

(2004) 02 JH CK 0028
In the Jharkhand High Court
Case No : Writ Petition (C) No. 999 of 2004

Yamuna Prasad Sah

APPELLANT

Vs

State of Jharkhand and Others

RESPONDENT

Date of Decision : 26-02-2004

Acts Referred:

Constitution of India, 1950 — Article 227

Citation : (2004) 3 JCR 157

Hon'ble Judges : P.K. Balasubramanyan, C.J

Bench : Single Bench

Advocate : Manoj Kumar Sah, for the Appellant; GP I, for the Respondent

Judgement

P.K. Balasubramanyan, C.J.—Heard counsel for the petitioner.

2. This is a proceeding under Article 227 of the Constitution of India challenging the interim order passed in a second appeal filed by the petitioner before the Commissioner. Normally, I should be passing this order after hearing the contesting respondents but, I find that there are 20 respondents in this proceeding and if this matter were to be admitted and the proceedings kept in abeyance, it will prejudice the respondents more than the order I now propose to pass. In that view, I propose to dispose of this proceeding without issuing notices to the respondents 5 to 20. Government counsel has appeared on behalf of respondents 1 to 4.

3. The suit was filed by the plaintiff in terms of Santhal Parganas Act before the Assistant Settlement Officer. That suit was resisted by the writ petitioner. That suit was decreed. An appeal was filed by the writ petitioner before the Settlement Officer, deputy Commissioner, Dumka. That appeal was dismissed according to him without hearing him. Whatever it be, challenging that dismissal, the writ petitioner filed second appeal No. 101/2003-2004 in the Court of the Commissioner, Santhal Pargana Division at Dumka. The litigation has had a chequered career having reached this Court on a previous occasion. In the

second appeal, the petitioner made an application for stay of execution of the decree for possession until the second appeal was heard and disposed of. The Commissioner has dismissed that stay petition on the ground that the appellant before him had lost in the both the Courts and both the Courts had found no merit in the claim made on his behalf. There has been no independent application of mind by the second appellate authority by considering whether a prima facie case for stay has been made out by the appellant or not. Normally, I would have admitted the matter and stayed the eviction and directed notice to issue but, since, as I have noticed, that would mean pendency of this proceeding in this Court for a considerable time. I am satisfied that in the interests of justice, it will be more expedient to direct the second appellate authority, the Commissioner, Santhal Pargana Division, Dumka to hear and dispose of the second appeal on merits and in accordance with law, as expeditiously as possible and in any event within four months from this date. Until the aforesaid second appeal is disposed of, the execution of the decree in Title Suit No. 33 of 1993/8 of 1999 of the Court of Assistant Settlement Officer, Dumka will be kept in abeyance. The second appellate authority will ensure that both the parties are given an opportunity of being heard while disposing of the second appeal.

4. The writ petition is disposed of with the above directions. The Registry will communicate a copy of this order to the Commissioner, Santhal Pargana Division, Dumka for compliance.