
(2010) 02 JH CK 0095
In the Jharkhand High Court

Ruplal Mahto

APPELLANT

Vs

Bangali Prasad Mehta and Sita Ram Mehta

RESPONDENT

Date of Decision : 03-02-2010

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2010) 02 JH CK 0095

Hon'ble Judges : R.K. Merathia, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

R.K. Merathia, J.—This writ petition has been filed for quashing the order dated 21.8.2008 passed by the learned Munsif, Hazaribagh in Title Suit No. 82 of 2004, whereby the prayer of defendant/petitioner for deciding the question of maintainability of the suit as preliminary issue has been rejected.

2. It is submitted that such preliminary issues can be decided at any stage of the suit. Counsel for the petitioner relied on the judgments reported in 2008 (1) JLJR 307(SC), 2005(2) JLJR 665, 2005(4) JLJR 3, Abdul Waheed Khan Vs. Bhawani and Others, , N.V. Srinivasa Murthy and Others Vs. Mariyamma (dead) by Proposed LRs. and Others, , T. Arivandandam Vs. T.V. Satyapal and Another, and Sivananda Roy Vs. Janaki Ballav Pattnaik and Others, .

3. It appears from the impugned order that this suit was filed on 29.11.2004; the petitioner filed written statement on 27.4.2005; the proposed issues were filed by the petitioner on 24.11.2006 and subsequently after hearing the parties at length and going through the documents five issues were framed on 15.9.2007 including the Issue No. 2 with regard to maintainability of the suit in view of Section 43 of the Bihar Land Reforms (Fixation of ceiling area and acquisition of surplus land) Act. After about a year, petitioner filed the petition in question for deciding the maintainability of suit as preliminary issue. Learned court below has refused such prayer of the petitioner, in terms of Order XIV Rule 2 of the C.P.C.

4. In the facts and circumstances of this case, the judgments relied by the petitioner are not applicable. I find no reason to interfere with impugned order in exercise supervisory power under Article 227 of the Constitution of India in this case. This writ petition is, accordingly, dismissed. The parties are directed to cooperate in early disposal of the suit.