
(2005) 04 JH CK 0022
In the Jharkhand High Court
Case No : Civil Revision No. 33 of 2005

Kartik Prasad

APPELLANT

Vs

Parsadi Pandit

RESPONDENT

Date of Decision : 27-04-2005

Acts Referred:

Bihar Bhoodan Yagna Act, 1954 — Section 11, 14
Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, 9

Citation : (2006) 1 CCC 323 : (2005) 3 JCR 319

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : R.K. Singh and Pramod Kumar Jha, for the Appellant; None, for the Respondent

Final Decision : Dismissed

Judgement

N.N. Tiwari, J.—The petitioner has filed this Civil Revision against the order dated 25.1.2005 passed in T.D.S. No. 246 of 2003 by learned Sub-Judge II, Deoghar whereby the petitioner's application under Order VII, Rule 11 of the CPC has been rejected.

2. The plaintiff opposite party filed Title Suit No. 246 of 2004 praying for a decree of declaration of his right, title and confirmation of possession of the plaintiff over the suit land and also for declaration that the order passed in Criminal Miscellaneous No. 97 of 2000 dated 6.6.2000 by the Sub-Divisional Magistrate and order dated 10.4.2003 in Criminal Miscellaneous No. 37 of 2003 are null and void.

3. The defendant petitioner appeared and filed an application under Order VII, Rule 11 of the CPC praying for rejection of the plaint on the ground that the suit was not tenable as the suit property was acquired on the basis of a certificate granted by Bhoodan Yajna Committee and no suit can be filed against the said certificate.

4. The plaintiff opposite party filed a rejoinder stating inter alia that the suit was filed for declaration of right, title and interest and confirmation of possession and for which only the civil Court has got jurisdiction and as such the defendants petition was baseless and liable to be rejected.

5. The Court below after hearing the parties and considering the facts and materials on record held that the issues of right, title and interest as well as possession are involved in the suit and the same can be only decided by the Civil Court and that there was no ground for entertaining the defendants, petition under Order VII, Rule 11 of the Civil Procedure Code; The learned Court below thus rejected the said application.

6. Mr. R.K. Singh, learned counsel appearing on behalf of the petitioner submitted that the Bihar Bhoodan Yajna Act, 1954 is the special legislation and if the land has been transferred by any grantee under the said provision it cannot be challenged in the Civil Court and the suit for declaration of right, title and interest also cannot be tried by the Civil Court. Learned counsel placed reliance on Section 11(A) and submitted that the protection has been given under this Act from ejecting the grantee from the land given to him. According to the learned counsel there is provision for appeal in the Act itself and anybody aggrieved by the grant or otherwise can file an appeal and the suit is barred. The learned Court below has committed an error of law and exercised its Jurisdiction illegally in rejecting the defendant's application.

7. After hearing the learned counsel for the petitioner and perusing the records and the relevant provision of law, I find that the Bihar Bhoodan Yajna Act, 1954 does not create any bar for trying a suit for declaration of right, title and interest by the Civil Court. The provision as contained in Section 14(A) of the said Act does not exclude the Jurisdiction of the Civil Court for deciding the issues of right, title and interest even in respect of the land said to be granted under the provision of the Bhoodan Yajna Act. Section 9 of the CPC confers jurisdiction to the competent Civil Court to try and decide all suits of civil nature excepting the suits of which cognizance is either barred expressly or impliedly. Since no express bar has been created by the said Bihar Bhoodan Yajna Act for trying the suit of civil nature by the Civil Court particularly for declaration of right, title and interest, the plaintiff cannot be deprived of the statutory remedy of instituting the suit. The Court below has considered all the aspects and has also come to the conclusion that the defendant has failed to make out any case for returning the plaint to the plaintiff and rejected the defendant petition. I do not find any jurisdictional error or any other illegality in the impugned order.

8. The Civil Revision is accordingly dismissed.