
(2007) 01 JH CK 0004
In the Jharkhand High Court

Md. Maqusood Alam and Others

APPELLANT

Vs

Seikh Karu and Others

RESPONDENT

Date of Decision : 24-01-2007

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2007) 2 JCR 4

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

M.Y. Eqbal, J.—In this writ application filed under Article 227 of the Constitution of India, the plaintiffs-petitioners have prayed for quashing the order dated 25.6.2004 passed by the learned 4th Additional District Judge, Godda in Title Appeal No. 13 of 2003 whereby he has allowed the petition filed by the intervenor for impleading him as party-defendant.

2. The facts of the case lie in a narrow compass:

Plaintiffs filed suit for partition being Title (Partition) Suit No. 32/92 for preparation of preliminary decree of partition to the extent of 12 annas share in the suit property. Plaintiffs' case is that Sk. Dayali Mandal and Sk. Marsalli Mandal, S/o late Kasim Ali Mandal of village Garhi held and possessed the suit property, which were recorded in the names of the aforesaid two brothers acquiring joint cultivating possession having equal share therein. Sk. Marsalli Mandal died leaving his widow, Bibi Jhako and a son Seikh Salamat as his heirs who inherited his interest in the aforesaid property. Thereafter, Sk. Salamat died in 1986 leaving behind his widow Bibi Maidan and two sons Md. Ayub Ali and Md. Maqusood and also three daughters as his heirs who said to have inherited the interest of their father.

3. The suit was contested by the original defendants disputing genealogical table given in the plaint. The suit was eventually decreed on 30.5.2003. Aggrieved by

the said judgment and decree defendants preferred appeal before the District Judge, Godda being Title Appeal No. 13/03. During the pendency of the appeal, respondent No. 1 Seikh Karu, S/o Seikh Salamat intervened in the appeal by filing a petition praying inter alia that he may be added as respondent on the ground inter alia that plaintiffs and the defendants left him out from the genealogical table on the ground that Kasim Ali Mandal died leaving behind his two sons and one daughter namely, Sk. Dayali Mandal, Sk. Marsalli Mandal and Bibi Ammo. The said prayer was opposed by the plaintiffs. The court below after hearing the parties allowed the application holding that the intervenor/defendant is a necessary party in the suit and for the ends of justice he is to be added as party respondents/defendants.

4. Learned Counsel for the petitioners assailed the impugned order as being illegal and wholly without jurisdiction. Learned Counsel submitted that at the appellate stage the intervenor-respondent should not have been made party. According to the learned Counsel after preliminary decree passed in a partition suit, third party cannot be impleaded plaintiff or defendant in the suit.

5. Order 1 Rule 10 of the CPC confers a very wide direction in the matter of addition or striking out parties. Application of impleading defendant can be filed at any stage of the proceeding even at the appellate stage. It is well settled law that while deciding application under Order 1 Rule 10 court should take liberal view and should not reject the application on the mere ground that such application is filed at the appellate stage. Once, prima facie it is found that a person is a necessary party in the suit; he is to be, added as defendant in the suit. The provisions of Order 1 Rule 10 should be invoked when prima facie it appears that the intervenor has some interest in the suit property. A suit for partition is not maintainable without impleading all the persons who have interest and share in the suit property.

6. In the instant case, the intervenor claimed that he is son of Ammo who is the daughter of Sk. Kasim Ali Mandal. In the rejoinder filed by the plaintiff/appellant it has been admitted that Kasim Ali Mandal died leaving behind his two sons and one daughter namely, Sk. Dayali Mandal, Sk. Marsalli Mandal and Bibi Ammo. Bibi Ammo died leaving behind his son Sk. Karu who is intervenor. However, one of the respondents opposed the prayer of the intervenor on the ground that he is not a necessary party. In the aforesaid premises, the court below has rightly held that the intervenor appears to be necessary party in a partition suit. I do not find any jurisdictional error committed by the court below in passing the impugned order.

7. For the aforesaid reasons, I do not find any merit in this writ application, which is accordingly, dismissed.