

(2017) 02 JH CK 0169
In the Jharkhand High Court
Case No : 4982 of 2016

Jharkhand Jan Kranti Morcha through its President Amrendra Kumar,

APPELLANT

Vs

The State of Jharkhand & ORS.

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

[Code of Civil Procedure, 1908](#), [Order 14Rule 1](#), [Order 14Rule 2](#), [Order 14Rule 3](#), [Order 14Rule 5](#)

Citation : (2017) 02 JH CK 0169

Hon'ble Judges : Aparesh Kumar Singh

Bench : SINGLE BENCH

Advocate : Bhupal Krishna Prasad

Judgement

1. Heard counsel for the petitioners.

2. Learned Trial Court of Senior Civil Judge-1, Dumka in Title (P) Suit No. 128/2003, has declined the prayer for adding two more issues for trial at the instance of the defendants / petitioners herein by the impugned order dated 10.08.2016 (Annexure-5). The issues sought to be framed are as follows: i. Has the plaintiff no. 2 inherited the suit property of Chandmani Osta on his death in the year 1995?

ii. Are the plaintiff no. 3, illegitimate children, entitled to any share in coparcenary property of Negi Osta and Bhutka Thakur @ Osta?

It is not in dispute that after completion of pleadings, six issues were framed as early as on 24.09.2008. I. Is the suit maintainable in its present form.

II. Have the plaintiff valid cause of action for the suit.

III. Is the suit bad for non-joinder of necessary parties.

IV. Is there unity of title and possession in between the parties.

V. Are the plaintiffs entitled to the claimed relief.

VI. To what other and further relief or reliefs the plaintiffs are entitled to. Parties have also led their evidence which has been closed in February 2016.

3. Defendants however have chosen to move this application on 20.07.2016 seeking addition of two more issues for just decision of the case. Learned counsel for the Defendants / petitioners has sought to justify the prayer on the grounds that pleadings in the plaint together with genealogy enclosed therein and its rebuttal in the written statement of the defendants, are sufficient to show that adjudication of the lis involves determination of these two issues as well. It is submitted that the provisions of Order XIV Rule 5 of Civil Procedure Code do permit the Court also to amend the issues or frame additional issues any time before passing of decree on any such terms, as it may think fit and all such amendments or additional issues for determining the matters in controversy between the parties, shall be made or framed. The Court also can strike out issues before passing a decree, if wrongly framed.

4. Perusal of the impugned order shows that after considering the submissions of the parties and contentions on law, learned Trial Court has been persuaded to decline the prayer at that stage keeping into account that suit is of 2003 and 13 years old and such venture may unnecessarily delay adjudication of the main suit. It however also clearly indicated that issues, if any, which are required to be framed, may be framed at an appropriate stage without any petition from either side. Both parties were directed to complete their arguments within time frame. Matter is said to be at the stage of argument.

5. Order XIV Rule 1,2,3 and 5 of Civil Procedure Code are quoted hereunder: "1. Framing of issues.-(1) Issues arise when a material proposition of fact or law is affirmed by the one party and denied by the other.

(2) Material propositions are those propositions of law or fact which a plaintiff must allege in order to show a right to sue or a defendant must allege in order to constitute his defence.

(3) Each material proposition affirmed by one party and denied by the other shall form the subject of a distinct issue.

(4) Issues are of two kinds:

(a) issues of fact,

(b) issues of law.

(5) At the first hearing of the suit the Court shall, after reading the plaint and the written statements, if any, and [after examination under rule 2 of Order X and after hearing the parties or their pleaders], ascertain upon what material propositions of fact or of law the parties are at variance, and shall thereupon

proceed to frame and record the issues on which the right decision of the case appears to depend.

(6) Nothing in this rule requires the Court to frame and record issues where the defendant at the first hearing of the suit makes no defence.

2. Court to pronounce judgment on all issues.- (1) Notwithstanding that a case may be disposed of on a preliminary issue, the Court shall, subject to the provisions of sub-rule (2), pronounce judgment on all issues. (2) Where issues both of law and of fact arise in the same suit, and the Court is of opinion that the case or any part thereof may be disposed of on an issue of law only, it may try that issue first if that issue relates to-

(a) the jurisdiction of the Court, or

(b) a bar to the suit created by any law for the time being in force, and for that purpose may, if it thinks fit, postpone the settlement of the other issues until after that issue has been determined, and may deal with the suit in accordance with the decision on that issue.

3. Materials from which issues may be framed.- The Court may frame the issues from all or any of the following materials:- (a) allegations made on oath by the parties, or by any persons present on their behalf, or made by the pleaders of such parties;

(b) allegations made in the pleadings or in answers to interrogatories delivered in the suit;

(c) the contents of documents produced by either party.

5. Power to amend and strike out issues.- (1) The Court may at any time before passing a decree amend the issues or frame additional issues on such terms as it thinks fit, and all such amendments or additional issues as may be necessary for determining the matters in controversy between the parties shall be so made or framed. (2) The Court may also, at any time before passing a decree, strike out any issues that appear to it to be wrongly framed or introduced."

Learned counsel for the petitioners submits that both parties have adduced evidence on these contentious issues as well.

6. Provisions of Civil Procedure Code, as noted herein-above, have persuaded the Learned Trial Court also to indicate that the issues, if any, required to be framed, may be framed at an appropriate stage. Pleadings and evidence of the parties are admittedly complete. It therefore goes without saying that the learned Trial Court, if so considers necessary, may amend the issues or frame additional issues any time before passing the decree for determining the matter in controversy between the parties. In that event, it is open for the Court to allow further hearing or evidence on the additional issues if it is necessary to determine the matters in controversy.

7. With these observations therefore, writ petition is disposed of without interfering in the impugned order. I.A. No. 5860/2016 also stands disposed of.