
(2012) 08 JH CK 0063

In the Jharkhand High Court

Case No : Writ Petition (C) No. 831 of 2012

Mahendra Prasad Sahu

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 09-08-2012

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, Order 39 Rule 2A, 151, 80

Constitution of India, 1950 — Article 21, 227, 300A

Penal Code, 1860 (IPC) — Section 120B, 147, 148, 149, 323

Citation : (2012) 08 JH CK 0063

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

Bench : Single Bench

Advocate : V. Shivnath, Mr. Biarendra Baurman and Mr. Niraj Kumar, in both cases, for the Appellant; Jai Prakash Jha (in W.P.(C) No. 831/12) for the Respondent No. 6-8 and Mr. A.K. Sahani, Advocate (in W.P.(C) No. 4074/2011) for the Respondents No. 1, 5 and 7, for the Respondent

Judgement

P.P. Bhatt

1. The petitioner has filed two separate writ petitions i.e. W.P.(C) No. 4074 of 2011 and W.P.(C) No. 831 of 2012.

W.P.(C) No. 4074 of 2011

The petitioner by way of filing this writ petition under Article 227 of the Constitution of India has prayed for quashing the order dated 6.6.2011 passed by the Sub-Judge-VIth Giridih in Partition suit No. 24 of 1990 whereby the prayer of the petitioner to appoint a Survey Knowing Pleader Commissioner to inspect and report about the construction carried out by the respondent No. 1 (Defendant No. 9) in spite of order of maintaining status quo and to take suitable action against the said defendant has been rejected.

W.P. (C) No. 831 of 2012

The petitioner by way of filing this writ petition under Article 227 of the Constitution of India has prayed for issuance of an appropriate writ/order/direction upon the respondent nos. 2 to 5 in particular to protect the petitioner's possession over portion of Plot No. 825, Khata No. 168/371, Area 0.04 acres with Katcha Khapraposh building and also prayed for issuance of an appropriate direction upon the respondents No. 2 to 5 to restrain the respondents No. 6, 7 and 8 from making any kind of demolition, construction and raising new pucca construction in violation of the status-quo order dated 7.9.1995 passed by a Civil Court (Sub-Judge-I, Giridih) in pending Partition Suit No. 24 of 1990. It is further prayed for issuance of an appropriate direction upon the respondents No. 2 to 5 to deploy full protection of the petitioner's possession during pendency of the writ application.

It is the case of the petitioner that he has instituted a Partition Suit No. 24 of 1990 for a relief of 1/12th share in the suit properties against the defendants including respondent nos. 6, 7 and 8. In the said suit, the petitioner has claimed exclusive possession over portion of plot No. 825, Khata No. 168/371, Area 0.04 acres with Khapraposh building. The petitioner had filed an application on 14.8.1995 under Order 39 Rules 1 and 2 read with section 151 of the CPC in the Partition suit No. 24 of 1990 seeking for order of permanent injunction in respect of claiming 1/12th share in the entire properties against all the defendants including respondents No. 6, 7 and 8 (defendants No. 4, 5 and 6) who were interested to make construction and interfere with the possession of the petitioner. The learned court below, after hearing the plaintiff and defendants, passed an order on 7.9.1995 directing both the parties to maintain "Status quo" on the immovable properties of the suit. According to the petitioner, despite the existing order of maintaining the status quo the respondents No. 6, 7 and 8 wanted to interfere with the peaceful possession of the petitioner in violation of the order of status quo. It is the case of the petitioner that the respondent No. 6 to 8 had disobeyed, disregarded and violated the order of the statusquo passed on 7.9.1995 and therefore, the petitioner was compelled and forced to file an application under Order 39 Rule 2(A) of the CPC in the court of Sub-Judge-1 Giridih against the respondents No. 6, 7 and 8 for disobeying the order of statusquo which was registered as Misc. Case No. 74 of 1996. It is further the case of the petitioner that the petitioner examined several witnesses including Survey Knowing Pleader Commissioner appointed by the learned District Judge, Giridih and the said witnesses have proved the case of the petitioner that the respondents had violated and disobeyed the order of Status quo passed on 7.9.1995. According to the petitioner, inspite of pendency of the aforesaid Misc. Case No. 74 of 1996, the respondents No. 6, 7 and 8 again wanted to put locks upon the door of the front portion of the premises of the petitioner's possession and started causing illegal demolition and destruction. As against that, the wife of the petitioner namely Smt. Gita Debi had fled a Complaint Case No. 1092 of 1998 in the court of Chief Judicial Magistrate, Giridih. After recording statements on solemn affirmation and statement of witnesses in the inquiry, the learned Sub-

