

(2009) 05 JH CK 0039

Jharkhand High Court

Case No: Writ Petition (C) No. 2501 of 2009

Sarita Kataruka

APPELLANT

Vs

Jai Kishore Nath Shahdeo and
Others

RESPONDENT

Date of Decision: May 26, 2009

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 1 Rule 10
- Constitution of India, 1950 - Article 227

Hon'ble Judges: D.N. Patel, J

Bench: Single Bench

Advocate: R.S. Mazumdar, for the Appellant; L.C.N. Shahdeo, for the Respondent

Judgement

D.N. Patel, J.

Feeling dissatisfied and being aggrieved by an order dated April 21, 2009, passed by the Sub Judge-VII, Ranchi, on an application, preferred by the present petitioner under Order I Rule 10 of the CPC (for joining party), in Title Suit No. 8 of 2003, this writ petition has been preferred by the petitioner under Article 227 of the Constitution of India.

2. Having heard learned Counsels for both the sides and looking to the facts and circumstances of the case, I hereby quash and set aside the order impugned dated April 21, 2009, passed by the Sub Judge-VII, Ranchi, on an application, preferred by the present petition under Order I Rule 10 of the Code of Civil Procedure, in Title Suit No. 8 of 2003, for the following facts and reasons:

(i) It appears from the facts of the case that respondent Nos. 1, 2 and 3 are the original plaintiffs, who have instituted Title Suit No. 8 of 2003 before the trial court against respondent Nos. 4 to 7. who are original defendants, without joining the present petitioner, as a party defendant to the suit.

(ii) It appears that, thereafter, the present petitioner preferred an application under Order I Rule 10 of the Code of Civil Procedure, for joining herself as a party defendant to the said suit i.e. Title Suit No. 8 of 2003. Said application has been dismissed vide the impugned order and, therefore, the present writ petition has been preferred by the petitioner.

(iii) It appears that the present petitioner is also carrying a business in the suit property/premises. It is submitted by the learned Counsel for the petitioner that Ashok Automobile Private Limited, Ranchi, is a company, in which the original plaintiffs as well as the original defendants as well as the present petitioner are the share-holders, The share of the present petitioner is approximately 5% in Ashok Automobile Private Ltd. The said premises is a commercial property, which is being used for commercial activities. The petitioner is carrying her business activities in the suit property, like other defendants and, therefore, the petitioner is vitally interested in the suit property and the eviction thereof. Looking to these facts, which are not disputed by the learned Counsel for the original plaintiffs, it appears that for passing effective decree in the suit i.e. Title Suit No. 8 of 2003, the present petitioner ought to have been joined as a party defendant. This aspect of the matter has not been properly appreciated by the trial court, which is an error, apparent on the face of the record.

(iv) It also appears that the petitioner has, prima facie, a right, title and interest in the suit property, looking to the documents, upon which the petitioner is relying upon and, therefore also, the present petitioner ought to have been joined as a party defendant in the suit i.e. Title Suit No. 8 of 2003, looking to the decision, rendered by the Hon"ble Supreme Court in the case of [Sumtibai and Others Vs. Paras Finance Co. Regd. Partnership Firm Beawer \(Raj.\) Thru Smt. Mankanwar Chordia \(Dead\) and Others](#), , especially paragraph No. 14, which reads as follows:

14. In view of the aforesaid decisions we are of the opinion that Kasturi case is clearly distinguishable. In our opinion it cannot be laid down as an absolute proposition that whenever a suit for specific performance is filed by A against B, a third party C can never be impleaded in that suit. In our opinion, if C can show a fair semblance of title or interest he can certainly file an application for impleadment. To take a contrary view would lead to multiplicity of proceedings because then C will have to wait until a decree is passed against B, and then file a suit for cancellation of the decree on the ground that A had no title in the property in dispute. Clearly, such a view cannot be countenanced.

(Emphasis supplied)

Thus, in view of the aforesaid decision also, if the petitioner can show a fair semblance of title or interest, she can certainly file an application of her impleadment as a party defendant to the suit.

(v) Looking to the facts of the present case and looking to the application, preferred by the present petitioner under Order I Rule 10 of the Code of Civil Procedure, there is a fair semblance of interest of the present petitioner in the suit property, involved in Title Suit No. 8 of 2003 and, therefore, the present petitioner ought to be joined as a party defendant in the suit. This aspect of the matter has also not been properly appreciated by the trial court, while rejecting the application of the present petitioner, preferred under Order I Rule 10 of the CPC and, therefore also, the impugned order deserves to be quashed and set aside.

(vi) Looking to the impugned order, it appears that much weightage has been given by the trial court, upon a time bound schedule, given by this Court in an earlier writ petition bearing W.P.(C) No. 6287 of 2007. It appears that on earlier occasion, same petition was preferred by defendant, Nos. 4 to 7 and it was directed by this Court that within a period of three months, Title Suit No. 8 of 2003 ought to be decided and, therefore, the trial court has observed in the impugned order that the application has been preferred by the present petitioner at a much belated stage. But, looking to the interest of the present petitioner in the suit property, the present petitioner ought to have been joined from very beginning by the original plaintiffs themselves.

3. No effective decree could have been passed by the trial court without joining the present petitioner as defendant and, therefore, I hereby quashed and set aside the impugned order, passed by the Sub Judge-VII, Ranchi, dated April 21, 2009, in Title Suit No. 8 of 2003 and I hereby direct the present petitioner to file written statement, within a period of one week from the date of receipt of a copy of the order, passed by this Court and it is assured by the learned Counsel for the petitioner that within a further period of one month maximum, if any evidence is required to be taken by the newly joined defendant, it will be completed without causing any further delay and the petitioner will not ask for unnecessary adjournment. No unnecessary adjournment will be taken by the present petitioner and, therefore, I hereby direct the trial court to hear and dispose of the Title Suit No. 8 of 2003, within a period of three months from the date of receipt of a copy of the order, passed by this Court.