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Court : Jharkhand

Decided On : Jul-22-2008

Reported in : [2008(4)JCR92(Jhr)]

Judge : M.Y. Eqbal, J.

Appellant : Jalibi Devi and ors.

Respondent : Sanjit Kumar and ors.

Disposition : Application allowed

Judgement :

ORDER

M.Y. Eqbal, J.

1. This writ application at the instance of the plaintiffs-petitioners under Article 227 of the Constitution of India is directed against the order dated 13.6.2007 passed by Additional District Judge-I, Chatra in Title Appeal No. 10 of 2006 whereby he has allowed the petition filed by the defendants-appellants purported to be under Order XLI, Rule 27 of the Code of Civil Procedure for adducing additional evidence.

2. The facts of the case lie in a narrow compass:

The original plaintiff, being the husband of petitioner No. 1. filed Title Suit No. 28 of 1987 against the defendants for then eviction from the suit property and also for

payment of arrears of rent. The suit was contested by the defendants by filing written statement. The trial Court, after considering the oral and documentary evidence, decreed the suit by terms of judgment and decree dated 22.5.2005. Aggrieved by the said judgment the defendants-appellants preferred Title Appeal No. 16 of 2006. In the said appeal an application under Order XLI, Rule 27, CPC was filed stating, inter alia, that the document marked as Ext. 3 from the side of the plaintiffs is forged and fabricated document and, therefore, a prayer was made for seeking opinion from the handwriting expert on the genuineness of the said document (Ext. 3). The Court of appeal below allowed the said application by passing the impugned order.

3. I have heard Mr. S.K. Sharma, learned Counsel appearing on behalf of the petitioners and Mr. L.K. Lal, learned Counsel appearing for the respondents.

4. The Court of appeal below is of the opinion that Ext. 3 although is an unregistered deed of kirayanama agreement, but it is a vital document produced by the plaintiffs-respondents to prove the relationship of landlord and tenant and since the defendants have denied the genuineness of this document saying that the same is forged and fabricated, for the proper finding on the issue of relationship of landlord and tenant the opinion of the handwriting expert is necessary to be brought on record.

5. After considering the facts of the case and after hearing the counsel for the parties I am of the opinion that the view expressed by the Court of appeal below is wholly misconceived and devoid of any substance. Admittedly unregistered document was filed and proved by the plaintiffs and was marked as Ext. 3.

6. The Court of appeal below has not heard the appeal on merit and before coming to any conclusion the provision of Order XLI, Rule 27, CPC ought not to have been applied for adducing additional evidence. Besides the above, the defendants-appellants excepting denial in the pleadings, have not taken any step to prove the document as forged and fabricated. In the said premises, the Court of appeal below has exceeded its jurisdiction in allowing the applications for adducing additional evidence.

7. It is well settled that unless the applicant fulfils the conditions mentioned in Order XLI, Rule 27, CPC, the Court should be very slow in exercising power under the said provision. Finding with regard to the document has already been recorded by the trial Court. In my considered opinion, therefore, the impugned order cannot be sustained in law.

8. For the aforesaid reasons, the application is allowed and the impugned order is set aside. Application allowed.

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