

IN THE HIGH COURT OF JHARKHAND AT RANCHI

(Civil Miscellaneous Appellate Jurisdiction)

M.A. No. 313 of 2013

Smt. Sumitra Devi, W/o Arun Kumar Sinha Appellant

Versus

1. Jalwanti Devi, Widow of Late Ramchandra Saw Sonar (deleted vide order dated 02.07.2020)

2. Raj Kumar Mistry

3. Madan Mistry

Respondent Nos.2 & 3 both sons of Late Ramchandra Saw Sonar, R/o Village Saudagar, Mohalla Ramgarh, P.O. & P.S. Ramgarh, District Ramgarh.

4. Mandodri Devi, Widow of Late Ramavtar Sahu (deleted vide order dated 02.07.2020)

5. Nagendra Prasad, S/o Late Ramavtar Sahu

6. Krishna Prasad, S/o Late Ramavtar Sahu

7. Jawahar Prasad, S/o Late Ramavtar Sahu

8. Sandip Kumar, S/o Late Ramavtar Sahu

Respondent Nos.5 to 8 are R/o Ghutwa, P.O. & P.S. Barkakana, District Ramgarh

9. Arjun Sao, S/o Ganga Sao, R/o Saudagar Mohalla, P.O. & P.S. Ramgarh Cant., District Ramgarh Respondents

CORAM :HON'BLE MR. JUSTICE KAILASH PRASAD DEO
(Through :-Video Conferencing)

For the Appellant : Mr. Niraj Kishore, Advocate

For the Respondents :

07/09.07.2020. Heard, learned counsel for the appellant, Mr. Niraj Kishore.

Appellant has preferred this appeal against the order of remand vide judgment dated 22.08.2013 (decree signed on 27.08.2013) passed by the District Judge-VI, Hazaribag in Title Appeal No.22 of 2007 whereby the appellate court after setting aside the judgment dated 23.06.2007 (decree sealed and signed on 07.07.2007) in Title Suit No.05 of 1990 passed by the Sub-Judge-V, Hazaribag directed the learned trial court to readmit the suit under its Original number in the register of the Civil Suit, framed an issue as questioned in para 9 of the judgment and to decide all the issues afresh, after impleading the State of Jharkhand through the Deputy Commissioner, Ramgarh as defendant. The Court shall provide opportunity to the State to file written statement and the parties to make amendment in their pleadings accordingly. The Court shall also provide opportunity to all the parties to adduce both oral and documentary evidence.

Learned counsel for the appellant has submitted that the learned appellate court at para 9 of the judgment held as under:-

“9. The learned Trial Court has taken the defendant's case in issue no.-(vi) to (xiii). The judgment of learned Trial Court is silent about the question as to “Whether Janki Sao @ Janki Sonar had acquired raiyati interest over Khata No.-267 under khewat no.3/1 having plot no.-2915 area 15 decimal and plot no.-2916 area 01 decimal one house total 16 decimals of Mouza Ramgarh.”

Learned counsel for the appellant has further submitted that from perusal of

the trial court judgment particularly issue no.(vi), the same issue has been framed and decided by the learned appellate court.

Issue no.(vi) of the trial court reads as follows:-

“(vi) Whether the settlement made by Amulya Ratna Goswami in favour of Janki Sao @ Janki Sonar with respect to plot No.-2915, area 15 decimals and plot No.-2916 area 2 decimals was valid, genuine and operative and whether settlee came in possession till 28.08.1958 over the settled land as claimed by the defendants?”

Learned counsel for the appellant has further submitted that this issue has already been decided at para 8 along with issue no.(vii) to (xiii) by the trial court, which are as follows:-

“(vii) Whether Ramautar Sahu acquired any right, title, interest and possession over the suit land described in Schedule-C of the plaint on the basis of sale deed executed by Janki Sonar on 18.08.1958 in his favour?

(viii) Whether Narayan Sao and Krishna Sao are the tenants of the plaintiff living in two rooms mentioned in Schedule-A of the plaint alleged to have been inducted by Janki Sonar uncle of the plaintiff?

(ix) Whether Mandodari Devi had valid, right, title, interest and possession over the suit lands mentioned in Schedule-A and C of the plaint and the sale deed executed by her in favour of Sumitra Devi is valid, genuine and for consideration?

(x) Whether Sumitra Devi defendant No.1 acquired any right, title, interest and possession over the suit land described in Schedule-C of the plaint on the basis of sale deed No.2346 dated 09.08.1989 executed by Mandodary Devi and her sons?

