

(2011) 02 JH CK 0020

Jharkhand High Court

Case No: Writ Petition (C) No. 5024 of 2005

Gaurango Kundu

APPELLANT

Vs

Purushottam Das Jhunhunwala
and Another

RESPONDENT

Date of Decision: Feb. 21, 2011

Acts Referred:

- Constitution of India, 1950 - Article 227

Citation: AIR 2011 Jhar 108 : (2011) 2 JCR 243

Hon'ble Judges: Dhirubhai Naranbhai Patel, J

Bench: Single Bench

Judgement

D.N. Patel, J.

The present writ petition has been preferred under Article 227 of the Constitution of India against an order passed by the Additional District Judge, Ghatsila dated 30th July, 2005 whereby, an application preferred by the original Defendant in Eviction Suit No. 1 of 1993 or the Respondent in Eviction Appeal No. 2 of 2003, to amend the written statement was dismissed by the lower appellate court.

2. Having heard counsel for both the sides and looking to the facts and circumstances of the case, I hereby, quash and set aside the order passed by the Additional District Judge, Ghatsila dated 30th July, 2005 mainly on the following facts and reasons:

(i) It appears that the present Respondents are the original Plaintiffs, who have instituted Eviction Suit No. 1 of 1993 before the Court of learned Munsif at Ghatsila, mainly on the ground of personal requirement.

(ii) It appears that the suit filed by the present Respondents (original Plaintiffs) was dismissed by the trial court vide order dated 17th February, 2003 and thereafter, Eviction Appeal No. 2 of 2003 was preferred by the original Plaintiffs.

(iii) It further appears from the facts of the case that Eviction Suit No. 2 of 1993 and Eviction Suit No. 3 of 1993 were also instituted by the original Plaintiffs against some other persons, which were decreed in favour of the Plaintiffs. Thus, the original Plaintiffs in Eviction Suit No. 1 of 1993 or the Appellants in Eviction Appeal No. 2 of 2003 now got some lands by virtue of different decrees, passed in Eviction Suit No. 2 of 1993 and Eviction Suit No. 3 of 1993.

(iv) This crucial facts, after passing two different decrees in favour of the original Plaintiffs/Appellants, have been brought on record by the original Defendant or Respondent in Eviction Appeal No. 2 of 2003 mainly to show that now the ground of personal requirement is no more in existence and thus the very ground for which Eviction Suit No. 1 of 1993 was instituted by the original Plaintiffs, does not survive. These facts, the original Defendant wanted to bring to the notice of the lower appellate court by virtue of amendment in the written statement, which has not been properly appreciated by the lower appellate court and unnecessarily the lower appellate court has entered into the merits of the amendment and rejected the same.

(v) It further appears from the impugned order that amendment application cannot be brushed aside only on the ground of the merits of the amendment, but, it should be decided, considering the later stage also. Merits of the amendment is one thing and amendment of the written statement is altogether a different thing. Thus, looking to the facts and circumstances of the present case, amendment application ought to have been allowed by the lower appellate court. The original Defendant or the Respondent in Eviction Appeal No. 2 of 2003 wanted to bring on record that now the personal need of the original Plaintiffs after getting decrees in both the suits, does not survive because of the fact that original Plaintiffs have now got sufficient property by virtue of the decrees passed in Eviction Suit Nos. 2 of 1993 and 3 of 1993. These facts will certainly affect the very cause in the suit being Eviction Suit No. 1 of 1993 and will have also affect to the very root of the case. Thus, these facts were necessarily brought on record to decide correctly the dispute between the parties. This aspect of the matter has not been properly appreciated by the lower appellate court.

(vi) The merits of the amendment should be decided independently by the lower appellate court upon cogent evidences on record.

3. In view of these facts, this writ petition is allowed and disposed of. The order passed by the Additional District Judge, Ghatsila dated 30th July, 2005 in Eviction Appeal No. 2 of 2003 is hereby, quashed and set aside and the application, preferred by the Respondent in Eviction Appeal No. 2 of 2003 bringing on record the facts about the decisions given in Eviction Suit Nos. 2 of 2003 and 3 of 1993, is hereby, allowed. Eviction Appeal No. 2 of 2003 will be decided by the Additional District Judge, Ghatsila as expeditiously as possible and practicable.