

Ramesh Kumar Sharma Vs Smt Laxmi Devi

Court: Jharkhand High Court

Date of Decision: Jan. 21, 2025

Acts Referred: Constitution of India, 1950 " Article 227
Code of Civil Procedure, 1908 " Order 7 Rule 11(d), Order 12 Rule 6

Hon'ble Judges: Sanjay Kumar Dwivedi, J

Bench: Single Bench

Advocate: Siddharth Roy

Final Decision: Dismissed

Judgement

Sanjay Kumar Dwivedi, J

1. Heard the learned counsel appearing for the petitioner.

2. This petition has been filed under Article 227 of the Constitution of India for quashing of the order dated 18.09.2024 whereby a petition filed under

Order VII Rule 11(d) CPC read with Order XII Rule 6 CPC has been rejected.

3. Learned counsel for the petitioner submits that earlier Partition Original Suit No.486 of 2021 was instituted and there was partition in between the

parties and the suit property was already partitioned and in spite of the earlier partition the Original Suit No.486 of 2021 was instituted for preliminary

decree of half share out of scheduled property described in the plaint. He submits that certain terms and conditions were violated and for that a case

of specific performance is required to be filed however the partition suit has been filed which is not maintainable. He submits that in view of that the

said petition filed before the learned court for rejection of the plaint itself. However, the learned court has wrongly decided the same and dismissed the

same. On this ground, he submits that the said order may kindly be set aside. He submits that there is no violation on behalf of the plaintiff no.2 and

inspite of that, the suit has been filed.

4. The Court has perused the impugned order dated 18.09.2024 and finds that the learned court has found that the terms of the earlier partition was

reduced in writing and as per the partition the plaintiff and the defendant have come in their respective allotted portion. The plaintiff no.1 has admitted

that he will be entitled of Rs.25000/- per month from the defendant no.1 from the date of commercial utilization of the share till her life time. The

Court has found there is violation of the terms of compromise and there is specific clause-V that if the violation is there, the partition will be re-opened

so far as the plaintiff no.1 is concerned. If such a position is there and certain violation is there, the learned court has rightly passed the order.

5. It is well settled that the cause of action arises out of bundle of facts and that can be proved in the trial and for deciding the petition, the entire plaint

is required to be looked into. In paragraph no.18 of the plaint it has been disclosed that in light of clause-V of the said family settlement deed dated

15.11.2017 it was decided between the parties that if the defendant will not pay the agreed amount to the plaintiff no.1 then itself forfeit the right of

the allowed area and plaintiff no.1 will be entitled to claim half share into the share from the defendant. If such a situation is there, the entire cause of

action is there and the learned court has rightly passed the said order.

6. The contention of the petitioner with regard to non-maintainability of the plaint against the plaintiff no.1 and 2 can be decided by way of leading the

evidence in the pending suit. There is no illegality in the impugned order. As such, this petition is dismissed.