

(2010) 08 JH CK 0074
In the Jharkhand High Court

Kailash Chandra Sharma

APPELLANT

Vs

Uday Kumar Rajgaria, Akash Kumar Rajgaria and Vikram
Kumar Rajgaria

RESPONDENT

Date of Decision : 26-08-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 08 JH CK 0074

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramesh Kumar Merathia, J.—This writ petition has been filed against the order dated 10.2.2010 passed by learned Additional District Judge, Fast Track Court-II, Dhanbad in Title Appeal No. 115 of 2005, rejecting the petition dated 1.12.2009 filed by the defendant-petitioner-tenant, for stay of hearing of the said title appeal, till the pendency of Second Appeal No. 180 of 2002, before this Court.

2. It is submitted by Mr. J.K. Pasari, Learned Counsel for the petitioner, that according to the petitioner, Purushottam Das Rajgaria is his landlord to whom rent was paid, and therefore, there was no default, whereas the plaintiffs-respondents herein are claiming that they are the landlords. Thus he submitted that the hearing of said Title Appeal No. 115 of 2005, pending in the lower appellate court, be stayed till the disposal of Second Appeal No. 180 of 2002. He also pointed out that certain mistake of fact has crept in the impugned order.

3. On the other hand, Mr. A.K. Sahani, Learned Counsel appearing for the plaintiffs-respondents-landlords, submitted that Title Suit No. 17 of 1988, was filed by the respondents herein; against Purushottam Das Rajgaria who lost up to the Supreme Court; and then he filed Title Appeal No. 72 of 2001, which was also dismissed; against which, the said Second Appeal No. 180 of 2002 has been filed. He incidentally pointed out that Mr. Pasari, Learned Counsel for the petitioner, also appears on behalf of Purushottam Das Rajgaria in the said second

appeal, before this Court. He further submitted that the issues involved in the present eviction suit are entirely different.

4. It is true that some mistake of fact has crept in the order, but that will not make any difference. Undisputedly, petitioner is tenant. His claim is that he is tenant under Purushottam Das Rajgaria. Even if it is accepted that some dispute is pending between Purushottam Das Rajgaria and the respondents herein, with regard to their right, title and interest over the suit property, the petitioner cannot claim that the said Title Appeal No. 115 of 2005 be stayed till the disposal of the said Second Appeal No. 180 of 2002. The suit, from which this appeal arises, was filed in the year 1988. The petitioner is trying to delay the matter by abusing the process of law. No ground is made out for interference with the impugned order under Article 227 of the Constitution of India.

5. Accordingly this writ petition is dismissed with cost of Rs. 5000/- to be paid to the other side in the learned court below within four weeks from today.