
(2016) 11 JH CK 0141
In the Jharkhand High Court
Case No : W.P.(C) No. 3857 of 2016

Pramod Kumar Jaiswal

APPELLANT

Vs

State of Jharkhand

RESPONDENT

Date of Decision : 22-11-2016

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 10

Citation : (2017) 2 AIRJharR 170 : (2017) 2 JCR 551 : (2017) 1 JLJR 36

Hon'ble Judges : Mr. Aparesh Kumar Singh, J.

Bench : Single Bench

Advocate : Mr. Sidhhartha Roy, Advocate, for the Petitioner; M/s Vikash Kishore Prasad, S.C.(L&C) and Ashish Kr. Thakur, J.C to S.C.(L&C), for the Respondent

Final Decision : Dismissed

Judgement

Mr. Aparesh Kumar Singh, J.— Heard learned counsel for the petitioner. Mr. Vikash Kishore Prasad, learned Standing Counsel, Land and Ceiling representing the State of Jharkhand is also present, though the State of Jharkhand does not appear to be party in the Suit in the Court below.

2. Petitioner is aggrieved by the order dated 27.6.2016(Annexure- 8) passed by the learned Court of Sub Judge-VII, Ranchi in Partition Suit No. 328 of 2012 where by the intervention petition preferred by the Applicant has been allowed and has been impleaded as Defendant in the Suit. The suit instituted by the Plaintiff/Petitioner herein is for partition of certain property said to be ancestral in nature. Parties are said to be governed by the Mitakshra School of Hindu Law.

3. Applicant seeking impleadment under Order 1, Rule 10 set up a case before the Court below that he is in possession of the property described in the schedule at Item No.1 comprising holding no. 959(old), holding no. 1344(new), ward no.2(old) and 24(new) corresponding to MS plot no. 1734 area 13 Khatas at Jokhi Ram Jagarnath Road, Upper Bazar, Ranchi. It was his further case that the said property and other properties were owned by one Damri Bhagat and Ram

Kumar Bhagat. Damri Bhagat and Ram Kumar Bhagat fought two partition suits, which were decreed. After the death of Ram Kumar Bhagat his legal heirs sought execution in Case No. 3 of 1984. In course of execution, the property comprising in Plot no. 1734 was delivered in their favour which includes, 6 kathas of land. It was the case of the Applicant pleaded before the Court below that rest portion of Plot no. 1734 is in the possession of the Applicant. The Execution Case No. 11 of 1966 was also instituted by Damri Bhagat pursuant to the partition decree which was however rejected. Another execution case by his legal heirs was instituted being Case No. 26 of 2006. The case was executed by Kamal Jaiswal against the legal heirs of Ram Kumar Bhagat, which were also in relation to M.S Plot no. 1734, area 6 Kathas. The said execution case was however rejected on merits as being time barred. Based on these contentions, the Applicant/Intervenor claimed that Plot no. 1734 comprising 12 Kathas being Item No.1 of the schedule property being involved in the present suit also, the Applicant was a necessary party to be impleaded.

4. This was contested by the Plaintiff. It was contended that one Title Suit No. 293 of 2014 is pending before the Sub Judge-1, Ranchi in respect of plot involved in Item no. 1 of the schedule and that another case is pending before the learned Additional Judicial Commissioner, Ranchi where in the Intervenor/Applicant is also a party. It was stated that the Applicant has been making the claim over the schedule property in Item No. 1 on wholly unsustainable basis. Claim over the 6 Kathas in Plot no. 1734 cannot be denied by the Defendants in any manner. There is no dispute in respect of the piece of land on the western side of plot no. 1734 but both the Plaintiff and the Defendants are in possession over the 6 kathas of land over plot no. 1734. The Intervenor/Applicant therefore cannot deny their rightful claim over the said piece of land described in Item No.1 of the schedule to the Partition Suit.

5. Learned Court below after consideration of the rival pleas of the parties including the Plaintiffs and the Intervenor/Applicant, however came to a finding that the presence of the Intervenor/Applicant as Defendant in the instant Suit is proper and necessary. It has referred to the two Execution Cases bearing no. 11 of 1966 instituted in respect of the 6 Kathas of land over M.S. Plot no. 1734, which was rejected and the subsequent Execution Case No. 26/2006, which was also rejected as being time barred. It also took into account the contention of the Intervenor/Applicant that it is in possession of the piece of land in Item No. 1 of the schedule of the property described in the plaint. Learned Court below therefore was persuaded to come to a opinion that Plaintiffs, Defendants as well as Intervenor/Applicant, all are staking a claim over Item No.1 of the schedule property. It has also referred to the written statement of the Defendants no. 1 to 7, 11,12,16 to 18 that final decree in respect of the Partition Suit No. 36 of 1949 and 130 of 1948 have not been properly acted upon.

6. Perusal of the materials on record and the impugned order therefore leads to the impression that the subject matter of the partition of property i.e. Item No.1

of the Schedule to the plaint in the instant suit instituted by the Plaintiff/Petitioner herein are such where the presence of the Intervenor/Applicant/Respondent no.20 herein cannot be objected as he may have genuine reason and cause to contest the same on the aforesaid grounds. Whether the Plaintiff or Defendant will succeed, is a matter of adjudication after adducing evidence and consideration of the pleadings of the parties. However, the impugned order at Annexure-8 dated 27.6.2016 passed by the learned Court below under Order 1, Rule 10 after due consideration of the pleas of the parties cannot be said to suffer from error of jurisdiction inviting interference under Article 227 of the Constitution of India. The order also does not appear to be perverse in the eye of law. Therefore, petitioner has failed to make out a case for interference.

7. The writ petition is accordingly dismissed.