
(2015) 03 JH CK 0088
In the Jharkhand High Court
Case No : Writ Petition (C) No. 7822 of 2013

Mangat Murmu

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 17-03-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 21 Rule 97, Order 21 Rule 97(2), 151, 47

Citation : (2015) 2 AJR 597 : (2015) 2 JLJR 326

Hon'ble Judges : S. Chandrashekhar, J

Bench : Single Bench

Advocate : Rajeeva Sharma, Senior Advocate, for the Appellant

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 06.09.2010 in Title Execution Case No. 11 of 2006 and order dated 30.08.2013 in Civil Misc. Appeal No. 09 of 2010, the present writ petition has been filed.

2. The brief facts of the case are that, Title Suit No. 54 of 1998 was instituted by the plaintiffs for declaration of their right, title and interest in the suit scheduled property and for recovery of possession. In Title Suit No. 54 of 1998, the wife of the petitioner was arrayed as defendant No. 1 however, the petitioner who is the legal heir and successor of Bhagmat alias Matla Hansda was not made a party. Title Suit No. 54 of 1998 was decreed on 23.03.2006 and thereafter, the decree-holder filed Execution Case No. 11 of 2006, in which the petitioner filed application dated 08.05.2007 under Section 47 CPC and under Order 21 Rule 97 r/w Section 151 CPC. The said application has been dismissed vide order dated 06.09.2010 and the appeal preferred by the petitioner has also been dismissed on 30.08.2013. Aggrieved, the petitioner has approached this Court by filing the present writ petition.

3. Heard the learned counsel appearing for the petitioner and perused the documents on record.

4. The learned senior counsel for the petitioner submits that the petitioner was adopted as a Gharjamai and he and his wife namely, Munni Hansda resided in the house of Bhagmat alias Matla Hansda and they are in continuous possession of the house and property of the said Bhagmat alias Matla Hansda. The petitioner's father-in-law namely, Bhagmat alias Matla Hansda executed a registered Gharjamai deed in the year, 1962 and after the death of the said Bhagmat alias Matla Hansda in the year, 1970, the present petitioner being Gharjamai inherited the property comprised in J.B. No. 19, Mouza-Balidih, Total Area-31 Bigha, 19 Katha and 8 Dhur. It is further submitted that under the customary law, the Gharjamai son-in-law is the legal heir of the properties of his father-in-law and his wife is not the legal heir and successor of the properties of Bhagmat alias Matla Hansda. It is contended that the issue whether the Gharjamai son-in-law would inherit the properties of his father-in-law or not, has been settled by several decisions of this Court and therefore, application dated 08.05.2007 filed by the petitioner should not have been dismissed on the ground that the issue has already been adjudicated in Title Suit No. 54 of 1998. It is further contended that the appellate order dated 30.08.2013 also suffers from serious error in law in as much as, the appeal has been dismissed on the ground that the petitioner being the husband of Munni Hansda had the knowledge of Title Suit No. 54 of 1998.

5. I have carefully considered the submission of the learned counsel for the petitioner and perused the documents on record.

6. From the materials brought on record, it appears that the objector/petitioner has pleaded that both the decree-holder and the judgment-debtors are Santhals and they are governed by Santhal Customary Law. The petitioner is the son-in-law of one Bhagmat alias Matla Hansda, who was son of Lakhan Hansda. The said Lakhan Hansda died leaving behind three sons namely, Salhai, Ram Hansda and Bhagmat alias Matla Hansda. The property in question came in possession of Bhagmat alias Matla Hansda by way of a private arrangement and his other brothers held and succeeded other properties. The applicant-objector after his marriage in Gharjamai form with Munni Hansda, the daughter of Bhagmat alias Matla Hansda was brought to village-Balidih. On performance of "Lebet Uchur" and other ceremony, the marriage was performed in Gharjamai form in the year, 1952 and since then, the objector and his wife Munni Hansda have been residing in the house of Bhagmat alias Matla Hansda. A registered Gharjamai Deed dated 21.07.1962 was executed by the Bhagmat alias Matla Hansda who died in the year, 1970 and after his death the property in question came in possession of the objector.

7. From the pleadings in the case, it appears that the objector has pleaded that after the death of Bhagmat alias Matla Hansda, he and his wife inherited land comprised in J.B. No. 19, Mouza-Balidih, Total Area-31 Bigha, 19 Katha and 8 Dhur. In Title Suit No. 54 of 1998, the wife of the objector was arrayed defendant No. 1, who filed written statement admitting the relationship between the

parties. In the written statement, Munni Hansda has pleaded that the ancestors of the parties amicably accepted allotment of land in their respective shares and acted upon the same. In paragraph No. 18 of the written statement, the wife of the objector has stated that she and her husband Bhagmat alias Matla Hansda are the lawful owners having lawful title to Jamabandi No. 19 of Mouza-Balidih. It has further been stated in paragraph No. 29 of the written statement that the wife of the objector and the objector have subsisting title and lawful possession over the entire Jamabandi No. 19 in Mouza-Balidih. The factum of marriage in Gharjamai form was also specifically pleaded by the wife of the objector. In Title Suit No. 54 of 1998, a specific issue was framed with respect to marriage of defendant No. 1-Munni Hansda with Mangat Murmu, the objector in Gharjamai form. The Title Suit No. 54 of 1998 has been decreed in favour of the plaintiffs and the issue of marriage in Gharjamai form has been answered against the defendant. In application u/s. 47 Order 21 Rule 97 CPC r/w. Section 151 CPC, the objector has not pleaded that he alone is the legal heir and successor of the properties of Bhagmat alias Matla Hansda. The trial court and the 1st appellate court have noticed that the issue of marriage in Gharjamai form has been disbelieved by the trial court. I find that the application filed by the objector is a replica of the written statement filed by his wife in Title Suit No. 54 of 1998. In *Silverline Forum Pvt. Ltd. Vs. Rajiv Trust and another*, (1998) 3 AD 249 : AIR 1998 SC 1754 : (1998) 3 JT 1 : (1998) 119 PLR 519 : (1998) 2 SCALE 550 : (1998) 3 SCC 723 : (1998) 2 SCR 587 : (1998) 1 UJ 521 : (1998) AIRSCW 1544 : (1998) 3 Supreme 555 , the Hon'ble Supreme Court has held that, the trial court is not obliged to determine a question merely because the resister has raised it. It has been further held that it is necessary that the question raised by the resister or the obstructor must legally arise between him and the decree-holder. The Hon'ble Supreme Court has held thus:

14. "It is clear the executing court can decide whether the resister or obstructor is a person bound by the decree and he refuses to vacate the property. That question also squarely falls within the adjudicatory process contemplated in Order 21 Rule 97(2) of the Code. The adjudication mentioned therein need not necessarily involve a detailed enquiry or collection of evidence. The court can make the adjudication on admitted facts or even on the averments made by the resister. Of course the court can direct the parties to adduce evidence for such determination if the court deems it necessary."

8. As noticed above, the issue raised by the objector that he is the legal heir and successor of the deceased-Bhagmat alias Matla Hansda and thus, Title Suit No. 54 of 1998 should not have been proceeded in his absence has been already decided by the trial court. The defendant or the objector has not challenged judgment in Title Suit No. 54 of 1998 by filing an appeal.

9. Considering the aforesaid facts, I find no error in the impugned order dated 06.09.2010 in Title Execution Case No. 11 of 2006 and order dated 30.08.2013 in Civil Misc. Appeal No. 09 of 2010 and accordingly, this writ petition is

dismissed.