
(2008) 03 JH CK 0025
In the Jharkhand High Court

S.N. Roy and Another

APPELLANT

Vs

Bharat Bouri and Others

RESPONDENT

Date of Decision : 19-03-2008

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2008) 2 JCR 432

Hon'ble Judges : M.Y. Eqbal, J

Bench : Single Bench

Final Decision : Allowed

Judgement

M.Y. Eqbal, J.—This application under Article 227 of the Constitution of India is directed against the order dated 18.3.2006 passed by Sub-Judge VI, Dhanbad in Title Suit No. 45 of 1990, whereby petition filed under Order I, Rule 10, CPC by the intervenor has been allowed for impleading him as party in the suit.

2. The plaintiffs-respondents No. 1 and 8 filed Title Suit No. 45 of 1990 against the defendants-petitioners in the Court of Munsif, Dhanbad for declaration that the plaintiffs have perfected their right over the suit property and further for a declaration that the defendants-petitioners have got no right to disturb peaceful possession of the plaintiffs over the suit property and also sought a decree for permanent injunction restraining the defendants from disturbing their possession. The suit was contested by the defendants-petitioners by filing written statement stating inter alia that the father of the petitioners acquired the suit land by four registered documents of the years 1915, 1920, 1939 and lastly of 1948 and constructed a residential house and have been coming in exclusive possession as also absolute owner of the suit land. It was further pleaded by the defendants that they filed Title Suit No. 279 of 1979 against the father of plaintiff Nos. 3 and 6 and maternal uncle of plaintiff No. 1 and uncle of plaintiff Nos. 2 and 5 and brothers of plaintiff No. 4 and cousin grandfather of plaintiff No. 7. The said suit was decreed on 30.11.1985. The defendants of the suit filed Title Appeal No. 9 of 1986 which was dismissed on 22.11.1990. They also preferred

second appeal being Second Appeal No. 10 of 1991 which was also dismissed by the High Court on 15.7.1991. The defendants' further case is that at the fag end of hearing of the suit, application under Order I, Rule 10, CPC was filed by the intervenor for impleading him as party in the suit. The said application was seriously opposed by the defendants by filing rejoinder. The Court below after hearing the parties allowed the intervention petition.

3. I have heard the learned Counsel appearing for the parties. From perusal of the impugned order, it appears that the Court below has not correctly appreciated the provision of Order I, Rule 10, CPC and has misdirected himself in allowing the application. From pleadings of the parties, it is evidently clear that the plaintiffs filed the suit for declaration that they perfected their title and they are in possession of the suit land. On the other hand, the defendants' specific case is that their predecessor-in-interest have acquired the suit property by registered documents of the years 1915, 1920, 1939 and 1948 and they have been coming in possession of the suit land. The Court below has committed serious illegality in not considering the fact that at the stage of argument, the intervention petition was filed and the said application was not opposed by the plaintiffs. The Court below has further committed error of law in saying that since the intervention petition was not opposed by the plaintiffs, it is to be allowed. Prima facie, it appears that the intervenor was set up by the plaintiffs to intervene in the suit which was filed by the plaintiffs only for declaration that they have perfected their title over the suit land. In my considered opinion, the impugned order passed by the learned Court below is absolutely illegal and wholly without jurisdiction. For the reasons aforesaid, this application is allowed and the impugned order is set aside.