
(2011) 08 JH CK 0095

In the Jharkhand High Court

Case No : Writ Petition (C) No. 1515 of 2011

Raj Lalit Prasad @ Rajlalit Prasad and Others

APPELLANT

Vs

Rampati Devi and Others

RESPONDENT

Date of Decision : 16-08-2011

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 39 Rule 1, Order 39 Rule 2, 151
Registration Act, 1908 — Section 17

Citation : (2012) 1 JCR 284

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

N.N. Tiwari, J.—In this writ petition, the petitioners have prayed for quashing the order dated 14.12.2010 passed by learned District Judge, Lohardaga dismissing the plaintiffs-"petitioners" appeal and upholding the order dated 5.2.2010 passed by learned Munsif refusing the prayer of injunction.

2. The petitioners had filed Title Suit No. 11 of 2006 praying for the relief, inter alia, for declaration of right, title and for recovery of possession of suit land of Plot No. 1138 and Plot No. 1139 appertaining to khata No. 166 of village-Lohardaga, P.S. and district-Lohardaga.

3. The plaintiffs-petitioners" case, in brief, is that the parties are related to each other. Mouzilal Sahu and Ishwar Sahu were the sons of Nabidu Sahu. The plaintiffs are the heirs and descendants of Mouzi Lal Sahu and defendants are from the line of Ishwar Sahu. The suit land was purchased by six persons, namely, Ishwar Sahu, Khudi Lal Sahu, Bhalro Sahu, Bhado Sahu, Mahavir Sahu and Raghunath Mahto by virtue of deed dated 17.11.1943. In 1949, Ramna Mahto, who was a joint purchaser of the suit land, sold his share in favour of other five persons. Sub-sequently, in the year 1964, there was partition between Mouzi Lal Sahu and Ishwar Sahu. Each got half share in the suit land. Since thereafter, they have been coming in peaceful possession of the land of their

respective shares. After long period of said partition, the defendants are trying to grab the land, which fell in the share of the plaintiffs giving rise to a cause of action for the suit.

4. The defendants' case is that the suit land was the self-acquired property of Ishwar Sahu, who had purchased by virtue of registered sale-deed. The land was mutated only in his name. He was paying rent continuously. The defendants are the descendants of the said Ishwar Sahu and their names have been duly mutated in the revenue record and they have been continuously paying rent in respect of the said land.

5. During pendency, of the suit, the plaintiffs filed an application under Order XXXIX Rules 1 & 2 read with Section 151 of the CPC praying for grant of injunction restraining the defendants from selling, wasting or alienating the suit land and dispossessing the plaintiffs from the suit land till decision of the suit. The said injunction petition was contested by the defendants.

6. After hearing both the parties, learned Munsif, Lohardaga came to the conclusion that the plaintiffs have claimed their title over the said land on the basis of partition dated 5.12.1964 after about 40 years of the said partition. They have not been able to show their possession over the land. There is nothing on record to show any prima facie case or balance of convenience made out in favour of the plaintiffs. They have also not been satisfied the Court as to how they would suffer irreparable loss and injury. Learned Munsif rejected the plaintiffs' petition.

7. The plaintiffs, thereafter, filed appeal against the said order in the Court of District Judge. Lohardaga being Misc. Appeal No. 01 of 2010.

8. Learned lower appellate Court heard both the parties and considered the facts and materials on record and came to the finding that from the documents brought on record, it is evident that the suit land was purchased in the name of Ishwar Sahu and the defendants claimed the same by inheritance. The sale-deed is of the year 1943. The land was also mutated in the name of Ishwar Sahu and the rent was being paid by the defendants. The plaintiffs claimed themselves as successors of Mauji Lal Sahu, who was brother of Ishwar Sahu. They further claimed that the suit land was allotted to them in partition, which took place by virtue of unregistered panchanama. Partition can be proved by registered partition deed or unregistered memorandum of partition. There is no material on record to show that the partition took place earlier and was acted upon. The claim of the plaintiffs is not based on any registered deed or deed of memorandum of partition. It has been claimed on the basis of unsigned panchanama. Different registered sale-deeds executed by Ishwar Lal Sahu transferring the suit land to several persons also go to show that he had exclusively dealt with the property. The plaintiffs, thus, failed to make out any prima facie case, balance of convenience or of any irreparable loss and injury. Learned lower appellate Court dismissed the appeal.

9. Learned counsel for the petitioners assailed the said order of learned lower appellate Court alleging that the panchnama has not been properly considered by learned lower appellate Court. It contains signatures of the panches and is a valid document to establish partition. The partition took place by virtue of the said document and the same is not required registration u/s 17 of the Indian Registration Act.

10. I have heard learned counsel for the parties. Under the provisions of Section 17 of Indian Registration Act, a document effecting partition is compulsorily registrable. The plaintiffs have brought on record the unregistered panchanama, claimed to be partition deed. Learned Court below has rightly held that this is not a memorandum of partition and has rightly held that the plaintiffs have failed to establish prima facie that the partition was effected. Learned Court below has considered and held that the registered deed of sale of 1943 is in favour of Ishwar Lal Sahu, which was followed by mutation and continuous rent receipts by his name. Learned Court below has also considered that different plots have been sold by Ishwar Sahu to several purchasers by virtue of registered sale-deed, which shows that he had exclusively dealt with that property. In view of the above, learned Court below found that the balance of convenience also does not lies in favour of the plaintiffs. Learned Court below has further held that the plaintiffs" failed to make out any case of causing irreparable loss and injury to them.

11. The said judgment of learned Court below is based on due discussion and consideration of materials on record and is supported by speaking reasons.

12. There is no infirmity or illegality in the order of learned Court below. This writ petition is, accordingly, dismissed.