

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W.P. (C) No.6372 of 2018

Mahendra Prasad Singh, son of late Punit Singh @ Punit Ram, resident of Village Naudiha, PO Lohandi, PS Chouparan, District Hazaribag.

..... ... Petitioner

Versus

1. Ratan Ram, son of late Janki Ram
 2. Afnita Devi, wife of Ratan Ram
- both r/o Village Nawadiha, PO Lohdi, PS Chouparan, District Hazaribag.
3. Prakash Ram, son of late Janki Ram, r/o Village Nawadiha, PO Lohdi, PS Chouparan, District Hazaribag.
 4. Aalopi Devi, wife of Chhotu Ram, r/o Village Shale, PO Pathra, PS Itkhor, District Chatra.
 5. Pano Devi, wife of Kino Ram, r/o Village Hathiya, PO Besariya, PS Chouparan, District Hazaribag.
 6. Chinta Devi, wife of late Ramawtar Ram, r/o Village Kondi Nagar, PO Kolhiya, PS Chatra, District Chatra.
 7. Jitendra Pandey, son of Shankar Pandey, r/o Village Mangarh, PO Lodhi, PS Chouparan, District Hazaribag.
- Respondents

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner : Mr. Manindra Kumar Sinha, Advocate
For the Respondents : None

08/28.06.2024 On behalf of petitioner, learned counsel Mr. Manindra Kumar Sinha is present.

2. No one appears on behalf of the respondents despite service of notice to them.

3. The instant writ petition has been directed on behalf of the petitioner against the order dated 21.07.2018 passed by the learned Civil Judge (Sr. Div.)-III, Hazaribag in Partition Suit No. 128 of 2008 whereby and whereunder the learned court has rejected the petition filed by the defendant,

the petitioner herein to recall the witnesses including plaintiff on the point of sale deed bearing no. 498 dated 15.04.1941 and sale deed bearing no. 8286 dated 02.07.2008.

4. The learned counsel for the petitioner has submitted that the plaintiff has filed the suit for partition against the five defendants claiming his share eight aanas in the land given in the Schedule-B at the foot of plaint. The defendant no.6 who is petitioner herein was also the co-sharer in the land in suit, therefore, he moved the application for intervention under Order-1 Rule-10 of CPC in the very suit for partition and same was allowed by the trial court and he was impleaded as defendant no.6. The written statement was also filed on behalf of the defendant. After concluding the evidence of both the parties, the suit was fixed for the argument and at the stage of argument the application was given by the plaintiff for the permission to mark the sale deeds exhibited. That application was also allowed by the trial court. Thereafter, the defendant no.6 moved the application to cross-examine the witnesses including plaintiff. On the point of marking the sale deeds as exhibited that application was rejected by the learned trial court vide order dated 21.07.2018 and aggrieved from the same, he has filed this writ application.

5. It is also further submitted that during trial the plaintiff and other witnesses of the sale deed have been examined. Since the learned trial court has permitted the plaintiff to exhibit the sale deeds which are the certified copy, taking them to be public document. The defendant being aggrieved from the same had moved the application since the execution of the sale deed was not proved from the testimony of the plaintiff or other witnesses. As such

the opportunity of cross-examination should have been given to him and the learned trial court by rejecting the application has curtailed the right of defendant to cross-examine the witnesses who have claimed themselves to prove the sale deeds.

6. No one to oppose this writ petition on behalf of the respondents.

7. From the perusal of the record it is found that annexure no.1 is the copy of the plaint of Partition Suit No. 128 of 2008 which was filed on behalf of Ratan Ram and Afinta Devi against the five defendants, in which, the property in suit has been alleged to be of joint ownership and joint possession and the share of eight aanas has been claimed by the plaintiff and, accordingly, the relief for preliminary decree to declare his share has also been sought.

8. From the annexure no.2, it is found that the defendant no.6 who had also claimed himself the co-sharer in the land in suit had moved the application under Order-1 Rule-10 of CPC and the same application was allowed by the learned trial court vide order dated 22.08.2012 and the plaintiff was directed to implead him as defendant no.6. Accordingly the defendant no.6 who is petitioner herein was impleaded in the original suit as party.

9. The annexure no.3 is the copy of the written statement filed on behalf of defendant no.6 in Partition Suit No. 128 of 2008. At para-13 of written statement, the defendant no.6, the petitioner, herein has taken this plea that in the year 1987, a panchayati was held, in which, all the sons of Punit Ram @ Punit Singh including Janki Ram and his son the defendant no.1 were the party of the said panchayati and, thereafter, all the brothers of

Janki Ram were in peaceful possession of their shares. The suit for partition was also challenged on the ground since the settlement has arrived between the parties and all the co-sharers were enjoying their right and interest in the property in question in their separate share. The annexure no.3/1 is the copy of the settlement which is made part of the written statement.

10. Annexure no.4 is the order dated 16.09.2017 whereby the plaintiff was permitted to mark exhibit-1 and 1/A on both the sale deeds. Annexure no.5 is the application which was moved on behalf of the defendant no.6 before the trial court to recall the witness including plaintiff to cross-examine on the point of sale deeds which have been exhibited by the plaintiff with the permission of court at the stage of argument. The said application was rejected by the learned trial court vide order dated 21.07.2018.

11. Since in this Partition Suit No. 128 of 2008 the plaintiff had sought the relief to declare his eight aanas share in the property in suit and the petitioner was also the defendant of this suit who was impleaded after moving his intervention application in Partition Suit No.128 of 2008. After conclusion of the evidence of both the parties when the suit was at the stage of argument, the learned trial court has permitted the plaintiff to mark exhibit two documents which are certified copy of the sale deeds. Learned trial court while passing impugned order whereby the application of the petitioner defendant no.6 was rejected to cross-examine the plaintiff's witness on the point of sale deed has based the order on the finding that those documents were public documents.

12. The sale deed is the private documents though after registration

in the office of Registrar it become public document. But unless and until the execution of the sale deed is proved by the witnesses of the sale deed or the parties to the sale deed the exhibit on the same cannot be marked. On behalf of the defendant the application was given with a view to cross-examine in regard to the sale deed just to ascertain the veracity of those sale deeds. Learned trial court by rejecting the application of the defendant no.6 who is petitioner herein has deprived him, the opportunity to cross-examine the witness of plaintiff and plaintiff himself in regard to the sale deed which would ultimately affects the merits of the case reason being this plea has been taken by the defendant no.6 in his written statement that the property in suit has already been partitioned by way of settlement among the co-sharers.

13. In view of the above, the impugned order passed by the learned trial court needs interference and this writ petition deserves to be allowed.

14. This writ petition is hereby allowed. The impugned order passed by the trial court is set aside. The application of the petitioner/defendant no.6 which was moved by him to cross-examine the witness including plaintiff on the point of sale deeds is hereby allowed. The learned trial court is directed to give the opportunity to the defendant no.6 who is petitioner herein to cross-examine the witnesses including plaintiff on the point of sale deed.

15. Accordingly, this writ petition stands disposed of.

(Subhash Chand, J.)