Bench

Final Decision : Dismissed

Judgement

1. This appeal has been preferred against the order dated 17.4.2009 passed by the learned Single Judge in I.A. No. 1058/2009 arising out of W.P (C) No. 3154/2007, by which the interim order of stay granted in favour of the petitioner-appellant herein, was recalled.

2. Shortly stated there is a dispute over the title between the appellant and the contesting respondent Nos. 8 to 13 and initially a decree in a title suit was passed in favour of the appellant herein but the respondents preferred a Miscellaneous Appeal against the same and the matter was finally remanded by the High Court to the trial court for determination of the question of title between the appellant and the respondent Nos. 8 to 11, which is still pending.

3. Under the circumstance, it is obvious that all incidental questions including the question as to whether the plan could be approved by the Notified Area Committee for construction of the house on the disputed land and whether the same was fit to be entertained, can only be raised before the appropriate forum, i.e. the Civil Court of competent jurisdiction. Parallel proceedings giving rise to a dispute as to whether the land belongs to the appellant or the contesting respondents and consequently whether any construction is fit to be raised by the appellant or by the respondents on the disputed land, has to be adjudicated by a court of competent jurisdiction. Hence the interim order granted earlier in favour of the appellant restraining the respondents from raising construction, which has

now been vacated, cannot be interfered with as the decree, which was passed in favour of the appellant, admittedly was a compromise decree without impleading the contesting respondent Nos. 8 to 11.

4. In view of the aforesaid circumstance, the appellant is at liberty to raise all questions including approval of the plan in favour of the respondents by the Notified Area Committee before the Civil Court where the title suit bearing Misc. Case No. 12/2002 is pending, as the question of approval of plan also is a consequential relief after the title is decided. Similarly, the appellant will also be at liberty to file an application for injunction against the Notified Area Committee after establishing at least his prima facie title to the suit land and it is for the court below to consider all questions relating to title including the question whether the Notified Area Committee could approve the plan in favour of the respondent Nos. 8 to 11 without ascertaining clear title in favour of the respondent Nos. 8 to 11.

5. The appeal, subject to the aforesaid observation, is dismissed.