(xi) Whether Arun Sinha and Arjun Sao are trespassers and liable for eviction from the suit premises?

(xii) Whether Gujari Devi wife of Bhuneshwar and daughter of Janki Sonar came in possession over the property mentioned in the deed of will executed by Janki Sonar on 01.02.1968 for the lands of plot No.2915 and 2916 area 5 ½ decimals as oper Probate Case No.07/1968?

(xiii) Whether Hari Sao acquired any right, title, interest and possession over 2 decimals of land of plot No.2915 on the basis of sale deed executed in his favour by Janki Sonar?”

Page No.18 of learned trial court's judgment is quoted hereunder:-

“On the basis of the discussions made above I find and hold that the settlement made by Amulya Ratna Goswami in favour of Janki Sonar @ Janki Sao with respect to Plot No.2915 area 15 decimal and Plot No.2916 area 2 decimal was valid, genuine and operative and the settlee came in possession till 28.08.1958 over the settled land as claimed by the defendants and Ramavtar Sahu shall acquire valid right, title, interest and possession over the suit land described in Schedule 'C' of the plaint on the basis of sale deed executed by Janki Sonar on 28.08.58 in his favour and Narayan Sao and Krishna Sao are not the tenants of the plaintiff alleged to be living in two rooms mentioned in Schedule 'A' of the plaint alleged to have been inducted by Janki Sonar uncle of the plaintiff and Mandodari Devi, Wife of Late Ramawtar had valid right, title, interest and possession over the suit lands mentioned in Schedule 'A' and 'C' of the plaint and the sale deed executed by her in favour of Sumitra Devi is valid, genuine and for consideration and Suchitra Devi defendant No.1 acquired valid, right, title, interest and possession over the suit land described in Schedule 'C' of the plaint on the basis of sale deed No. 2346 dated 09.08.1989 executed by Mandodari Devi and her sons and Arun Sinha and Arjun Sao are not the tress-passers rather Arun Sinha is the husband of Sumitra Devi purchaser and they are not liable for eviction from the suit premises and Gunjari Devi wife of

Bhuneshwar Sahu and daughter of Janki Sonar came in possession over the property mentioned in deed of will executed by Janki Sonar on 1.2.1968 for the lands of Plot No.2915 and 2916, area 5½ decimals as per Probate Case No.7/68 and Hari Sao acquired valid right, title, interest and possession over 2 decimal of land of Plot No.2915 and on the basis of sale deed executed in his favour by Janki Sonar. And these issues are decided accordingly”.

The suit was decreed on contest in part with cost.

Learned counsel for the appellant has thus submitted that once the issue has already been dealt with by the learned trial court, it was not proper for the learned appellate court to remand the matter for decision on the same issue. Even if the State of Jharkhand has not been impleaded as a party in the original court the appellate court has power under Order I Rule 10 CPC.

The appellate court can invoke power under Order I rule 10 CPC, whereby court may strike out or add parties, as such, it was incumbent upon the learned appellate court to invoke power under Order I rule 10 CPC.

Considering the rival submissions of the parties, this Court has also perused the judgment of the trial court and found submission of the learned counsel for the appellant to be correct.

Under the aforesaid circumstances, let the notice be issued upon **respondent no.2-** Raj Kumar Mistry, **respondent no.3-** Madan Mistry, respondent Nos.2 and 3 both sons of Late Ramchandra Saw Sonar, R/o Village Saudagar, Mohalla Ramgarh, P.O. & P.S. Ramgarh, District Ramgarh, **respondent no.5-** Nagendra Prasad, S/o Late Ramavtar Sahu, **respondent no.6-** Krishna Prasad, S/o Late Ramavtar Sahu, **respondent no.7-** Jawahar Prasad, S/o Late Ramavtar Sahu, **respondent no.8-** Sandip Kumar, S/o Late Ramavtar Sahu, respondent Nos.5 to 8 are R/o Ghutwa, P.O. & P.S. Barkakana, District Ramgarh and **respondent no.9-** Arjun Sao, S/o Ganga Sao, R/o Saudagar Mohalla, P.O. & P.S. Ramgarh Cant., District Ramgarh under both process i.e. under registered cover with A/D as well as under ordinary process for which requisites etc. must be filed within two weeks.

Let the case be listed after service of notice upon respondents.

(Kailash Prasad Deo, J.)