
(2015) 10 JH CK 0077
In the Jharkhand High Court
Case No : WP(C) No. 959 of 2014

Satrughan Lal Verma

APPELLANT

Vs

Chhote Lal Sharma

RESPONDENT

Date of Decision : 12-10-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 3, 151, 2(11)
Limitation Act, 1963 — Section 5

Citation : (2015) 4 JLJR 526

Hon'ble Judges : S. Chandrashekhar, J.

Bench : Single Bench

Advocate : Ananda Sen and Nagmani Tiwari, for the Appellant; Rajeev Ranjan Tiwary, for the Respondent

Final Decision : Dismissed

Judgement

S. Chandrashekhar, J.—Aggrieved by order dated 17.1.2014 in Title Suit No. 95 of 2008 whereby, petition under Order XXII, Rule 3 r/w. Section 151 C.P.C. has been allowed, the present writ petition has been filed. The petitioner is defendant No. 2 in Title Suit No. 95 of 2008. The suit was instituted by one Lakhan Lal Sharma for declaration of his right, title, interest and possession over the suit land comprised in Khata No. 622 (New) Plot Nos. 95 and 96 and over the land comprised in Khata No. 72, Plot Nos. 515, 516, 517, 518, 519 and 520 in Ward No. 1, Jamshedpur Notified Area Committee. A challenge to sale deed dated 25.4.2008 registered by defendant No. 1 in favour of defendant Nos. 2 and 3 being null and void and not binding on the plaintiff has also been made in the suit. The plaintiff died on 7.7.2013 and thereafter, on 12.12.2013 one Chhote Lal Sharma filed an application for his substitution as plaintiff in the suit. The said Chhote Lal Sharma claimed himself the elder brother of the original plaintiff. Vide order dated 17.1.2014 the said Chhote Lal Sharma has been substituted in place of the original plaintiff in Title Suit No. 95 of 2008. Aggrieved, the defendant No. 2 has filed the present writ petition.

2. Mr. Ananda Sen, the learned counsel for the petitioner submits that, one Rajesh Kumar Sharma filed a petition on 20.8.2013 for his substitution as plaintiff however, the said petition was not pressed by him and in the meantime, the substituted plaintiff who is respondent in the present proceeding filed another application on 12.12.2013 which has been allowed. The respondent is not Class-I legal heir and successor of the deceased plaintiff and thus, petition under Order XXII, Rule 3 C.P.C. was not maintainable. It is contended that the petition dated 12.12.2013 was filed more than five months after the death of the original plaintiff namely, Lakhan Lal Sharma and thus, the suit had already abated. Since no application for setting aside the abatement was filed, Title Suit No. 95 of 2008 could not have been revived.

3. Mr. Rajeev Ranjan Tiwary, the learned counsel for the respondent supported the order substituting the respondent in place of the original plaintiff. He contended that the respondent is the own elder brother of the original plaintiff is not denied and therefore, his substitution in place of his own younger brother cannot be objected by the defendants.

4. I have carefully considered the submissions of the learned counsel for the parties and perused the documents on record.

5. In petition dated 12.12.2013 the respondent asserted that he is the elder brother of the original plaintiff. He claimed that he is aged about 82 years. Along with petition dated 12.12.2013 an application under Section 5 of the Limitation Act was also filed. The original plaintiff died issueless as he was unmarried, is not in dispute. Rule 3 to Order XXII provides that where the sole plaintiff dies and the right to sue survives, the Court, on an application made in that behalf, shall cause the legal representative of the deceased plaintiff to be made a party and shall proceed with the suit. The original plaintiff asserted that the property in R.S. Khata No. 72, R.S. Plot No. 516, 517, 518, 519 and 520 total area 2.64 acres was acquired and possessed by his father namely, Jodhan Sharma since 19.12.1935, A.D. After the death of his father, the plaintiff exercised his possession and carried traditional business and cultivated paddy and vegetables in the suit property. The plaintiff further asserted that Raiyati Purga was issued by the Assistant Survey Settlement Officer, Jamshedpur in his favour. The possession of the original plaintiff was declared in his favour in Misc. Case No. 451 of 1992 and Misc. (P) No. 40 of 2006 which was converted into Misc Case No. 251A of 2007. As noticed above, it is not denied that the respondent is the elder brother of the original plaintiff. The main objection to the substitution of the respondent in place of deceased plaintiff was that the respondent is not Class-I legal heir of the deceased plaintiff. The trial court referred to Section 2(11) of C.P.C. and held that the respondent comes within the definition of legal representative of the original plaintiff. The objection that no application for setting aside abatement was filed, appears to be more technical than substantial in nature. Considering the aforesaid facts, I find no infirmity in the impugned order dated 17.1.2014 and accordingly, the writ petition is dismissed.