
(2021) 01 JH CK 0025
In the Jharkhand High Court
Case No : Writ Petition(C) No. 4655 of 2017

Mohar Yadav And Ors

APPELLANT

Vs

Pramod Yadav And Ors

RESPONDENT

Date of Decision : 04-01-2021

Acts Referred:

Code Of Civil Procedure, 1908 — Order 39 Rule 1(c), Order 43 Rule 1(r)

Citation : (2021) 01 JH CK 0025

Hon'ble Judges : Rajesh Shankar, J

Bench : Single Bench

Advocate : Tejo Mistry

Final Decision : Dismissed

Judgement

The present writ petition is taken up today through Video conferencing.

The present writ petition has been filed for quashing the order dated 18.05.2017 passed by the Civil Judge (Senior Division) No. II, Ramgarh in Title

Suit No. 11 of 2012, whereby a petition filed by the petitioners under Order XXXIX Rule 1(c) CPC for grant of temporary injunction has been

rejected.

2. The learned counsel for the petitioners submits that the plaintiffs/petitioners filed Title Suit No. 11 of 2012 against the defendants/respondents

through their attorney for declaration of their right, title, interest and confirmation of possession, cancellation of certain registered sale deeds and also

for permanent injunction against the defendants/respondents with regard to the suit property. It is further submitted that the land situated at Mouza-

Mahalidih, P.S Gola, Thana No. 63, District - Hazaribag (now Ramgarh) measuring an area of 18.72 acres is recorded in the name of the ancestors of

the petitioners, however, the defendants/respondents including their father, who were ardh-bataidar of the petitioners with respect to an area of 5.60

acres, claimed that the said property has been purchased by their ancestors from Khago Devi, the wife of one of the recorded raiyats namely,

Khuduwa Ahir. It is also submitted that the vendor of the defendants had no legal right to transfer the said land since after death of her husband, she

remarried another man namely, Manu Gope. It is further submitted that the petitioners, with apprehension that the defendants might sale the suit

property or might construct their houses so as to dispossess the petitioners from the suit land, filed petition under Order XXXIX Rule 1(c) CPC for

grant of temporary injunction and for restraining the defendants from selling the said land as well as making construction upon it. The court below,

however, rejected the said application of the petitioners observing that the petitioners failed to show prima facie case in their favour as balance of

convenience did not lie in their favour. The court below failed to appreciate that the alleged sale deed executed by Khago Devi was void ab-initio

since she was issueless and after the death of her husband, she remarried another man. Moreover, the petitioners are still paying rent to the

Government of Jharkhand. It is thus submitted that the court below failed to appreciate that the subject matter of the suit is the ancestral property of

the petitioners.

3. Be that as it may. The petitioners have preferred the present writ petition in the year 2017 challenging the order passed by the court below under

Order XXXIX Rule 1(C) CPC, however, they did not take pain to remove the defects as pointed out by the office of this Court for more than 3 years.

Moreover, the impugned order is an appealable one under Order XLIII Rule 1(r) CPC against which the petitioners could have file appeal, however,

they straightway moved before this Court by filing a writ petition under Article 227 of the Constitution of India.

4. In the case of Virudhunagar Hindu Nadargal Dharma Paribalana Sabai & Ors. Vs. Tuticorin Educational Society & Ors. reported in (2019)

9 SCC 538, the Hon'ble Supreme court has held as under:

13. Therefore wherever the proceedings are under the Code of Civil Procedure and the forum is the civil court, the availability of a remedy under the

CPC, will deter the High Court, not merely as a measure of self-imposed

restriction, but as a matter of discipline and prudence, from exercising its power of superintendence under the Constitution. Hence, the High Court ought not to have entertained the revision under Article 227 especially in a case where a specific remedy of appeal is provided under the Code of Civil Procedure itself.

5. In view of the aforesaid reasons, the writ petition is dismissed as not maintainable.