
(2012) 04 JH CK 0210

In the Jharkhand High Court

Case No : Civil Revision No. 31 of 2011

Khetro Bhumij @ Krishna Chandra "Bhumij"

APPELLANT

Vs

Smt. Gurubari Bhumijani and Another

RESPONDENT

Date of Decision : 27-04-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 9 Rule 13, 151
Criminal Procedure Code, 1973 (CrPC) — Section 144

Citation : (2012) 4 JCR 39

Hon'ble Judges : P.P. Bhatt, J

Bench : Single Bench

Advocate : Bibhash Sinha, for the Appellant;

Judgement

P.P. Bhatt, J.—The present Civil Revision application is filed against the judgment and order dated 28.7.2011 passed by the learned Sub-Judge-I Jamshedpur in Misc. Case No. 10 of 2003 whereby the application filed under Order IX, Rule 13 read with Section 151. C.P.C. by the opposite party No. 1 was ordered to be allowed and thereby the learned Court below was pleased to set aside the ex-parte order and decree passed in Title Suit No. 52 of 1999. The brief facts of the cases are as under :-

The petitioner (original plaintiff) filed suit being Title Suit No. 52 of 1999 praying therein for a decree against the defendant No. 1 i.e. Opposite party No. 1 herein on the ground that the plaintiff being the agnate of his uncle Chhotia Bhumij @ Sotia Bhumij has inherited the suit land particularly described in Schedules D and B as the defendant No. 1. widow of Late Chhotia Bhumij @ Sotia Bhumji is excluded from inheritance being a tribal female and not entitled to inherit husband's landed property.

2. The learned counsel for the petitioner submitted that in the said Title Suit dated 7.8.1999 the Civil Court Peon has served the summons and the copy of the plaint in presence of the plaintiff and other witnesses but even thereafter defendant No. 1 i.e. Gurubari Bhumijani knowing fully well about the pendency of

Title Suit No. 52 of 1999 in the Court below and thereafter the learned Court below had taken mode of service of summons through publication in local daily newspapers which was duly published on 19th February, 2010 fixing next date for appearance on 7.3.2010 and thereafter vide order dated 1.5.2010 the suit was fixed for ex-parte hearing because of non-appearance of the opposite party No. 1. It is further submitted that the suit proceeded ex-parte and vide order dated 20.11.2000 the same was decided in favour of the petitioner(plaintiff) and decree was signed on 30.11.2000. It is further submitted that on 19th June, 2003 the opposite party No. 1 herein filed petition under Order IX, Rule 13, C.P.C. for setting aside the ex- parte judgment and decree which was registered as Misc. Case No. 10 of 2003. It is submitted that parties have contested the Misc Case No. 10 of 2003 and have led oral and documentary evidence and thereafter vide order dated 28.7.2011 passed by the learned Sub-Judge-1 Jamshedpur in Misc. Case No. 10 of 2003 petition filed under Order IX, Rule 13, C.P.C. read with Section 151 of C.P.C. was allowed and judgment and decree dated 20.11.2000 passed in Title Suit No. 52 of 1999 has been set aside. Being aggrieved and dissatisfied with the judgment dated 28.7.2011 the present Civil Revision is preferred.

3. The learned counsel for the petitioner submitted that the judgment dated 28.7.2011 passed by the Court below is perverse and is against the materials on record. It is further submitted that there is sufficient materials to show that the opposite party No. 1 herein had knowledge of the pendency of the Title suit No. 52 of 1999 despite of the same, she refused to appear and to contest the said suit. It is further submitted that the learned Court below overlooked the deposition of the process server, who was examined on behalf of the petitioner. While referring the order passed by the Court below the learned counsel submitted that the learned Court below failed to appreciate the documentary evidence i.e. Exhibit-A. copy of summons issued upon defendant in Title Suit No. 52 of 1999, Exhibit-B. Certified copy of list of documents filed on behalf of second party in Misc. Case No. 1445 of 2002 and Exhibit-C. certified copy of show cause filed by the second party/petitioner herein in proceeding u/s 144 of Cr.P.C. being Misc. case No. 1445 of 2002. It is further submitted that the learned Court below has completely overlooked the admission made by the opposite party No. 1 in paragraph-15 of her cross-examination wherein she has admitted that she had knowledge of summons of Title suit No. 52 of 1999, but has taken no step for getting the certified copy of the decision. It is also submitted that the learned Court below failed to appreciate that the summons were duly served upon the opposite party No. 1 in compliance of provisions as laid down in C.P.C. The learned counsel for the petitioner lastly submitted that the learned Court below has committed grave error in law in touching merits of suit by saying that though adivasi lady has not inherited right and title in the property of her husband but as per customary law she has right to be maintained from her husband's property till her death. Therefore, according to the learned counsel, the judgment passed by the Court below is bad in law and liable to be

set aside.

4. Upon hearing the learned counsel for the petitioner and on perusal of the order passed by the learned Sub-Judge it appears that the learned Court below has, after careful consideration of the facts and circumstances of the case and also considering the oral and documentary evidences recorded in Its finding, taken note of certain discrepancies for service of summons found on the basis of oral evidence of the process server and also independent witness. He has also observed that in view of the contradictory statement of all three witnesses who claim to be present at the time of serving summons does not appear reliable, dependable to come to a finding that the summons was validly served on 7.8.1999. The opposite party No. 1 appears to be illiterate widow lady and therefore, the learned Judge by appreciating this fact has observed that in the instant case it must be kept in mind that the applicant and the defendant of the original suit is Scheduled Tribe illiterate old lady. It appears that paper cutting available on the record clearly goes to show that the summon was published in English language and therefore, the learned Judge has rightly and property appreciate this fact and observed in its order that undoubtedly, a Scheduled Tribe illiterate lady is not expected to gather information upon publication of a summon in her name in local daily newspaper in English language. On perusal of the order passed by the Court below it appears that the opposite party No. 1 could gather information about the original suit on 29.5.2003 and then she took every efforts through her lawyer to know the details about the case and thereafter the case was filed on 19.6.2003. Therefore, by appreciating this fact the learned Court below has rightly observed that in such type of cases it is to be borne in mind that ability of concerned person should be considered and for complete and effective disposal for the ends of justice lenient view should be taken. The applicant is a Tribal illiterate old widow. The plaintiff(petitioner) had come with a case that a Tribal lady does not inherit right and title in the property of her husband as per their customary law but the learned Court below while dealing with the application has appreciated the undisputed fact hat a tribal widow has every right to be maintained out of the income from her husband's property till death and that right a valuable right and legally unenforcible right. Therefore, considering the facts and circumstances of the case this Court is of view that in such a situation, the learned judge has rightly and properly appreciated materials on record and reached to the conclusion that ex-parte order and decree passed in Title suit No. 52 of 1999 is re-to be set aside. On perusal of the findings recorded by the Court below in its judgment it appears that no irregularity or illegality has been committed by the Court below while passing the said order, rather rightly and properly considered the on record and passed an order setting aside the judgment and decree. Therefore, in my opinion, no interference is in the impugned order passed in Misc. Case No. 10 of 2003 on 28.7.2011. Hence this Civil Revision application is devoid of merit and is ordered to be dismissed. The learned counsel for the petitioner requested that since the title suit No. 52/99 is of the year 1999, the Court below may be

directed to dispose of the same within stipulated time. Considering the request made by the learned counsel for the petitioner and taking into account the fact that since the said title suit is of the year 1999 the learned Court below is expected to give priority in order to such an old case and shall expedite the same looking to the seniority of the case.