

Sushila Devi Vs Poonam Srivastava

Court: Jharkhand High Court

Date of Decision: Aug. 25, 2008

Acts Referred: Transfer of Property Act, 1882 " Section 48

Citation: (2009) 1 JCR 356

Hon'ble Judges: Ramesh Kumar Merathia, J

Bench: Single Bench

Judgement

Ramesh Kumar Merathia, J.

Heard the parties finally.

2. The petitioner has prayed for quashing the order dated 21.8.2006 passed by the Additional Munsif 1st at Dhanbad in Title Suit No. 97 of 2002

allowing the petition dated 11.8.2003 filed on behalf of the plaintiff-respondent: under Order VIII Rule 6-C of the CPC for exclusion of the

counter claim brought by the defendant-petitioner.

3. The learned court below, inter alia, held that there has to be nexus between the claims/causes of action of the parties but they are different.

4. Mr. Rajesh Lala, appearing for the petitioner, submitted that the petitioner purchased part of the property from Smt. Shanti Rani Chakraborty

on 23.7.1999 and thereafter she and her son sold part of the property to the respondent on 3.3.2000. A common drain was shown in the map, as

part of the schedule of the sale deed. He further submitted that in the sale deed of the respondent also it is mentioned as ""existing drain"", but the

other stipulation in the sale deed of the respondent is hit by Section 48 of the Transfer of Property Act. He referred to the reports of the Amin

dated 2.12.2000 and 5.1.2001. He further submitted that it cannot be said that there is no nexus between the claims of the parties, and, therefore,

in order to avoid the multiplicity of the proceedings, counter claim of the petitioner should not have been excluded. He further submitted that the

counter claim can be entertained till the issues are settled.

5. He relied on the judgment of Jag Mohan Chawla and another Vs. Dera Radha Swami Satsang and others, .

6. On the other hand, Mr. A.K. Sahani appearing for the respondent supported the impugned order. He submitted that in the suit the relief was

claimed only with regard to Schedule "F" property and, therefore, there was no nexus between the suit land and the counter claim raised by the

petitioner. He further submitted that no easementary right has been given in the sale deed of the petitioner.

7. In the said judgment of Jag Mohan Chawla (Supra), it was inter-alia held:

In other words, a defendant can claim any right by way of a counter-claim in respect of any cause of action that has accrued to him even though it

is independent of the cause of action averred by the plaintiff and have the same cause of action adjudicated without relegating the defendant to file

a separate suit.

6. In view of the said judgment of the Supreme Court, in order to avoid multiplicity of the proceedings, the impugned order is set aside. The

respondent will be at liberty to file written statement to the counter claim of the petitioner within one month.

9. This order will not prejudice the contentions of the parties in the suit/counter claim.

It is expected that the suit/counter claim will be decided as early as possible and preferably within six months from the date of receipt/production of

a copy of this order. The parties will cooperate in early disposal of the suit/counter claim.

10. With these observations and directions, this writ petition is disposed of. However, no cost:?.