divisional Judicial Magistrate, Giridih took cognizance of the offence on 7.12.1998 under sections 147, 148, 149, 120B, 452, 323, 341, 342, 354, 380 and 384 of the Indian Penal Code. Against the order of taking cognizance the accused persons including respondent's No. 6, 7 and 8 filed an application before this Court by way of filing Cr.M.P. No. 246 of 2005 which was dismissed on 15.2.2008 on merit. It is the further case of the petitioner that when he approached the Officer-in-charge, Dhanwar Police station for protection of his life including his family members and properties it prima facie appears that the concerned police officer of the Dhanwar Police station sided with the respondent nos. 6, 7 and 8 on the pretext that they have moved before the Supreme Court against the order passed in Cr.M.P. No. 246 of 2005. Thereafter, the petitioner filed an applications before the Superintendent of Police on 13.10.2010 and 19.10.2010 for issuance of an appropriate direction upon the Sub-ordinate Police officials for providing protection to the petitioner and its properties. The superintendent of Police after receipt of the applications has directed the Sub-Divisional Police Officer to look into the matter. The learned counsel for the petitioner submitted that despite grant of order of status quo by the court below, the respondents No. 6, 7 and 8 took law in their hands and committed breach of order passed by the court below and even despite pendency of the application filed by the petitioner under order 39 rule 2(A) of the CPC before the court below which was registered as Misc. Case No. 94 of 1996, the said respondents violated and disregarded the order of status quo. The petitioner approached the police authorities and despite issuance of direction by the Superintendent of Police, the respondents No. 6, 7 and 8 in connivance with the police authorities continued the violation of the order of status quo and thereby caused harassment to the petitioner. It is further submitted that despite the direction issued by the respondent No. 3, the Police Administration did not come in rescue of the petitioner and therefore, the petitioner was advised to give a notice u/s 80 of the CPC through Advocate upon the respondents. However, respondents did not reply to the said notice and therefore, according to the learned Senior Counsel appearing for the petitioners, the respondents No. 2 to 5 have acted arbitrarily in not providing any protection whatsoever to the petitioner and acted in violation of Article 300A of the Constitution of India. It is also submitted that the concerned respondents No. 2 to 5 police authorities did not take any action against the offenders respondent nos. 6 to 8 amounts to violation of Article 21 of the Constitution of India, and therefore, the petitioner had no other alternative efficacious remedy save and except to approach this Court seeking appropriate direction upon the said respondents.

2. As against that, the learned counsel appearing for the respondents submitted that the present petitioner has already moved the competent court having jurisdiction by way of filing an application under order 39 rule 2(A) of the CPC which was registered as Misc. Case No. 74 of 1996 and the said Misc. Case is still pending. However, the petitioner has approached this Court by abusing and misusing the process of law. It is submitted that the respondents No. 6 to 8 have

not committed any breach of order passed by the court below. Under the guise of protection by the police authorities the petitioner is trying to cause undue harassment to the respondent Nos. 6 to 8. It is further submitted that the Partition Suit No. 24 of 1990 is still pending and in the injunction application moved by the present petitioner by order dated 7.9.1995 both the parties were directed to maintain status quo on the immovable properties of the suit. Thereafter, the petitioner with a view to harass the private respondents moved an application for alleged breach of order of status quo under order 39 Rule 2(A) of the CPC and the said proceedings are still pending. Therefore, the present petition is not maintainable as the alternative efficacious remedy is already availed by the present petitioner and proceeding instituted by the present petitioner vide Misc. Case No. 74 of 1996 is pending before the competent court.

It is further submitted that the petitioner has also filed another writ petition vide W.P. (C) No. 4074 of 2011 praying therein for quashing of the order dated 6.6.2011 passed by the Sub-Judge VIth Giridih in Partition Suit No. 24 of 1990 whereby the prayer of the petitioner to appoint a Survey Knowing Pleader Commissioner to inspect and report about the construction carried out by the respondent No. 1 (defendant No. 9) in spite of the order of maintaining status quo with regard to take suitable action has been rejected. In the said writ petition notices to the respondents were ordered to be issued and the said petition is still pending. Despite pendency of the said writ petition the present petitioner moved another writ petition No. W.P. (C) 831 of 2012 and has suppressed the material fact about filing of earlier writ petition i.e. W.P. (C) No. 4074 of 2011, though the subject matter of both writ petitions is virtually in respect of proper observance of the order of maintaining the status quo which was granted in partition suit. The petitioner has not disclosed about filing W.P. (C) No. 4074 of 2011 in W.P. (C) No. 831 of 2012. It is submitted that instead of disclosing the said fact, the petitioner made positive statement in para-2 of the W.P. (C) No. 4074 of 2011 that the petitioner has not moved earlier before this Court for the same relief. Thus, according to the learned counsel appearing for the private respondents, the petitioner made attempt to mislead the court by suppressing the material fact and on this count alone both the petitions filed by the present petitioner deserves to be dismissed. It is further submitted that the present petitioner has also moved an application before the court below under Order 39 Rule 2 of the CPC seeking an order of mandatory injunction but the said application has been dismissed by the court below on 29.7.1997 and being aggrieved and dissatisfied by the said order the petitioner has also preferred an appeal and thereafter revision before the court below and the said appeal and revision were also rejected by the court below. It is submitted that these facts have not been disclosed in the writ petition. While concluding the arguments the learned counsel appearing for the private respondents lastly submitted that the present petitioners are responsible in getting the aforesaid partition suit prolonged for a period of more than 22 years. In the partition suit recording of evidence of both parties is over and the suit has been fixed for arguments and the respondents

