
(1924) 04 PAT CK 0005
In the Patna High Court

Ramji Pandey

APPELLANT

Vs

Alafkhan and Others

RESPONDENT

Date of Decision : 28-04-1924

Acts Referred:

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

Citation : AIR 1925 Patna 121

Hon'ble Judges : Das, J

Bench : Division Bench

Judgement

Das, J.—This application is directed against the order of the learned Judicial Commissioner of Chota Nagpur, dated the 27th July, 1923, by which he set aside the order of the Munsiff, dated the 1st February, 1923. The facts are as follows: The plaintiff who is the petitioner in this Court brought a suit for partition as against various persons. He also cited one Bichan Panday as defendant No. 12 in the action. Bichan Panday is the nephew of defendants 10 and 11. The defendants 10 and 11 filed a written statement in which they stated that their nephew Bichan Panday had no title to the properties which were the subject-matter of the partition. Bichan Panday sold his alleged interest in the properties to one Ritubhanjan Singh and on the 27th January, 1923, Ritubhanjan applied that he might be added as a party on the ground that he purchased Bichan's interest. The Munsiff added him as a party-defendant.

2. On the 31st January, the plaintiff applied for an order that Bichan Panday and Ritubhanjan should be dismissed from the action and their names struck out. It is this application which resulted in the order which is the subject-matter of the present proceedings.

3. The learned Munsiff did not decide the question whether Bichan Panday had any interest in the joint property. All that he says is that according to the plaintiff Bichan Panday had no interest whatever in the suit properties and that in those circumstances, he and the purchaser Ritubhanjan should not be made parties. In this view, and without deciding the question which was actually raised, he

ordered that the names of Bichan Panday and Ritubhanjan should be struck out and he passed a preliminary decree for partition after striking out the names of Bichan Panday and Ritubhanjan.

4. The learned Judicial Commissioner on appeal has set aside the order of the learned Munsiff.

5. I have been asked in this application to consider whether there was any jurisdiction in the Judicial Commissioner to deal with the matter at all.

6. It was Contended on behalf of the plaintiff petitioner that the learned Munsiff purported to act under Order 1, Rule 10 of the Code and that an order, under Order 1, Rule 10 is not appealable under the Civil Procedure Code. That position may be conceded to the plaintiffs; but this is an entirely different case. The suit was for partition: Bichan Panday had been added as a party to the suit on the footing that he had an interest in the joint property; Ritubhanjan had actually purchased the interest of Bichan and was added as a party-defendant on his own application. Now a partition suit differs from other suits. In that every party whether arrayed on the side of the plaintiffs or on the side of the defendants it in the position of a plaintiff in so far as every party whether plaintiff or defendant is entitled to ask the Court to allot a share of joint property to him.

7. Now this was the position. Ritubhanjan was as a matter of fact in the record, as a defendant on the 27th January, 1923, and it was open to him to ask the Court to determine the question whether his vendor had any interest in the joint properties and if he had, whether he was not entitled to a share in the joint properties. It was open to Ritubhanjan to ask the Court to allot a definite share to him. Now this was the position, and the plaintiff came to Court and said "I do not want to proceed against Ritubhanjan, and Bichan Panday."

8. Now if this was not a partition, no exception could possibly be taken to the plaintiff withdrawing the suit as against the defendant. A defendant certainly, could not complain if the plaintiff himself asked that the suit as against a particular defendant should stand dismissed. But as I have said a partition suit stands entirely on a different footing. Although arrayed on the side of the defendants Bichan Panday was in the position of a plaintiff in so far as he was entitled to ask the Court to allot a share of the properties to him and the learned Munsiff by the course which he took declined to consider the case of Bichan Panday.. The result of his order is that Bichan Panday is unable to get any relief in the partitions action.

9. That being so, the question is whether the order of the Munsiff was appealable. In my opinion it was Although the order was passed under Order 1, Rule 10 of the Code, the effect of the order was that the Court declined to adjudicate on the question distinctly raised by Bichan Panday. It was held in the case of Rama Rao v. Surya Rao Bahadur Garu (1919) 42 Mad. 219, that it is open to a plaintiff to appeal from the order of the Court striking out the name of the defendant on the ground that the plaint disclosed no cause of action against

him. Similarly in this case the effect of the order of the Munsiff is that the claim of Bichan and therefore of Ritubhanjan remains undecided. There was an appeal open to Ritubhanjan not indeed from the order of the Munsiff looked upon as an order passed under Order 1, Rule 10, but from that order looked upon as a decree declining to adjudicate upon the claim of Bichan and therefore of Ritubhanjan.

10. That being so, this application must fail and must be refused with costs: hearing fee two gold mohurs.