
(2014) 04 JH CK 0010
In the Jharkhand High Court
Case No : Civil Revision No. 32 of 2011

Kamala Gangoli

APPELLANT

Vs

Ram Lakhan Singh Yadav College

RESPONDENT

Date of Decision : 29-04-2014

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 11(d)

Citation : (2014) 3 JLJR 479

Hon'ble Judges : Dhruv Narayan Upadhyay, J

Bench : Single Bench

Advocate : Rajan Raj, Rohit and Ganesh Pathak, Advocate for the Appellant;
Anup Kr. Mehta and Sharad Kaushal, Advocate for the Respondent

Judgement

Dhruv Narayan Upadhyay, J.—This revision application has been directed against the order dated 17.08.2011 passed by learned Subordinate Judge-VIII, Ranchi in Title Suit No. 19 of 2008 whereby and whereunder the petition dated 12.05.2010 filed by the petitioners under Order VII Rule 11(d) of the Code of Civil Procedure has been rejected. It is submitted that the opposite party has filed the suit on 14.01.2008 for specific performance of contract in respect of an agreement dated 11.11.1988 allegedly executed between the parties and it is apparent that the suit filed by the opposite party is time barred. It is further contended that the aforesaid agreement which was executed between the parties stood cancelled because the opposite party failed to discharge his part of obligation under the said agreement and it was duly informed to the opposite party. Since the suit filed by the plaintiff is not having cause of action, the plaint filed by the opposite party was liable to be rejected but the learned Sub-Judge misconstrued the provision and the reasoning given in the impugned order are not tenable. The petitioner was directed to maintain status quo during pendency of L.P.A. No. 430 of 1999 (R) and therefore the opposite party was not restrained from taking recourse to enforce the alleged agreement.

2. On the other hand, learned counsel appearing for the opposite party has

vehemently opposed the argument so advanced and submitted that after execution of the said agreement petitioners were contesting U.L.C. Case No. 12 of 1976 which was pending before Deputy Commissioner, Ranchi and that matter went upto the High Court and lastly disposed of vide L.P.A. No. 430 of 1999 (R). It is submitted that the petitioners have preferred C.W.J.C. No. 3347 of 1998 (R) before the Patna High Court (Ranchi Bench) in which the opposite party appeared and contested the said writ application. Thereafter, the opposite party had also appeared in L.P.A. No. 430 of 1999 (R) in which status quo was directed to be maintained and the petitioners were restrained from transferring the land. That was the reason the opposite party did not prefer any suit for specific performance of contract. When, this Hon''ble Court at the time of disposal of L.P.A. No. 430 of 1999 (R), has observed:-

since it is stated that the college authority already entered into sale agreement, it is open to college authority to invoke other remedies available in regard to the specific performance of said agreement for sale by initiating appropriate proceedings as against the appellants in the appropriate forum.

3. The opposite party in view of observation made in the said order filed Title Suit No. 19 of 2008 in which the petitioners filed petition under Order VII Rule 11(d) which stood rejected with appropriate reason and that order does not suffer with any illegality or incorrectness and therefore there is no merit in this revision.

4. Learned counsel has relied upon the judgment reported in the case of Saleem Bhai and Others Vs. State of Maharashtra and Others, , Sopan Sukhdeo Sable and Others Vs. Assistant Charity Commissioner and Others, , Popat and Kotecha Property Vs. State Bank of India Staff Association, .

5. By referring those judgments, it is contended that the averments made in the plaint are to be considered by the court for the purpose of rejection of the plaint. The defence taken in the written statement or the pleadings made therein are not supposed to be considered for the purpose of rejecting the plaint under order VII Rule 11(d) CPC.

6. I have gone through the impugned order and the materials placed before me and the judgment reported in the case of Saleem Bhai and Others Vs. State of Maharashtra and Others, , it is very clearly observed that:

the trial court can exercised its power under Order VII Rule 11 CPC at any stage of the suit before registering the plaint or after issuing summons to the defendant at any time before the conclusion of the trial. For the purposes of deciding an application under clauses (a) and (a) of Rule 11 Order 7 CPC, the averments in the plaint are germane; the pleas taken by the defendant in the written statement would be wholly irrelevant at that stage, therefore, a direction to file the written statement without deciding the application under Order 7 Rule 11 CPC cannot but the procedural irregularity touching the exercise of jurisdiction by the trial court.

7. This point has been considered by the Hon"ble Apex Court in the other judgment referred to above. Learned Sub Judge has elaborately discussed all the points and after considering the materials, passed a reasoned order. I do not find that the impugned order needs any interference. There is no merit in this revision application, which stands dismissed.