

(2004) 04 JH CK 0098
In the Jharkhand High Court
Case No : Writ Petition (C) No. 1634 of 2004

Mahali Oraon and Another

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 02-04-2004

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 14 Rule 2

Citation : (2004) 2 BLJR 1306 : (2004) 2 JCR 625

Hon'ble Judges : P.K. Balasubramanyan, C.J

Bench : Single Bench

Advocate : P.P.N. Roy, Praveen Kumar and R.P. Singh, for the Appellant; Manjul Prasad, SC (LC), for the Respondent Nos. 1 and 2, for the Respondent

Judgement

P.K. Balasubramanyan, C.J.—This is a proceeding initiated by the defendants under Article 227 of the Constitution of India. The plaintiff filed a suit for declaration of his title over the property and for other consequential reliefs including the relief for a declaration that the order passed under the Chotanagpur Tenancy Act, 1907 (the Act) was illegal and unenforceable. The defendant resisted the suit. He raised the contention that the suit was not maintainable in view of Section 139-A of the Act.

2. While the suit was pending, the defendant moved an application seeking the hearing of the issue of maintainability of the suit raised by him as a preliminary issue. The Court below took the view that in terms of Order XIV, Rule 2 of the Code of Civil Procedure, it would be proper to decide that issue along with the other issues in the suit. Hence, it refused to accede to the request of the defendant to hear the question of maintainability of the suit as a preliminary issue and deferred a decision on that issue, to be taken along with the other issues in the suit. It is this order that is sought to be challenged by the defendants in this proceeding under Article 227 of the Constitution of India.

3. Learned counsel for the defendants submitted that though Order XIV, Rule 2 of the CPC uses the expression "may", it should be understood as "shall" and

whenever a statutory bar to the maintainability of a suit is raised, the question must be decided as a preliminary issue alone and not otherwise. He sought to derive support from the decision of the Andhra Pradesh High Court in Hyderabad Asbestos Cement Products Ltd. Vs. Mohamad Argobasi Enterprises and Another, and the decision of the Praduman Kumar Vs. Girdhari Singh and Others, Counsel also cited the decision of the Supreme Court in Arun Agarwal v. Nagreeka Exports, (2002) 10 SCC 101 , to contend that in a case where the suit can be disposed of on a preliminary issue, the Court was obliged to decide that question first without compelling the parties to undergo the stress of a regular trial. He also referred to the decision of the Supreme Court in Pandey Orson Vs. Ram Chander Sahu and others, , to emphasise that! the Chotanagpar Tenancy Act, was a beneficial legislation and should be construed in favour of the tenant, on whom benefit is sought to be conferred by the Act. Counsel also relied on a decision of the Patna High Court in Parithosh Maitly v. Ghasiram Maitly 1987 BLJ 217, on the question of exclusive jurisdiction of the authority under the Act. I do not think that the time has arrived for deciding the merits of the contentions sought to be raised by the defendants. After all, it depends on the discretion of the Trial Court in the light of the pleadings in the case to decide whether the suit should be disposed off on a preliminary issue or their objection to the maintainability of the suit should be taken up and decided as a preliminary issue. There is no hard and fast rule. It will depend upon the facts of the , case and the nature of pleadings and the nature of the enquiry needed even for deciding the question of maintainability. But in the case on hand, I cannot say that the Trial Court has exercised its discretion in that regard in an unreasonable manner or perversely. On the whole, I felt that the Trial Court was justified in not acceding the request to take up the issue concerned as a preliminary issue and was not in error in postponing its consideration along with the other issues after the evidence was taken. The argument of learned counsel that in every case where maintainability of the suit is questioned and it is sought to be tried as a preliminary issue, the Court is bound to accede to the request, cannot be accepted. After all, the question has to be decided in the context of Order XIV, Rule 2 of the CPC and. in my view, it is for the Trial Court to decide whether a preliminary issue should be answered at the threshold or it should be tried and disposed of along with the other issues. In the circumstances, I decline to interfere with the order of the Court below. I dismiss the proceeding. But I direct the Trial Court to take note of the nature of the suit and direct it to try and dispose it of, in any event, within one year from this date.