
(2015) 10 JH CK 0030
In the Jharkhand High Court
Case No : WP(C) No. 7471 of 2012

Sanaullah

APPELLANT

Vs

The State of Jharkhand and Others

RESPONDENT

Date of Decision : 28-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 11 Rule 12, Order 11 Rule 14, Order 8 Rule 1-A, Order 9 Rule 12, Order 9 Rule 14

Citation : (2015) 4 JLJR 653

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Naimuddin Ansari, for the Appellant; A. Allam, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 24.9.2012 in Title Suit No. 117/2010, the present writ petition has been filed. The petitioner is plaintiff in Title Suit No. 117/2010. The respondent No. 2, who is defendant in the suit, filed a written statement asserting a claim over the suit schedule property by virtue of sale-deed dated 21.8.1944 executed by Md. Badruddin and Md. Sharfuddin in his favour. However, only a certified copy of sale-deed dated 21.8.1944 was filed by the defendant. The plaintiff filed application dated 4.7.2012 under Order IX (sic--XI?) Rules 12 & 14 CPC seeking a direction upon the defendant to produce the original sale-deed dated 21.8.1944. The said application has been dismissed by the impugned order dated 24.9.2012.

2. The learned counsel for the petitioner submits that in terms of Order VIII, Rule 1-A CPC, the defendant must file the original copy of sale-deed dated 21.8.1944 however, the Trial Court has erroneously rejected the application seeking such direction upon the defendant.

3. I find that the defendant through the written statement set up a claim over the suit property. The defendant claimed that the suit property was sold to one

Sk. Jumman Mian by the father of the plaintiff through sale-deed dated 21.8.1944. The defendant purchased the suit property from the son of Late Sk. Jumman Mian in the year 1996 and since then he is in continuous and peaceful possession over the same. The defendant filed certified copy of sale-deed dated 21.8.1944 asserting that the original sale-deed is not in his custody. The defendant after obtaining certified copy of sale-deed dated 21.8.1944 from the Office of the District Sub-Registrar, Ranchi, filed the same in Title Suit No. 117/2010.

4. Order VIII, Rule 1-A CPC reads as under:--

"1-A. Duty of defendant to produce documents upon which relief is claimed or relied upon by him.--(1) Where the defendant bases his defence upon a document or relies upon any documents in his possession or power, in support of his defence or claim for set-off or counter-claim, he shall enter such document in a list, and shall produce it in Court when the written statement is presented by him and shall, at the same time, deliver the document and a copy thereof, to be filed with the written statement.

(2) Where any such document is not in the possession or power of the defendant, he shall, where possible, state in whose possession or power it is.

(3) A document which ought to be produced in Court by the defendant under this rule, but is not so produced shall not, without the leave of the Court be received in evidence on his behalf at the hearing of the suit."

As noticed above, the defendant has taken a plea that the original copy of sale-deed dated 21.8.1944 is not in his possession. The Trial Court observing that the secondary evidence is admissible, dismissed the application under Order XI, Rules 12 & 14 CPC. I find no infirmity in impugned order dated 24.9.2012 and accordingly, the writ petition is dismissed.