
(2012) 08 JH CK 0099

Jharkhand High Court

Case No: Writ Petition (C) No. 6092 of 2011

Rameshwar Ram

APPELLANT

Vs

Dashrath Ram

RESPONDENT

Date of Decision: Aug. 7, 2012

Acts Referred:

- Civil Procedure Code, 1908 (CPC) - Section 10, 11
- Constitution of India, 1950 - Article 227

Citation: (2012) 4 JCR 392

Hon'ble Judges: P.P. Bhatt, J

Bench: Single Bench

Advocate: R.C. Khatri, for the Appellant; R.A. Choubey, for the Respondent

Final Decision: Dismissed

Judgement

@JUDGMENTTAG-ORDER

P.P. Bhatt

1. Heard the Learned Counsel for the parties. The present petition has been filed under Article 227 of the Constitution of India for setting aside the order dated 22.6.2011 (Annexure-2) passed in Title Suit No. 473 of 2009 by learned Sub-Judge-VIII, Ranchi, whereby, the court below has rejected the prayer of the petitioner (original defendant) on the application filed by the petitioner u/s 10 r/w Section 11 of the CPC that the Title Suit No. 473 of 2009 filed by the plaintiff respondent is hit by res judicata.

2. Learned Counsel for the petitioner submitted that the respondent herein instituted title Suit No. 276/05 challenging the agreement dated 26.12.2002 and the said suit was withdrawn as per order dated 13.5.2009. Thereafter, another suit being Title suit No. 473 of 2009 was preferred by the same plaintiff for the same cause of action and the same subject matter and therefore, in view of the provision

contained in Section 11 CPC, the principle of res judicata will apply. It is further submitted that the subsequent suit filed by the present respondent is not maintainable and therefore, an application was submitted before the Court below raising this plea but the court Below has failed to consider this aspect of the matter and thereby, rejected the application filed by the present petitioner. Learned Counsel for the petitioner in support of his submission has referred to and relied upon the judgment delivered in the case of [Kunjan Nair Sivaraman Nair Vs. Narayanan Nair and Others,](#) .

3. As against this, Learned Counsel for the respondent while justifying the order passed by the court below, submitted that the court below has rejected the application filed by the petitioner after careful consideration of the facts and circumstances of the present case involved in this matter. Learned Counsel for the respondent pointed out that the previous suit was filed in respect of agreement dated 26.12.2002. Learned Counsel for the respondent while referring Title Suit No. 276 of 2005, submitted that the said suit was withdrawn as there was amicable settlement arrived at between the parties. It is further submitted that the Title Suit No. 473 of 2009 has been filed by the plaintiff in respect of specific performance of agreement dated 11.5.09, which was modified vide agreement dated 21.10.09. It is further submitted that the principle of res judicata will not apply and the suit filed by the respondent is maintainable and therefore, the learned Judge has rightly and appropriately rejected the application preferred by the present petitioner. Learned Counsel for the respondent in support of his case has also referred to and relied upon the judgment delivered in the case of [Deva Ram and Another Vs. Ishwar Chand and Another,](#)

4. Considering the aforesaid rival submissions and from perusal of the order impugned, it appears that the learned Court below has rightly rejected the application filed by the present petitioner filed u/s 10 r/w Section 11 C.P.C. The main reason assign by the court is that the previous suit i.e. Title Suit No. 276 of 2005 was filed in respect of agreement dated 26.12.2002 between the same parties, but that suit was withdrawn by the plaintiff on account of amicable settlement between the parties, and thereafter, the subsequent suit has been filed by the plaintiff in respect of agreement dated 11.5.09, which was modified vide agreement dated 21.10.09 and therefore, the principle of res judicata will not apply. Learned court below has also considered the judgment passed by Hon"ble Apex Court delivered in the case of Pukhraj D. Jain Vs. G. Gopala Krishna reported in (2004) 7 S.C. 251 while passing the order impugned.

5. From perusal of the order impugned, it transpires that the previous suit was filed in respect of Agreement dated 26.12.2002 but the said suit was withdrawn as the matter was amicably settled between the parties. Thereafter, the subsequent suit i.e. Title Suit No. 473/09 was filed for specific performance in respect of Agreement dated 11.5.09, which was modified vide agreement dated 21.10.09 and therefore,

the subject matter of the subsequent suit is also different. Moreover, the previous suit was withdrawn without any adjudication and there was no final decision in the previous suit and therefore, assuming for the time being that the subsequent title suit is a continuation of earlier suit which was filed in respect of agreement dated 26.12.2002, then also there was no final adjudication of any issue or finding is recorded by the Court. Therefore the principle of res judicata shall not apply in the facts and circumstances of the present case as the previous suit was not finally decided by the Court below. Therefore, the ratio laid down in the judgment cited by the Learned Counsel for the petitioner reported in [Kunjan Nair Sivaraman Nair Vs. Narayanan Nair and Others](#), does not help to the case of the petitioner so far.

6. The judgment referred to and relied upon by the Learned Counsel for the respondent is reported in [Deva Ram and Another Vs. Ishwar Chand and Another](#), . Para 23 is relevant and applicable to the present one which reads as under;

23. In the previous suit, which was instituted by the respondents, an issue, namely, Issue No. 5 was framed on the status of the appellant as to whether they were the tenants of the land in suit under the respondents but in the subsequent suit this issue was not raised as the appellants who were the defendants in the subsequent suits did not plead that they were the tenants under the respondents. What they pleaded was that they were in possession since a long time namely from Samvat 2005 and had, therefore, acquired title by adverse possession. Consequently, in the subsequent suits, the issue which was raised and tried in the previous suit was not raised, framed or tried and no finding, therefore, came to be recorded as to whether the defendants were tenants of the land in suit. It is true that the instant suit which is the subsequent suit, is between the same parties who had litigated in the previous suit and it is also true that the subject matter of this suit, namely, the disputed land, is the same as was involved in the previous suit but the issues and causes of action were different. Consequently, the basic requirement for the applicability of rule of res judicata is wanting and, therefore, in the absence of pleadings in the absence of issues and in the absence of any finding, it is not open to the Learned Counsel for the appellants to invoke the rule of res judicata on the ground that in the earlier suit it was found by trial court that the appellants were the tenants of the land in dispute under the respondents.

In light of the above discussion, the order passed by the learned court below appears to be in accordance with the provisions as contained in Section 10 r/w Section 11 of the CPC and therefore, this Court is of the view that the learned court below has not committed any irregularity and illegality while passing the order dated 22.6.2011 in Title Suit No. 473 of 2009. Therefore writ petition deserves to be dismissed. Accordingly the same is ordered to be dismissed.