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Manoj Kumar Jha and Subha Jha Vs Smt. Geeta Devi Thakur

None

Court: Jharkhand High Court

Date of Decision: Sept. 16, 2008

Acts Referred:
Constitution of India, 1950 â€" Article 227

Citation: (2009) 1 JCR 687

Hon'ble Judges: Ramesh Kumar Merathia, J

Bench: Single Bench

Final Decision: Dismissed

Judgement

Ramesh Kumar Merathia, J.
This writ petition under Article 227 of the Constitution of India, has been filed for quashing the order dated

11.4.2007 passed by the District Judge, Deoghar in Civil Miscellaneous Appeal No. 15 of 200b allowing the appeal filed by the respondent and

restraining the petitioners from making any construction over the suit property, while allowing the injunction petition of the respondent.

2. Mr. Prashant Pallav, learned Counsel appearing for the petitioners, submitted that the said appeal filed by the respondent was not maintainable.

He relied on Nagina Singh and Others Vs. Most. Sheojoti Kuer and Others, , M. Radheshyamal v. Shailesh AIR 2005 Madras 93 and Manohar

Nale and Others Vs. Jaipalsing Rajput and Others, . He further submitted that on merits also, the prayer for injunction of the respondent could not

be allowed.

3. On the other hand, Mr. V. Shivnath, learned senior counsel appealing for the respondent, supported the impugned order and submitted that

actually the said appeal was filed against the order refusing to grant injunction in favour of the respondents. He relied on a Full Bench decision of

Andhra Pradesh High Court in B.F. Pushpaleela Devi v. State of A.P. and Ors. AIR 2002 AP 420

4. The questions are whether the said appeal was maintainable; and whether the said judgment passed in appeal calls for interference by this Court

in this writ petition or not.

5. The plaintiff respondent filed a suit being Title (D) Suit No. 51 of 2006 for declaration of her right, title and interest over the suit property; for

confirmation of possession or in the alternative, for recovery of possession by ejecting the defendants-petitioners in the event she is adjudged

dispossessed and also for temporary and permanent injunction restraining the defendants from making any construction over the suit property.

An application for injunction under Order XXXIX Rule 1 of the CPC was filed by the plaintiff on 28.3.2006. After hearing the parties, the prayer

was refused by the learned trial court. However, a survey knowing pleader commissioner was appointed to ascertain the actual position of the

disputed property. The respondent filed a review application on 5.8.2006 for reviewing the said order which was rejected on 11.12.2006 in limine

saying that no ground was made out for review; and moreover the order under review was appealable. The respondent then filed an appeal which

was registered as Civil Miscellaneous Appeal No. 15 of 2006. After hearing the parties, the appeal has been allowed by allowing the prayer for

granting temporary injunction restraining the defendants-petitioners not to create any further permanent or temporary structure over the suit land till

the disposal of the suit and to maintain status quo.

6. It is true that the order rejecting review is not appealable. But it appears that the respondent filed the said appeal under Order XLIII Rule 1 (r)

of the CPC ""against the order dated 11.12.2006 passed in continuation of the order dated 25.7.2006-refusing the prayer of temporary injunction

made by the respondent."" Thus actually the appeal was filed against the order refusing injunction which was appealable. Instead of filing appeal, the

respondent filed review. However, ultimately the appeal was filed. As the prayer of injunction of the respondent was refused, she did not derive

any benefit by filing a review application first instead of an appeal.

7. In these circumstance, it is not possible to hold that the appeal was not maintainable. Moreover it does not appear from the impugned judgment

that the respondent raised any ground assailing the order dated 11.12.2006 rejecting review application. Thus the judgments relied on behalf of the

petitioners are not relevant in the present case.

8. So far as the grounds on which injunction has been granted by the lower appellate court are concerned, I find that the relevant aspects have

been taken into consideration by the lower appellate court in paragraph 15 onwards. It is not necessary to reiterate the same. I do not find any

reason to interfere with them.

9. However, it is made clear that any observation made by the learned trial court or the appellate court while refusing/granting injunction will not

prejudice the respective cases of the parties on merits at the time of final decision in the suit. The parties should cooperate in early disposal of the

suit.

10. In the result, this writ petition is dismissed. However, no costs.