(2012) 3 JLJR 552

Jharkhand High Court

Case No: Writ Petition (C) . No. 5116 of 2009

Kamleshwary Rai @ Kamleshwari Roy		APPELLANT
	Vs	
Most. Sushila Debya @ Sushila Devi and Others		RESPONDENT

Date of Decision: June 29, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Order 8 Rule 1A, 151
- Constitution of India, 1950 - Article 227

Citation: (2012) 3 JLJR 552

Hon'ble Judges: Aparesh Kumar Singh, J

Bench: Single Bench

Advocate: Kailash Prasad Deo, for the Appellant; Ashish Jha and Mr. Birendra Kumar, for the Respondent

Final Decision: Dismissed

Judgement

Aparesh Kumar Singh

1. Heard learned counsel for the parties. This writ petition has been preferred for setting aside the order dated 12.8.2009 passed in Title Suit No. 43 of 1999 by the court of Sub Judge, 2nd, Deoghar whereby the petition filed by the defendants/ respondents u/s 151 C.P.C & Under Order VIII Rule 1A of C.P.C. was allowed granting leave to the defendants for exhibiting the certificate dated 253.2009, issued by the Head Master of the school.

2. The case of the plaintiff petitioner is that the instant Title Suit No. 43 of 2009 was instituted seeking for the annulment of the deed of adoption in favour of the respondent No. 4, which is illegal and ab-initio-void. It is further case of the plaintiff- petitioner that during the course of hearing of this suit after closure of evidence, the learned trial court

entertained the petition filed under Order VIII Rule 1A C.P.C. granting leave to the defendants to exhibit the said document. Inspite of the objection being made by the plaintiff for granting leave to exhibit the said certificate, the impugned order dated 12.8.2009 was passed allowing the defendants to exhibit the said document on the cost of Rs. 700/- under the provision of Order VIII Rule 1A (sub clause 3A). which is quoted herein below:-

A document which ought to he produced in Court by the Defendant under this rule, but, is not so produced shall not, without the leave of the court, be received in evidence on his behalf at the hearing of the suit.

3. Learned counsel for the respondents have appeared and opposed the prayer of the plaintiff- petitioner on the ground that the petition was made within time and allowed after taking leave of the court after due consideration and application of mind and the said application is vital for determining issues raised in the suit, which seeks to challenge the adoption of the concerned defendant- respondent No. 4 on the ground whether she was major or minor on the particular date.

4. Learned counsel for the petitioner submitted that no whisper was made about the said document in the written statement filed by the defendants. No such issue was framed relating to the genuineness of the document which ultimately will cause serious prejudice to the case of the plaintiffs and the document sought to be exhibited at a late stage is only for filling lacuna of the defendants.

5. However, learned counsel for the respondents have drawn attention of this court to the relevant statement made in the written statement of the respondents at para 7 wherein it has been stated that at the relevant point of time, defendant No. 4 was aged only 12 years and the defendants were entitled to bring on record such document which is necessary in order to support the aforesaid statement made in the written statement.

6. After hearing both the parties and after carefully going through the records and the impugned order dated 12.8.2009, it appears that the learned court below has taken into account that the primary question which requires to be determined for adjudicating the relief sought for by the plaintiffs is the question of age of the defendant No. 4 as to whether she was minor or major at the relevant point of time when the alleged adoption took place. Moreover, learned court below has also taken into account that under the provision of Order VIII Rule 1A(sub clause 3) even at the stage of hearing, the said document can be allowed to be exhibited by the leave of the court and accordingly, proceeded to pass the impugned order allowing to exhibit the said document on payment of cost in favour of the defendants. From the aforesaid facts it is clear that the learned court has only allowed for exhibiting the said document, since it is relevant and necessary with regard to the controversy raised in the suit in order to finally dispose the said suit. The power conferred upon the Trial under the aforesaid provisions of Code of Civil Procedures has been exercised in a judicious manner after proper application of mind,

which cannot be said to be perverse or irrational. It appears that the plaintiffs- petitioner is having apprehension that the document might be used so as to prejudice him, hence he moved this court against the impugned order. However, learned court below has not expressed its mind relating to the genuineness and authenticity of the document which can only be pronounced at the time of final judgment.

7. In that view of the matter, I find no illegality or perversity in the impugned order. Hence, I am not inclined to exercise the supervisory jurisdiction under Article 227 of the Constitution of India by interfering with the impugned order. Accordingly, this writ application is dismissed.