
(2025) 04 JH CK 1404
In the Jharkhand High Court
Case No : C.M.P. No.342 Of 2024

Syed Rizwan Hassan

APPELLANT

Vs

Hena Irfan Akhtar

RESPONDENT

Date of Decision : 28-04-2025

Acts Referred:

Constitution of India, 1950 — Article 227

Code of Civil Procedure, 1908 — Order 1 Rule 10, Order 1 Rule 10(2)

Citation : (2025) 04 JH CK 1404

Hon'ble Judges : Sanjay Kumar Dwivedi, J

Bench : Single Bench

Advocate : Alok Lal, Asim Kumar Sahani, Niranjan Kumar

Final Decision : Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard Mr. Alok Kumar, the learned counsel appearing on behalf of the petitioner as well as Mr. Asim Kumar Sahani, the learned counsel appearing on behalf of the Opposite party no.1 and 2 and Mr. Niranjan Kumar, the learned counsel appearing on behalf of the Opposite party no.3.

2. Notice upon the Opposite parties has been effected, however, learned counsel for the O.P.No.4 is not present.

3. This petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 24.01.2024 passed by Sub Judge-V, Ranchi in M.C.A No.1076 of 2023 arising out of Original Suit No.380 of 2023 whereby the petition filed under Order I Rule 10(2) of the CPC by the wife of the defendant no.2 in the suit has been allowed by the learned court.

4. Mr. Alok Lal, the learned counsel appearing on behalf of the petitioners submits that the Partition Suit No.106 of 2014 was instituted before the learned Sub Ordinate Judge, Ranchi for partition of the land with respect to the property

acquired by the father of the plaintiff and the original defendant namely Syed Ibnul Hassan who purchased 2 kathas of land out of R.S. Plot no.4 under Khata No.32 situated in Village Kusai under Thana No.222, P.S. Doranda, and subsequently constructed a double storied building over the suit land. He further submits that after death of Mr. Syed Ibnul Hassan the said property devolved upon the original plaintiff-petitioner herein and defendant no.1 and 2 got two shares and defendant no.3 namely Shabana Praveen the daughter of common ancestor got one share after the death of their father. He submits that in that background, this partition suit was filed and a petition was filed under Order I Rule 10(2) of the CPC by the intervener for arraying her as one of the party in the partition suit on the ground that one another property was gifted to her which has already been sold to another person and in view of that she is not the necessary party and in view of that the learned court has allowed the petition filed under Order I Rule 10 CPC and directed to array as one of the defendant in the said suit. On this ground, he submits that the said order is erroneous and in view of that the same may kindly be set aside.

5. Mr. Asim Kumar Sahani, the learned counsel appearing on behalf of the Opposite party nos.1 and 2 submits that the intervener is a necessary party and in view of that the learned court has rightly passed the said order. He further submits that Syed Ibnul Hassan with contribution of the amount made by the intervener as well as the defendant no.2 and 3 constructed the double storied building on the aforesaid land, i.e., the suit property and since after the construction of the building the defendant nos.2 and 3 along with the intervener are coming in peaceful possession thereon. He further submits that gift suit property in favour of the son and daughter as well as in favour of the intervener is also the property in the suit. He submits in view of that the learned court has rightly passed the said order.

6. Mr. Niranjana Kumar, the learned counsel appearing on behalf of the Opposite party no.3 submits that he has adopted the argument of Mr. Alok Lal, the learned counsel appearing on behalf of the petitioner and in view of that, he is supporting the case of the petitioner herein.

7. In view of above submission of the learned counsels appearing on behalf of the parties, it is an admitted position that the defendant no.3 and the intervener are husband and wife respectively and the wife has filed the said petition for intervention on the ground that the contribution was also made by her and pursuant to that Syed Ibnul Hassan has constructed the double storied building in which she was also residing and that fact has been disclosed in paragraph no.13 and 14 in the petition filed under Order I Rule 10 CPC.

8. If such a situation is there, and further the dispute is with regard to the property which has been gifted to the intervener and according to the petitioner, that has been sold to another person and in view of that, she is not a necessary party which can be a subject matter of the suit as prima facie it appears that the claim has been made on the basis of the contribution made by her for

construction of the double storied building which is also the part of the suit property, and in this background, if such a petition is allowed the Court finds that there is no illegality in the order and it is further beneficial in favour of all the sides if she is made a party; there should be avoidance of multiplicity of litigation and so far the share is concerned, that can be decided by the learned court on the basis of the evidence led by the parties.

9. Merely by way of allowing the petition under Order I Rule 10 CPC does not mean that she will get share in the suit and it depends upon the evidence led by the parties.

10. As such, the Court finds that there is no illegality in the impugned order and hence, this petition is dismissed.

11. However, the dismissal of this petition will not prejudice the case of either of the parties on the merit of the suit and that will be decided in accordance with law.

12. Pending petition, if any, also stands disposed of, accordingly.