

(2005) 01 JH CK 0047

In the Jharkhand High Court

Case No : Writ Petition (C) No. 4441 of 2004

Shiv Narain Mishra and Others

APPELLANT

Vs

Sanichar Singh

RESPONDENT

Date of Decision : 27-01-2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 9

Coal Bearing Areas (Acquisition and Development) Act, 1957 — Section 26

Citation : (2005) 3 JCR 145

Hon'ble Judges : Narendra Nath Tiwari, J

Bench : Single Bench

Advocate : Rajesh Kr. Mohatha, for the Appellant; Atanu Banerjee, for the Respondent

Judgement

N.N. Tiwari, J.—In this writ application the petitioners have prayed to hold the order dated 18.5.2004 bad in law. By the impugned order, the learned Court below has held that he has got no jurisdiction to decide Relief No. (a) as prayed for by the plaintiff in paragraph 15 of the plaint. The plaint has been annexure as Annexure-1 to the writ petition. In Paragraph 15(a) of the plaint, the following reliefs have been prayed :

"(a) On adjudication it be declared that the plaintiff has valid right, title, interest and possession over the suit lands described in Schedule "A" of the plaint.

(b) It be further declared that the registered sale deed No. 4374, dated 15.5.1967 executed by defendant No. 1 in favour of the defendants No. 2 and 3 for the suit land is illegal, invalid in operative, null and void and not binding on the plaintiff."

2. By the impugned order the learned Court below has held that the suit will proceed only with respect to the Relief No. (b), as he has got no jurisdiction to try relief No. (a). The ground for holding that he has got no jurisdiction to adjudicate upon the Relief 15(a) according to the Court below is the bar of

jurisdiction of the Civil Court as contained u/s 26 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, Section 26 of the said Act reads thus :

"Jurisdiction of Civil Courts.-Save as otherwise expressly provided in this Act, no Civil Court shall have jurisdiction in respect of any matter which the Central Government or the competent authority or any other person is empowered by or under this Act to determine."

3. The grievance of the petitioners is that since the Court below has got no jurisdiction to try and adjudicate upon the Relief 15(a), he has also got no jurisdiction to continue with the suit for the trial and adjudication of Relief No. 15 (b) and as such the impugned order is bad and the same is liable to be quashed.

4. Mr. Atanu Banerjee, learned counsel appearing on behalf of the plaintiff/respondent, on the other hand, contended that under the provisions of Section 9 of the CPC, the Civil Court has got jurisdiction to try and decide all the suit of civil nature except the suits on which their cognizance is either explicitly or implicitly barred. Learned counsel submitted that Section 26 of the Coal Bearing Areas (Acquisition and Development) Act, 1957 does not bar cognizance of the suit regarding adjudication and declaration of right, title, interest and possession of the land and as such the Civil Court and that of the Court below has got jurisdiction to adjudicate upon such issue. Learned counsel further submitted that although he has not filed a separate petition, yet he is aggrieved by the said portion of the impugned order whereby it has been held that the Court below has no jurisdiction to try the relief No. (a). According to the learned counsel the said part of the order of the Court below is wholly illegal.

5. From perusal of the provision as contained in Section 26 of the Coal Bearing Areas (Acquisition and Development) Act, 1957, I find that the section bars jurisdiction of the Civil Court only in respect of the matter which the Central Government or the competent authority or any other person is empowered by or under this Act to determine. So far the declaration of right, title, interest and possession of the suit land is concerned, this power has not been given to the Central Government or any other authority/person and the cognizance of the same is not barred under the provision of the said Act. No other provision or any law has been brought to my notice which creates any bar for taking cognizance by the Civil Court and trying the suit for declaration of right, title and interest in the land.

6. In view of the above discussion, I find that the impugned order dated 18.5.2004 is wholly without any legal basis. The impugned order is, therefore, not sustainable in law and the same is hereby quashed. Since the cognizance of Relief No. 15(a) is not barred by any law to the notice of this Court, the same is also triable by the Court below itself.

7. This writ application is disposed of with the said observation/direction.