

(2020) 12 CHH CK 0006

Chhattisgarh High Court

Case No: Writ Petition (227) No. 563 Of 2018

Loknath @ Ramkumar
Sahu And Ors

APPELLANT

Vs

Lekhram Sahu And
Ors

RESPONDENT

Date of Decision: Dec. 1, 2020

Acts Referred:

- Constitution Of India, 1950 - Article 227

Hon'ble Judges: Rajendra Chandra Singh Samant, J

Bench: Single Bench

Advocate: Raj Kumar Pali, H.B. Agrawal, Preeti Yadav, Devendra Pratap Singh, Prakash Kumar Mishra

Final Decision: Disposed Of

Judgement

Rajendra Chandra Singh Samant, J

1. This petition under Article 227 of the Constitution of India has been brought seeking indulgence of this Court in quashing the impugned order dated

01.05.2018, passed by the Court of District Judge, Bemetara, District Bemetara in Civil Suit No.3-A/2013.

2. It is submitted by the learned counsel for the petitioners that the petitioners are defendants No.1, 2, 13, 14, 15 & 16 in the civil suit mentioned herein

above. The respondent No.11 has filed a civil suit praying for relief of partition of his share from the joint family property and for possession. The

petitioners have filed written statement in which they have made admission of the claim of the plaintiff/respondent No.11, however, they have not

admitted the quantum of the share and pleaded about their entitlement differently.

3. It is submitted that the respondent No.1 to 9 are contesting the suit. Respondent No.1 Lekhram Sahu, who is defendant No.3 has been examined in trial and cross-examined by the plaintiff side. The petitioners filed an objection, that the interest of the respondents No.1 to 9, who are defendants is adverse to the petitioners, who are also co-defendants, therefore, they may be given opportunity to cross-examine the witnesses of defendants No.3 to

11. This application has been dismissed by the impugned order.

4. It is further submitted by the counsel for the petitioners that looking to the difference in pleadings of the petitioners and other defendants regarding their share in the joint family property, the petitioners have entitlement to cross-examine the witness of other co-defendants with respect to the statement i.e. adverse to their interest. Hence, the order impugned is not correctly passed, which may be quashed and the petitioners be given opportunity to cross-examine the witnesses of other co-defendants.

5. Counsel for the respondents No.1 to 9 submits that the petitioners are although defendants in the case, but they have admitted the pleadings in the plaint, therefore, their interest is collusive with the plaintiff. The petitioners have not filed any counter claim, therefore, without any pleading of counter claim, the petitioners have no right to cross-examine the witness of co-defendants. It has been rightly held in the impugned order that the interest of the petitioners is not adverse to the other co-defendants, therefore, the impugned order does not suffer from any infirmity. It is prayed that petition be dismissed.

6. I have heard the learned counsel for the parties and perused the documents placed on record.

7. Civil suit has been filed by the respondent No.11 against the petitioners and other co-defendants praying for relief of partition of the joint family property, in which the plaintiff has claimed share of 1/40 along with relief of possession. Defendant No.1 and 2, who are petitioners have admitted the pleadings, however, they have made statement in pleading that they have entitlement of share of 1/9 each in the joint family property. The other petitioners/defendants have filed written statement making admission to the pleadings in the plaint and they have separately pleaded about their entitlement of share.

8. Copy of the written statement of other co-defendants No.3 to 11/respondents has not been filed, but on perusal of the copy of the deposition of the defendant No.3, it is found that defendant No.3 to 11 are contesting the civil suit on this basis that family property is no longer joint, which has been partitioned on 09.10.2012 with the consent of the share holders of the property and prayer has been made to dismiss the civil suit.

9. As the petitioners/defendants have admitted the pleadings in the plaint that suit property still stands as joint family property, therefore, this pleading of the defendant No.3 to 11 is adverse to the interest of the petitioners/defendants.

10. In the case of M/s. Ennen Castings (P) Ltd. Vs. M.M. Sundaresh, reported in AIR 2003 Karnataka 29, 3 it was observed in paragraph No.10, which is as follows :-

“10. Though there is no specific provision in the Indian Evidence Act providing for such an opportunity for a defendant-respondent to cross-examine a co-defendant/co-respondent, however, having regard to the object and scope of cross examination, it is settled law that when allegations are made against the party to the proceedings, before that evidence could be acted upon, that party should have an ample opportunity to cross-examine the person who had given the evidence against him. It is only after such an opportunity is given, and the witness is cross examined that evidence becomes admissible. In this regard it is useful to refer to passages in the law of evidence, by the learned authors on the subject.

Sarkar on Evidence, Eighth Edition Para. 1141 :-

No special provision is made in the Evidence Act for the cross-examination of the co-accused's or co-defendant's witnesses. But the procedure to be adopted may be regulated by the well-known rule that no evidence should be received against one who had no opportunity of testing it by cross-examination ; as it would be unjust and unsafe not to allow a co-accused or co-defendant to cross-examine witness called by one whose case was adverse to his, or who has given evidence against. If there is no clash of interest or if nothing has been said against the other party, there cannot be any right of cross-examination.

Principles and Digest of the Law of Evidence by M. Monir, Third Edition, Para. 1114 :-

A defendant may cross-examine a co-defendant or any other witness who has given evidence against him, and reply on such evidence, though there is no issue joined between them".

Phipson on Evidence, Tenth Edition, Para. 1538:-

A defendant may cross-examine a co-defendant or any other witness who has given evidence against him, and reply on such evidence though there is no issue joined between them.

11. As per principle of law, no evidence shall be received against a person, who had no opportunity of testing the same by cross-examination. It is

clear that the petitioners and other co-defendants have conflict of interest according to the pleadings they have made in their written statements,

therefore, the petitioners ought to have given such opportunity to cross-examine the witness of co-defendants. Hence, I am of this view that the

learned trial Court has committed error in holding that the interest of the petitioners is not adverse to the other co-defendants, whereas, it has been

found to the contrary. Hence, the present writ petition is allowed. The impugned order dated 01.05.2018 is quashed. The learned trial Court is directed

to afford opportunity to the petitioners to cross-examine the witness of respondent/co-defendants No.1 to 9 to the extent their interest is adverse to the interest of the co-defendants.

12. Accordingly, this petition is disposed off.