

(2011) 02 JH CK 0019

Jharkhand High Court

Case No: Writ Petition (C) No. 4990 of 2010

Prayag Mahto and Others

APPELLANT

Vs

Jagdish Mahto

RESPONDENT

Date of Decision: Feb. 21, 2011

Citation: (2011) 2 JCR 241

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Judgement

D.N. Patel, J.

The present writ petition has been preferred against the order, passed by the Sub JudgeI, Hazaribagh dated 7th September, 2010 below an application preferred by the original Plaintiff in Title Suit No. 106 of 2006 for opening of the stage of evidence and the Defendant's application to present certified copy of the plaint, judgment and preliminary decree in Partition Suit No. 10 of 1934 was dismissed and therefore, the original Defendants in Title Suit No. 106 of 2006 has preferred the present writ petition.

2. Having heard counsel for the the sides and looking to the facts and circumstances of the case, I hereby, quash and set aside the order, passed by the Sub JudgeI, Hazaribagh dated 7th September, 2010 in Title Suit No. 106 of 2006 mainly on the following facts and reasons:

(i) It appears that the Respondent, who is an original Plaintiff, has instituted Title Suit No. 106 of 2006.

(ii) It appears that the present Petitioners, who are original Defendants, have presented all their evidences before the trial court and the stage of taking evidence by Respondent was closed on 22nd June, 2010.

(iii) It appears that the original Defendants have given an application after one month and approximately ten days i.e. 3rd August, 2010 for adducing evidences.

The original Defendants wanted to present before the trial court certified copy of the plaint, judgment and preliminary issue drawn by the concerned court in earlier Partition Suit No. 10 of 1934 which has a direct nexus with the dispute between the parties in present Title Suit No. 106 of 2006.

(iv) It appears that this application was dismissed by the trial court vide order dated 7th September, 2010 without appreciating the fact that there is no much delay between 22nd June, 2010 i.e. the date on which stage of taking evidence by the Defendants was closed down and 3rd August, 2010 i.e. the date on which an application was given by the original Defendants for adducing evidence before the trial court. Secondly, the trial court has not appreciated the fact that the documents upon which the Defendants are relying upon and want to present before the trial court are the certified copies of the plaint, judgment and preliminary decree of Partition Suit No. 10 of 1934. It has a direct nexus with Title Suit No. 106 of 2006. Some of the properties in both suits i.e. in Title Suit No. 106 of 2006 and Partition Suit No. 10 of 1934 are common. Moreover, the plaint, the judgment and the preliminary decree in Partition Suit No. 10 of 1934 will facilitate the trial court in arriving at correct decision of the dispute between the parties. This aspect of the matter has not been properly appreciated by the trial court, which is an error apparent on the face of record.

3. In view of the above facts, I hereby, allow the application preferred by the original Defendants for adducing evidences in the form of certified copy of the plaint, judgment and preliminary decree in Partition Suit No. 10 of 1934 to be presented in Title Suit No. 106 of 2006 with cost of Rs. 500/ (rupees five hundred only) to be paid by the original Defendants to the original Plaintiff. The cost will be deposited before the trial court which is allowed to be withdrawn by the original Plaintiff after filing proper application and I hereby, quash and set aside the order, passed by the Sub JudgeI, Hazaribagh dated 7th September, 2010 in Title Suit No. 106 of 2006.