
(2011) 04 JH CK 0162

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1518 of 2011

Raj Kishore Singh

APPELLANT

Vs

Nandjee Yadav

RESPONDENT

Date of Decision : 19-04-2011

Acts Referred:

Citation : (2011) 3 JCR 51

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Allowed

Judgement

D.N. Patel, J.—The present writ petition has been preferred against the order passed by learned Munsif, 1st Dhanbad dated 19th January, 2011 in Title (Eviction) Suit No. 58 of 2000, whereby, the application given by the original Plaintiff to open the stage of taking evidence was closed by the trial court on 4th August, 2007.

2. Learned counsel for the Petitioner submitted that the Petitioner want to examine few of the witnesses to prove three documents. The list whereof is at Annexure-1, which are original of the agreement to sale dated 15th October, 1998, another is registered power of attorney dated 12th July, 2000 and the third is registered sale deed dated 9th August, 2000. The list of these documents was already tendered to the trial court on 22nd August, 2006. These documents affect the very root of the case, therefore, the plaintiff want to examine few of the witnesses and, therefore, the stage of taking evidence, which has already been closed by the trial court, may be opened and without wasting any further time, the plaintiff may be directed to examine his witnesses within a period of one month and the plaintiff will not ask for any adjournment for examination of the witnesses

3. Notice for final disposal upon the Respondent was issued by this Court on 31st March, 2011 and notice was served upon the Respondent. Now, an affidavit has

been filed by the Petitioner, wherein, it is stated that the Respondent has refused to accept the notice, issued by this Court, in presence of two witnesses. This affidavit has been filed on 18th April, 2011, which is on record.

4. In view of the aforesaid fact, it appears that the notice has been served upon the Respondent.

5. Having heard learned counsel for the Petitioner and looking to the facts and circumstances of the case, I hereby quash and set aside the order passed by learned Munsif, 1st Dhanbad dated 19th January, 2011 in Title (Eviction) Suit No. 58 of 2000 for the following facts and reasons:

(i) The Petitioner is an original Plaintiff, who has instituted Title (Eviction) Suit No. 58 of 2000.

(ii) It appears that the Plaintiff has examined few of the witnesses and, thereafter, his stage of taking evidence was closed on 4th August, 2007. It is submitted by learned counsel for the Petitioner that the original Defendant/Respondent is taking his evidences. Thus, the stage of taking evidence is still going on.

(iii) It further appears from the facts of the case that the application was given by the original Plaintiff before the trial court, whereby, list of documents were filed before the trial court. These documents are under:

List of documents filed on behalf of the Plaintiff.

1. Original of the Agreement to sale dated 15.10.1998 executed by Smt. Muniya Devi in favour of Raj Kishore Singh -- 7 Sheets

2. Regd. Power of Attorney No. 42 dated 12.7.2000 executed by Smt. Muniya Devi in favour of Basudeo Singh -- 3 Sheets

3. Regd. Sale Deed No. 2738/2000 dated 9.8.2000 executed by Smt. Muniya Devi through her Power of Attorney holder Basudeo Singh in favour of Raj Kishore Singh -- 10 Sheets

Total -- 20 Sheets

The aforesaid list was given on 22nd August, 2006.

(iv) It appears that the Plaintiff wants to examine witnesses to prove these three documents, which affects the very root of the case.

(v) It is submitted by learned counsel for the Petitioner that the Petitioner will examine his witnesses within a month's time and he shall not ask for any unnecessary adjournment and, therefore, the Plaintiff ought to have been allowed to examine witnesses because it will not cause any prejudice to the original Defendant. The burden of proof is upon the Plaintiff to prove his case, though much time has been lapsed after the institution of the suit, but, looking to the stage of trial, which is evidence taking stage, the trial court ought to have

allowed the Petitioner (Plaintiff) to examine his witnesses by imposing some cost. This aspect of the matter has not been properly appreciated by the trial court. Moreover, these documents affect the very root of the case and the evidence about these documents will facilitate the trial court to arrive at the correct decision of the dispute between the parties. In the interest of justice also, the Plaintiff ought to have been allowed to examine his witnesses by imposing reasonable cost.

6. In view of the aforesaid facts and circumstances, I hereby quash and set aside the order passed by learned Munsif, 1st Dhanbad dated 19th January, 2011 in Title (Eviction) Suit No. 58 of 2000. The Petitioner (Plaintiff) will examine his witnesses at the earliest, preferably within a period of one month. The stage of taking evidence by the Petitioner (Plaintiff) is open with the cost of Rs. 5,000/- (Rupees five thousand). This amount will be deposited by the Petitioner (Plaintiff) before the trial court within a period of two weeks and upon proper application filed by the Respondent (Defendant), the said amount shall be permitted to be withdrawn.

7. The petition is allowed and disposed of.