

(2010) 04 JH CK 0134
In the Jharkhand High Court

Md. Yusuf and Others

APPELLANT

Vs

Kirpa Shankar Jaiswal and Others

RESPONDENT

Date of Decision : 19-04-2010

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227
Criminal Procedure Code, 1973 (CrPC) — Section 151

Citation : (2010) 04 JH CK 0134

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present petition has been preferred by the petitioners (original plaintiffs) under Article 227 of the Constitution of India against an order, passed by the Sub Judge-IV, Ranchi, dated 17th May, 2008 in Title Suit No. 12 of 1999 (Annexure 4 to the memo of petition), whereby, the application preferred by the petitioners (original plaintiffs) under Order 6 Rule 17, to be read with Section 151 of the Code of Civil Procedure, for amendment in the plaint, has been rejected.

2. I have heard learned Counsel for the petitioners, who has submitted that the petitioners are the original plaintiffs, who have filed Title Suit No. 12 of 1999 and in paragraph Nos. 10(a) and 10(b) of the plaint, certain sale deeds have been referred, which have been relied upon by the original defendants. Thus, there is already an averment in the aforesaid paragraphs of the plaint that these sale deeds are null and void, but, there was no consequent prayer for declaration of those sale deeds as null and void and, therefore, a separate application under Order 6 Rule 17, to be read with Section 151 of the Code of Civil Procedure, was preferred by the petitioners in Title Suit No. 12 of 1999 on 3rd April, 2008 for amending the prayer portion. The said application is at Annexure 2 to the memo of petitioner. It is submitted by the learned Counsel for the petitioners that by

allowing this amendment, the nature of the suit will not be changes, on the contrary, the amendment will facilitate the trial court in arriving at a correct decision upon the dispute between the parties. This aspect of the matter has not been properly appreciated by the trial court. It is also submitted by the learned Counsel for the petitioners that this amendment application has been preferred not at the fag end of the whole trial, but, the evidences of the plaintiffs' side witnesses is going on and, thus, no prejudice is going to cause to the original defendants. Even otherwise also, this averment is already referred in paragraph Nos. 10(a) and 10(b) of the plaint and, therefore, the order, passed by the learned trial court deserves to be quashed and set aside and the amendment application ought to have been allowed.

3. Though the respondents are served with the notices, nobody appears on their behalf.

4. Having heard learned Counsel for the petitioners and looking to the order, passed by the trial court, I hereby quash and set aside the order, passed by the Sub Judge-IV, Ranchi, dated 17th May, 2008 in Title Suit No. 12 of 1999 (Annexure 4 to the memo of petition), below an application preferred by the petitioners (original plaintiffs) under Order 6 Rule 17, to be read with Section 151 of the Code of Civil Procedure, for the following facts and reasons:

(i) The petitioners are the original plaintiffs, who have instituted Title Suit No. 12 of 1999 before the learned Sub Judge-IV, Ranchi. The petitioners claim their right, title and interest upon the suit property.

(ii) It appears that the respondents herein are relying upon certain sale deeds and they are also claiming right, title and interest upon the suit property.

(iii) It further appears from paragraph Nos. 10(a) and 10(b) of the plaint that the sale deeds, upon which the respondents are relying upon, have been narrated as null and void, in the eyes of law, by the petitioners (original plaintiffs).

(iv) Thus, looking to the plaint, it appears that there is already a reference of these sale deeds and there are also enough averments in the plaint. The only thing, left out by the plaintiffs, is to make a prayer for a declaration that the sale deeds, which are referred in paragraph Nos. 10(a) and 10(b) of the plaint, should be declared as null and void and, therefore, it appears that, at a later stage, an application was preferred by the original plaintiff under Order 6 Rule 17, to be read with Section 151 of the Code of Civil Procedure.

(v) It further appears that by allowing this amendment, it cannot be said that the nature of the suit will be changed. Otherwise also, there are enough allegations levelled in the plaint. This aspect of the matter has not been properly appreciated by the trial court, which is an error apparent on the face of the record.

(vi) It further appears that the application under Order 6 Rule 17, to be read with Section 151 of the Code of Civil Procedure, has been preferred by the plaintiffs,

not at a much belated stage of the suit. The plaintiffs' side evidence is going on and the defendants have not yet started taking evidence. In view of this fact, no prejudice is going to cause to the original defendants, even if this amendment is allowed in the prayer portion of the plaint, because the defendants have already been confronted with the averments, made in paragraph Nos. 10(a) and 10(b) of the plaint. This aspect of the matter has also not been properly appreciated by the trial court.

5. As a cumulative effect of the aforesaid facts and reasons, I hereby quash and set aside the order, passed by the learned Sub Judge-IV, Ranchi, dated 17th May, 2008 in Title Suit No. 12 of 1999 (Annexure 4 to the memo of petition) and I hereby allow the application, preferred by the petitioners (original plaintiffs) under Order 6 Rule 17, to be read with Section 151 of the Code of Civil Procedure, with a cost of Rs. 500/- (rupees five hundred), which will be deposited by the petitioners before the trial court, within a period of two weeks from the date of receipt of a copy of the order of this Court and the trial court will allow this amount to be withdrawn by the defendants, upon an application by the original defendants.

6. This writ petition is, thus, allowed and disposed of. Looking to the period consumed after filing of Title Suit No. 12 of 1999, I hereby direct the trial court to expedite the hearing of Title Suit No. 12 of 1999, so as to dispose it of on or before 30th December, 2010 and no unnecessary adjournment will be given by the trial court in favour of any of the parties to the suit.