
(2015) 09 JH CK 0079
In the Jharkhand High Court
Case No : W.P.(C) No. 3060 of 2013

Lal Yashwardhan Nath Shahdeo

APPELLANT

Vs

Rupa Shahdeo and Others

RESPONDENT

Date of Decision : 23-09-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 7 Rule 11, Order 7 Rule 14, Order 7 Rule 18, Order 7 Rule 9

Citation : (2015) 4 JLJR 348

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : P.K. Sinha, for the Appellant; Rahul Kr. Gupta, for the Respondent

Final Decision : Allowed

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 20.3.2013 in Title Suit No. 452 of 2012, the present writ petition has been filed. The petitioner is the plaintiff in Title Suit No. 452 of 2012. A suit was instituted on 10.9.2012 and the plaintiff deposited adequate court-fees and second copy of the plaint. After the institution of the suit opportunity was granted to the petitioner/plaintiff to file original documents and, subsequently plaint was rejected under Order VII, Rule 11 CPC.

2. The learned counsel for the petitioner submits that under Order VII, Rule 11 CPC, the suit cannot be dismissed on the ground that original documents were not filed along with the plaint. It is further submitted that the suit can be dismissed on the ground that the claim of the plaintiff is not supported by documentary evidence however, after the institution of the suit, the trial court cannot dismiss the suit at the initial stage itself on the ground that original documents were not filed.

3. The learned counsel for the respondents/defendants submits that Order VII, Rule 14 CPC provides that at the time of presentation of plaint, the plaintiff is required to produce the document in his possession upon which the claim is

based. It is submitted that though the impugned order dated 20.3.2013 refers that the plaint is rejected under Order VII, Rule 11 CPC, the order is, in fact, passed under Order VII, Rule 14 CPC and therefore, it suffers from no infirmity.

4. There is no dispute" that a plaint cannot be rejected under Order VII, Rule 11 CPC on the ground that the plaintiff has failed to produce original documents. Insofar as, the contention that the order dated 20.3.2013 is, in fact, under Order VII, Rule 14 CPC, I find that the trial court has not recorded a finding that the plaintiff instituted the suit upon a document, the original copy of which was not produced by the plaintiff. I further find that after the presentation of the plaint, the suit has been instituted and it has been numbered. The plaintiff-petitioner has taken a plea that he applied for certified copies of record of rights, registered partition deed, registered sale-deed etc. however, till 20.3.2013 the same were not made available to him. The impugned order dated 20.3.2013 though records attendance of the plaintiff however, the plea taken by the petitioner is not recorded in the said order. From the averment in the writ petition it appears that one of the documents was record of rights, the original copy of which could not have been submitted by the plaintiff. Sub-rule 1 to Rule 14 of Order VII CPC mandates that where a plaintiff sues upon a document in his possession or power, he shall produce the same in Court when the plaint is presented and he shall deliver the said document or a copy to be filed with the plaint. The said provision does not speak of original documents. Further, the said provision is applicable only at the time of presentation of the plaint. Sub-rule (2) of Rule 14, Order VII CPC provides that where the plaintiff relies on any other document/ documents, whether in his possession or power or not, as evidence in support of his claim, he shall enter such documents in a list to be added or annexed to the plaint. Order VII, Rule 18 CPC provides that a document which ought to be produced in Court by the plaintiff when the plaint is presented, or to be entered in the list to be added or annexed to the plaint and, which is not produced or entered accordingly, shall not, without the leave of the Court, be received in evidence on his behalf at the hearing of the suit. The procedure under Order VII, Rule 9 CPC also does not provide rejection of the plaint if the original documents are not filed by the plaintiff. The order-sheet of Title Suit No. 452 of 2012 discloses that upon presentation of the plaint, the suit was instituted and it was fixed for hearing on the point of admission. I am of the opinion that, subject to specific provisions in the Code, after a suit has been instituted, it can only be dismissed or decreed by pronouncing a judgment and the plaint cannot be rejected either under Order VII, Rule 11 CPC or under Order VII, Rule 14 CPC on the ground that the plaintiff has failed to file original documents relating to the suit. I am of the opinion that impugned order dated 20.3.2013 suffers from serious infirmity in law and accordingly, it is set aside. The writ petition stands allowed. Title Suit No. 452 of 2013 is restored to its original file.