
(2009) 09 JH CK 0029
In the Jharkhand High Court

Tribeni Pandey and Another

APPELLANT

Vs

Bishun Deo (Sudama) Pandey

RESPONDENT

Date of Decision : 10-09-2009

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 151
Constitution of India, 1950 — Article 227

Citation : (2009) 09 JH CK 0029

Hon'ble Judges : Dhirubhai Naranbhai Patel, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

D.N. Patel, J.—The present writ petition has been preferred under Article 227 of the Constitution of India against the order passed before Additional Munsiff dated 15th of September, 2008, in Title suit No. 40 of 1999 (Annexure-5 to the memo of petition) below an application preferred by the original defendant under Order VI, Rule 17 to be read with Section 151 of Code of Civil Procedure.

2. Having heard learned Counsel for the petitioner and looking to the facts & circumstance of the case, I see no reason to entertain this writ petition mainly for the following facts & reasons:

(i) The present petitioner is an original plaintiff who has Instituted Title Suit No. 40 of 1999, and is claiming a title upon the suit-property, on the basis of sale-deed executed in his. favour which is a registered document. The said so-called registered deed upon which the original plaintiff is heavily relying upon, is dated 9.9.1994;

(ii) It appears that a written statement was filed by the original defendant wherein several facts have been denied which are stated in the plaint and in paragraph No. 7 of the written statement filed by the original defendant there is a denial of the averments and allegations made in Paragraph Nos. 3 and 4 of the plaint. Written statement was filed by the original defendant on 20th of

December, 2000;

(iii) it appears that thereafter the original defendant had moved an application under Order VI, Rule 17 for the amendment in the written statement. This application was preferred on 11th of June, 2008 and certain averments, the original defendant wants to add in Paragraph No. 7 of the written-statement. The said amendment is at Page No. 44 of the present compilation. It is stated in the proposed amendment that the so-called sale-deed is dated 9.9.1994 (in fact the correct date is 9.9.1974) is illegal, inoperative and unenforceable. The original defendant also wants to put on record that there is an earlier decision rendered by a competent Court in Title Suit No. 165 of 1955. The suit was instituted by Moti Pandey and Banwari Pandey against Mosemat Pano Kuari. It is also alleged by the original defendant that the said Pano Kuari who is a defendant of a Partition Suit No. 165 of 1955 was non-else, but, executant of the alleged sale-deed dated, 9.9.1974. Thus, the said sale-deed, on the basis of which the whole title suit has been instituted is devoid of any merits and is improper and illegal and is not enforceable. This amendment has been allowed by the trial court Looking to the fact that by allowing this amendment. it cannot be said that there will be a total departure from the whole written-statement. No new case is made out, even if, the amendment application is allowed.

(iv) Looking to the aforesaid nature of the amendment no error has been committed by the trial court in allowing the application preferred by the original defendant. The proposed amendment is not challenging the whole nature of the, written statement, on the contrary, proposed amendment will facilitate the trial court in arriving at a correct decision of the dispute between the parties. Proposed amendment is clarifying the basic allegation already levelled by the defendants in Para 7 of written statement that the sale-deed upon which the reliance is placed by the original plaintiff is not enforceable This aspect of the matter has been correctly appreciated by the trial court. Even, the cost has been awarded by the trial court for allowing the amendment. Looking to the Paragraph No. 7 of the written-statement filed by the original defendant, looking to the amendment application under Order VI, Rule-17 of the CPC and looking to the order passed by the trial court allowing the amendment in the written statement. I see no reason to entertain this writ petition. There is no error committed by the trial court, much less, an error apparent on the face of the record.

3. As a cumulative effect of the aforesaid facts & reasons. I hereby, dismiss the petition and avail order passed by the trial court upon the amendment application preferred by the original defendant.

4. Accordingly, this writ petition is hereby, disposed of, as dismissed.