nos. 6 to 8 have already submitted written note of arguments. However, attempts are being made by the petitioner by way of filing such frivolous petition by suppressing the material facts and thereby caused hardship to respondent nos. 6 to 8 in peaceful enjoyment of the premises possessed by them and therefore, both the writ petitions filed by the present petitioners be dismissed with cost

3. Considering the aforesaid rival submissions and on perusal of the materials on record it appears that both writ petitions are arising out of the partition suit No. 24 of 1990 pending in the court of the learned Sub-Judge I Giridih. In the said partition suit the petitioner is claiming 1/12th share in the suit properties against the defendants including respondent nos. 6 to 8. In the said suit the petitioner has claimed exclusive possession over portion of plot No. 825, Khata No. 168/371, Area 0.04 acres with Khapraposh building. The petitioner had also filed an application under Order 39 Rules 1 and 2 of the CPC on 14.8.1995 in the partition suit No. 24 of 1990 and after hearing both the parties the learned court below passed an order dated 7.9.1995 directing both parties to "maintain status quo" on immovable properties of the suit. It is alleged by the present petitioner that the respondents No. 6 to 8 have committed breach of the said order of status quo and therefore, he moved an application under order 39 Rule 2(A) of the CPC in the court of Sub-Judge-I Giridih which was registered as Misc. Case No. 74 of 1996 and the said Misc. Case is still pending. It also appears that wife of the petitioner namely Smt. Gita Debi has also filed a Complaint case No. 1092 of 1998 in the court of Chief Judicial Magistrate, Giridih against the respondents No. 6 to 8. After recording statements on solemn affirmation and statement of witnesses in the inquiry, the learned Sub-divisional Judicial Magistrate Giridih took cognizance of the offence under sections 147/ 148/ 149/ 120B/ 452/ 323/ 341/ 342/ 354/ 380 and 384 of the Indian Penal Code. Being aggrieved and dissatisfied by the order of taking cognizance on 7.12.1998 the respondents No. 6 to 8 moved before this Court by way of filing Cr.M.P. No. 246 of 2005 which was dismissed on merit on 15.2.2008 and thereby the said complaint case is still pending. It also appears that Superintendent of Police on receiving the representation dated 19.10.2010 directed the Sub-Divisional Police officer to look into the matter and in spite of the aforesaid direction by the Superintendent of Police, the police officials did not come in rescue of the petitioner; and therefore the petitioner served a notice u/s 80 of the CPC through his Advocate upon the accused persons including the respondents No. 6 to 8.

4. Thus it transpires that the present petitioner has availed alternative efficacious remedy in respect of the alleged breach/violation of the order of status quo by respondents. Moreover, it also appears that the petitioner has moved an application seeking mandatory injunction in the court below but the said application has been dismissed by the court below and thereafter being aggrieved and dissatisfied by the said order the petitioner has also preferred an appeal and thereafter revision before the court below but the said appeal and revision filed by the present petitioner have also been dismissed. However, it

appears that the present petitioner has not disclosed this fact in the aforesaid writ petitions filed before this Court. Moreover, I find substance in the arguments advanced by the learned counsel for the respondents No. 6 to 8 that the petitioner has not disclosed about filing of W.P. (C) No. 4074 of 2011 in the subsequent petition filed by the petitioner i.e. W.P. (C) No. 831 of 2012. It also appears that the present petitioners have suppressed the material fact and thereby made an attempt to obtain orders under the pretext of proper observance of the order of status quo granted by the court below. Thus it appears that he has also made an attempt to invoke the writ jurisdiction by suppressing the material fact and therefore, in view of the aforesaid position, the present petitions are not maintainable and the same are dismissed and the interim order that has been passed by the court in W.P. (C) No. 831 of 2012 on 9.5.2012 stands vacated. Moreover the W.P. (C) No. 4074 of 2011 also deserves to be dismissed because the court Commissioner as prayed for cannot be appointed for collecting evidence. The learned counsel for the parties while concluding their submissions made request for issuance of appropriate direction to the court below for expeditious disposal of the partition suit No. 24 of 1990 as the same is of the year 1990. Considering the request made by the learned counsel for the parties and keeping in mind that the said partition suit is of the year 1990 and stage of the evidence is over and the matter is at the argument stage, appropriate direction is required to be issued to the court below for expeditious disposal of the suit. Accordingly, the court below is directed to deal with and decide the said partition suit expeditiously preferably within a period of six month from the date of receipt of a copy of this order.