

Krishna Deo Singh and Ors Vs. Jhari Devi and Ors

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Court : Jharkhand

Decided On : Nov-17-2017

Appellant : Krishna Deo Singh and Ors

Respondent : Jhari Devi and Ors

Judgement :

IN THE HIGH COURT OF JHARKHAND AT RANCHI C.M.P. No. 119 of 2010
Krishna Deo Singh and Ors. ..Petitioners Versus Jhari Devi and Ors. . Opp.
Parties ----- CORAM: HONBLE MR. JUSTICE AMITAV K. GUPTA ----- For
the Petitioners : Mr. Vikash Kumar, Advocate For the Opp. Parties : Mr. V.K.
Sharma, Advocate ----- 13/Dated:17.11.2017 Learned counsel for the
petitioner seeks permission to take steps under Order 5 Rule 20 C.P.C., for
substituted service of notice upon the legal heirs of deceased respondent no.
20(a), by publication of the notice in daily Hindi newspaper in Prabhat Khabar
(Chatra edition), published and widely circulated in the Chatra District. Heard.
Permission accorded. Learned counsel shall file the draft notice. Office is directed
to supply the contents of the notice. Learned counsel shall file an affidavit
annexing the newspaper clipping regarding the publication of notice. Office is
directed to list this case on 03.03.2018. (Amitav K. Gupta, J.) Tarun /- IN THE
HIGH COURT OF JHARKHAND AT RANCHI C.M.P. no. 366 of 2010 Mako
Munda & Others Petitioners Versus Julius Munda & Others Respondents
----- CORAM: HONBLE MR. JUSTICE AMITAV K. GUPTA ----- For the
Petitioner : Mr. V.K. Tiwary, Advocate For the Respondents : -----

06/Dated:17.11.2017 Learned counsel for the petitioners, submits that he shall file substitution application as well as supplementary affidavit within a week. (Amitav K. Gupta, J.) Tarun/- IN THE HIGH COURT OF JHARKHAND AT RANCHI C.M.P. no. 55 of 2012 Kishun @ Krishna Mistry & Others Petitioners Versus Suresh Singh & Others Opp. Parties ----- CORAM: HONBLE MR. JUSTICE AMITAV K. GUPTA ----- For the Petitioner : Mr. Arun Kumar, Advocate For the Opp. Parties : ----- 09/Dated:17.11.2017 Learned counsel for the petitioners shall take fresh steps for filing requisites of notice under ordinary process, to be issued to opposite party nos. 1 to 3. If the notices are so filed within the stipulated period, they are made returnable by 10th February, 2018. (Amitav K. Gupta, J.) Tarun/- IN THE HIGH COURT OF JHARKHAND AT RANCHI C.M.P. no. 153 of 2017 Mahijan Khatoon & Others Petitioners Versus Ajer Mallik & Others Respondents ----- CORAM: HONBLE MR. JUSTICE AMITAV K. GUPTA ----- For the Petitioner : Mr. R.R. Tiwary, Advocate For the Respondents : ----- 04/Dated:17.11.2017 Four weeks time as prayed for is granted to the learned counsel for the petitioners for removing the defects as pointed out by the office. If the defects are so removed, within the stipulated period, office to list this case on 05.01.2018. (Amitav K. Gupta, J.) Tarun/- IN THE HIGH COURT OF JHARKHAND AT RANCHI C.R. No. 62 of 2015 Shiv Kumar Jain ..Petitioner Versus 1. Akshay Jain 2. Branch Manager, Canara Bank, Chaibasa 3. Branch Manager, Union Bank, Chaibasa 4. Deven Chand Jain 5. Smt. Tara Jain 6. Ms. Ayushi Jain . Opp. Parties ----- CORAM: HONBLE MR. JUSTICE AMITAV K. GUPTA ----- For the Petitioner : M/s. Suman Kumar Dutta, Saumyajit Dasgupta, & Sandip Kumar Dutta, Advocates For the Opp. Parties : M/s. Bibhash Sinha, R. Dutta, Advocates ----- 18/Dated:17.11.2017 On prayer of the learned counsel for the petitioner, put up this case on 05.01.2018 at 3:00 P.M. Till then, interim order dated 19.05.2016 shall continue. (Amitav K. Gupta, J.) Tarun /- Arguments advanced by learned counsel for the petitioner, Mr. Suman Kumar Dutta C.R. No. 62 of 2015 Dated 17.11.2017 This review application is against the order whereby the Learned Court below had held that the suit is maintainable instead of bar under Section 69 of the Partnership Act. That the plaintiff has filed the suit against the partners of the firm claiming that in the deed of partnership on demise of his father, who was a partner in the said firm, the legal heirs i.e., mother,

sisters and others are liable to be inducted as a partner in place of their father. That the plaintiff himself had filed the suit and is claiming to be a partner of the said firm. That from the plain reading of the plaint it can be asserted that the claim of the plaintiff as partner of the firm, the firm is not registered then whether the court under the provisions of the CPC will allow the suit to be continued because the firm is not registered, the suit has to be filed on that ground or whether the court will so allow or continue. Factual aspect of the matter- that under section 69 of the Partnership Act, no suit can be interfered. Right arises from the contract. That the right arises out the contract or partnership or any enforcement of right of the partner arises under Partnership Act, by a person who claims to be partner or who alleges to be a partner cannot be partner, unless, he has partner in the firm and his name is shown under the registration of the firm. Section 69 defines that any person who wants to be a partner or who alleges to have been a partner or claiming any right under the partnership Act can file suit unless the firm is registered and the name of the plaintiff appeared in partnership deed/firm. -2- Section 69 says that if you are basing your right on a contract and suing on a contract then, the firm should have been registered. Plaintiff alone became the partner of the firm. The plaintiff is suing as a partner in the firm. Learned judge while disposing of claim of plaintiff under Order 7 Rule 11 has held that the plaintiff is not a partner in the firm, he wants to become partner in the firm. That accepting the request of the plaintiff, the defendant no.4 by a letter dated 01.06.2013 has accepted and acknowledged the plaintiff that the firm can be reconstituted as a deed of partnership. That from the two partners, the plaintiff joined hands with one of them to become a partner and he has accepted him as partner. Learned lower court has stressed at paras 17, 18 and 19. Learned counsel has referred to Section 69 of the partnership Act which relates to paras 17, 18 and 19 of the lower court judgment and also stressed on Order 7 Rule 11 of the Act. That the suit is maintainable before the judgment for admission. In para-9, the partnership is defined a relationship of partner arises from the contract and not from the status. That para-2 of the plaint says that reconstituted deed of partnership is dated 31st March, 2004 and the para-1 says that the plaintiff's father was carrying on business alone in the name and style of M/s. Misti Lal Jain & Sons. That the firm was registered on 29th September, 1964 and the plaintiff says that the firm of which he

claims to be partner was reconstituted on 31st March, 2004. That the inference can be drawn that - this is the plaintiffs best defence that the firm was registered on 29th September, 1964 and reconstitution was done up to 31st March, 2004.
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