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Smt. Rani Shahi Vs Biresh Prasad Shahi and Another

Writ Petition (C) No. 457 of 2005

Court: Jharkhand High Court

Date of Decision: Jan. 31, 2005

Acts Referred:

Civil Procedure Code, 1908 (CPC) â€" Order 6 Rule 17, 151#Constitution of India, 1950 â€"

Article 226

Citation: (2005) 2 JCR 70

Hon'ble Judges: Narendra Nath Tiwari, J

Bench: Single Bench

Advocate: L.K. Sahay and S.K. Sahay, for the Appellant; Manjul Prasad Rohit Roy and

Shashank Shekhar, for the Respondent

Final Decision: Allowed

Judgement

@JUDGMENTTAG-ORDER

Narendra Nath Tiwari, J.

In this writ petition, the petitioner has prayed for quashing the order dated 24.11.2004 passed by the learned

Subordinate Judge VIIth in Title Suit No. 25 of 1995 whereby the learned Court below has rejected the petition for amendment in plaint filed by

the plaintiff-petitioner. According to the plaintiff, the suit was filed praying reliefs, interalia, for a declaration that Suresh Prasad Shahi has no right to

transfer any portion of the property to the defendant by way of gift or otherwise and that purported deeds of gift dated 24.6.1974 are void-ab-

tnitio. The suit was contested by defendant No. 2 contending, interalia, that the plaintiff has neither any right, title nor any possession over the suit

property and that the defendant No. 2 has got his title through Suresh Prasad Shahi and he has been in possession. The said defendant has also

taken a plea that the suit itself is barred by the provisions of Specific Reliefs Act, in view of the absence of any consequential relief in the plaint.

2. The plaintiff filed a petition under Order VI Rule 17 read with Section 151 of the CPC seeking amendment in the plaint. It was stated that due

to oversight the claim of possession could not be made and the advalorem Court fee could not be paid which is required in view of the nature of

controversy between the parties. From perusal, of the said amendment petition, it is evident that the petitioner has not sought for any foundational

change in the line of averments made in his plaint, but only wants to add the relief for recovery of possession, if found dispossessed and for that

purpose to pay ad valorem Court fee.

3. The respondents have appeared suo motu in this case and contested the petition on merit. Mr. Manjul Prasad, learned Senior Counsel

appearing on behalf of the contesting respondent, submitted that there is inordinate delay in filing the said amendment petition and on that ground

alone it does not require any consideration. Learned counsel further submitted that by way of amendment, the plaintiff has sought to bring

inconsistent relief changing the nature of the case from a declaratory suit to a regular title suit with a relief for recovery of possession. Learned

counsel appearing on behalf of the petitioner submitted that the occasion for the amendment arose when the defendant seriously contested the right,

title and possession of the plaintiff-petitioner. The defendant No. 2 has taken the ground that the suit is barred under the Specific Relief Act for not

seeking the proper reliefs. According to the learned counsel, there is nothing new and surprising for the defendants or to prejudice them in any way

in the proposed amendment. The main prayer in the relief portion is as it is and only consequential prayer is to be added by way of amendment and

that there: would be absolutely no change in the nature of the suit.

4. After hearing the parties and perusing the relevant documents, I am of the view that the amendments sought to be brought in the plaint, do not, in

any way change the basic nature of the claim of the plaintiff. The main relief prayed for in plaint is regarding the declaration of the gift deeds. The

defendant himself has taken the ground that the declaratory suit in the facts and circumstances is not maintainable and proper reliefs have not been

prayed for. By way of the said amendment the plaintiff wants to meet the said objection and payment of advalorem Court fee is required in view of

the addition of the prayer for recovery of possession. The proposed amendment is, thus, homogeneous and not inconsistent. From the pleadings of

the parties it is apparent that there are rival claims regarding title and possession and in that view, in order to adjudicate upon all the controversies

between the parties, it would be expedient in the interests of justice to allow the amendments. Though there is delay on the part of the plaintiff-

petitioner to bring the amendment, yet on that ground alone, the petition for amendment cannot be rejected.

5. In view of the above, the learned Court below has not properly exercised its jurisdiction in rejecting the petitioner"s petition for amendment and

in passing the impugned order. The impugned order is quashed, the amendment petition of the plaintiff-petitioner is allowed. Since the inordinate

delay in filing the said petition has caused inconvenience and harassment to the contesting defendant No. 2, the petition for amendment is allowed

subject to payment of cost of Rs. 5,000/- to the defendant No. 2 in the Court below within a period of three weeks. The defendant No. 2 will be

at liberty to file an additional written statement if so required. Since the suit is old, the Court below will make all endeavour to dispose of the same

expeditiously.

6. The writ petition is, thus, allowed.