

(2007) 05 PAT CK 0063
In the Patna High Court
Case No : C.R. No. 1826 of 2006

Shri Udai Narain Singh

APPELLANT

Vs

Shri Ramji Sharma and Others

RESPONDENT

Date of Decision : 22-05-2007

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 18 Rule 1

Citation : (2007) 4 PLJR 8

Hon'ble Judges : Ramesh Kr. Datta, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Ramesh Kr. Datta, J.—Heard learned counsel for the petitioner. The revision application has been directed against the order dated 18.7.2006 passed by Subordinate Judge-XII, Patna in Title Partition Suit No. 472/2002 by which he has rejected the petition filed by the plaintiff -petitioner under Order 18 Rule 1 of the CPC and directed the plaintiff to adduce evidence first.

2. The aforesaid Title Partition Suit was filed by the plaintiff claiming 1/3rd share in the suit property and prayer was made for partition and separation of Takhta of his 1/3rd share claiming that the plaintiff and his two brothers-opposite parties are governed by the Mitakshara School of Hind Law and are in joint possession over the same. It was further stated in the plaint that the suit lands were jointly purchased under registered sale deeds dated 6.12.1974 and 4.2.1975 by the plaintiff-petitioner and defendants-opposite parties and the sale deeds were also in the joint name. Certain oral arrangement between the parties was also alleged in the plaint on the basis of which the plaintiff claimed to have become the full owner of the property at Sherullahpur. The defendants filed the written statement but there is claim that the property had been purchased from the separate income and fund of the defendant-opposite party No. 1 and thus self acquired and personal property although the name of the three parties existed in the sale deeds. The defendants also denied existence of oral settlement and

agreement and denied that the suit property would be partitioned since according to them, the plaintiff had no title and possession over the same.

3. Thereafter the plaintiff-petitioner filed a petition under Order 18 Rule 1 CPC in which it was stated that there was presumption of jointness under the Mitakshra School of Hindu Law and whoever makes out a case against presumption of law, will have to lead evidence first and accordingly in a partition case there is presumption of jointness and whoever pleads against this jointness by alleging partition will have to lead evidence to that effect and accordingly a direction was sought upon the defendants to lead evidence first. After hearing both the sides the court below has rejected the petition and directed the plaintiff-petitioner to begin the evidence first.

4. Learned counsel for the petitioner states that it is the defendants who are denying the claim of jointness which is the natural presumption under Hindu Law and thus they must be asked to lead their evidence first. It is submitted that the sale deeds in question show the properties in the joint names of the plaintiff and the defendants and any denial of the same would have to be proved by leading evidence by the other side since the natural presumption is that all the purchasers have equal title in the property under the sale deed.

5. In support of the aforesaid proposition, learned counsel for the petitioner relies upon a decision of this Court in the case of Ramesh Chandra vs. H.D. Jain College, Arrah and Ors.: AIR 1957 Pat 145. In the said case the matter related to dismissal from service wherein a declaration was sought that the orders of suspension and/or dismissal were illegal and ultra vires and there was claim for recovery of certain amounts also. The College raised a plea that the orders of suspension or dismissal were proper and justified since the petitioner therein was guilty of misconduct and was so found in a duly constituted enquiry. The plaintiff of that case thereafter filed an application that the onus with regard to the issue Nos. 5 and 7 as to who was to adduce evidence at the first instance on these two issues, was upon the College since it was the matter specifically within their knowledge.

6. On a consideration of the facts of that case this Court came to the conclusion that the onus to prove the said facts lie upon the defendants in view of the said plea taken by them and thus they must adduce evidence on these two issues at the first instance and the plaintiff must have the right to give evidence in rebuttal thereof.

7. The facts of the aforesaid case cannot assist the plaintiff in the present matter since in the petition filed by the plaintiff-petitioner in the court below the prayer had been made that the defendants should be directed to lead evidence on all the issues since they had challenged the presumption of jointness. In those circumstances, the trial court rejected the prayer. It is not a case where with respect to specific issues on which the defendants have made special claim upon which onus would lie upon them to prove, that they have to lead evidence first.

In the said circumstances, the Court was justified in rejecting the petition filed by the plaintiff-petitioner under Order 18 Rule 1 CPC.

8. In the aforesaid circumstances, this Court does not find that any jurisdictional error has been committed by the court below in rejecting the petition dated 7.10.2004 filed on behalf of the plaintiff petitioner. The revision application is accordingly dismissed. However, it would be open for the plaintiff to raise the matter regarding leading of evidence first by the defendants with respect to specific issues with regard to which the onus would be upon the defendants to prove in view of the stand taken by them in their written statement.