

Parwati Devi and Ors Vs. Prem Shankar Gupta and Ors

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Court : Jharkhand

Decided On : Apr-26-2016

Appellant : Parwati Devi and Ors

Respondent : Prem Shankar Gupta and Ors

Judgement :

-1- IN THE HIGH COURT OF JHARKHAND AT RANCHI W. P. (C) No. 3166 of 2015 1.Parwati Devi 2.Raj Kishore Gupta 3.Rajendra Gupta 4.Rajesh Gupta 5.Sanjay Gupta 6.Raj Kumar Devi ... Petitioners -V e r s u s- Prem Shankar Gupta ...Respondent with W. P. (C) No. 294 of 2016

1. Parwati Devi

2. Raj Kishore Gupta

3. Rajendra Kumar Gupta

4. Rajesh Kumar Gupta

5. Sanjay Kumar Gupta ... Petitioners -V e r s u s-

1. Prem Shankar Gupta

2. Bijay Kumar Gupta

3. Krishna Kumar Gupta

4. Smt. Kusum Lata Devi ...Respondents CORAM: - HONBLE MR. JUSTICE APARESH KUMAR SINGH For the Petitioners : Mrs. A. R. Choudhary, Advocate For the Respondents : Mr. Rajiv Ranjan, Sr. Advocate O. P. Tiwari, Adv. 10/26.04.2016 Heard learned counsel for the parties. Petitioners in W. P. (C) No. 3166 of 2015 are the legal heirs of original defendant no. 1, who have been substituted after his death on 11.05.2014 at the instance of plaintiff/ respondent herein through petition dated 15.05.2014. Their substitution was allowed vide order dated 23.05.2014. Petitioners herein had made an application to file written statement on 14.11.2014, which has been declined vide impugned order dated 12.06.2015 passed by the learned Civil Judge, Sr. Division-VI, Jamshedpur in Title (Partition) Suit No. 101 of 2007. In W. P. (C) No. 294 of 2016, the same petitioners i.e. substituted heirs of deceased defendant no. 1 had made a prayer to set aside the order dated 11.04.2014 passed by the learned Civil Judge, Sr. Division-VI, Jamshedpur in the same Title (Partition) Suit No. 101 of 2007 whereunder the original defendant no. 1(now deceased) namely Raghunath Prasad was debarred from filing written statement. They have also impugned the order dated 08.05.2014 rejecting the prayer to recall the order of debarment dated 11.04.2014. The said defendant as noticed hereinabove has died on 11.05.2014. Petitioners after being -2- substituted at the instance of plaintiff sought permission to file written statement and on being denied have approached this Court. The facts pleaded in both the writ petitions by learned counsel for the parties show that the suit was a partition suit instituted by the respondent herein in the year 2007, which got dismissed for default in 2008. On a Miscellaneous Case preferred in the same year and after contest by the defendant no. 1 (now deceased), the suit got restored on 15.10.2011. Original defendant no. 1 did not file a written statement after restoration of the suit for quite some time though he appears to have raised objection relating to the maintainability of the partition suit on ground of facts alleging that suit property is situated in several places beyond the territorial jurisdiction of the Trial Court. That application of maintainability by the original defendant no. 1 was also rejected on 10.01.2013 and thereafter issues have been framed and trial has progressed. On the failure of the original defendant to file written statement after more than 2 and years of the restoration of the suit, the learned Trial Court debarred him from filing the written statement by the impugned

order dated 11.04.2014 in the second writ petition. Plea of the petitioners herein to allow them to file written statement in the aforesaid background of the case is being opposed by the plaintiff -respondent on the ground that original defendant had dis-entitled himself due to his laches and conduct from contesting the suit on merits. His Recall Petition was also rejected on 08.05.2014 prior to his death on 11.05.2014. The written statement proposed to be filed by the present petitioners is in addition to that had been filed by the deceased, the original defendant no. 1 and it is to be seen whether they can take inconsistent pleas on their part, if any permission assumingly is allowed to them to file such a written statement. Since, trial has progressed to a considerable extent and plaintiff witnesses are in process of being examined, the suit being of 2007, it would not be proper in the eye of law to allow these petitioners to file written statement and delay the adjudication of the main suit. Counsel for the petitioners have taken the plea that after the death of original defendant no. 1, the plaintiff simply would have expunged the name of deceased defendant, instead he chose to seek substitution of the legal heirs, which has been allowed. Under Order XXII Rule 4 substituted legal heirs who also have stake -3- in the property described in the schedule of the suit should not be denied opportunity to contest on merits. It is also pointed out that the plaintiff has sought significant amendment in the property described in the schedule of the plaint, which cannot be allowed to go unrebutted if the petitioners herein are denied opportunity to file their written statement. The amendment petition was filed on 06.05.2014. Learned counsel for the petitioners have relied upon the judgment rendered by the Apex Court in the case of Sumtibai & Ors. Vs. Paras Finance Co. Mankanwar & Ors. reported in [2008(1) JCR1SC]], relevant para-8 and 15 are quoted hereunder:-

8. Every party in a case has a right to file a written statement. This is in accordance with natural justice. The Civil Procedure Code is really the rules of natural justice which are set out in great and elaborate detail. Its purpose is to enable both parties to get a hearing. The appellants in the present case have already been made parties in the suit, but it would be strange if they are not allowed to take a defence. In our opinion, Order XXI, Rule 4(2) CPC cannot be construed in the manner suggested by learned counsel for the respondent.

15. Also, merely because some applications have been rejected earlier it does not mean that the legal representatives of late Kapoor Chand should not be allowed to file an additional written statement. In fact, no useful purpose would be served by merely allowing these legal representatives to be impleaded but not allowing them to file an additional written statement. In our opinion, this will clearly violate natural justice. They have also relied upon the judgment rendered by learned Single Judge of this Court in the case of Bako Bibi & Ors. Vs. Janab Ahmad Mian & Ors. reported in 2008 (3) JLJR447 It is submitted that the case of the present petitioners are exactly similar to the case of Bako Bibi (Supra) decided by learned Single Judge where the original defendant had been debarred from filing written statement on failure to file it within time and thereafter at the instance of plaintiff himself his legal heirs were substituted, who were also debarred from filing written statement. Paragraphs 11 and 13 of the said report is being relied upon in support of the petitioners' case, which are quoted hereunder:-

11. On a combined reading of sub-rule (2) of Rule 4 of Order 22 C.P.C. together it is evidently clear that in case of death of a defendant who failed to file written statement and also failed to participate in the proceeding, there may not be necessity of bringing the legal representative of the deceased-defendant on record and the Court may proceed to decide the suit and in the event any judgment is passed that shall have the same force and effect as it was passed before the death took place. However, irrespective of the fact whether the deceased-defendant filed written statement or no written statement was filed, after the legal representative of the deceased-defendant is brought on record by way of substitution at the instance of -4- the plaintiff, then a right accrues to the substituted legal representative to make any defence appropriate to his character as the legal representative of the deceased- defendant.

13. In the instant case, no written statement was at all filed by the deceased-defendant as he was debarred from filing written statement for the reason that written statement could not be filed by the deceased-defendant within time. The deceased- defendant thereafter died without raising any defence in the suit. In such circumstance, on the death of the defendant, if the legal representative is substituted at the instance of the plaintiff on an application made in that behalf,

then in my considered opinion, debarring the legal representative also from filing written statement will amount to serious miscarriage of justice and also violation of principles of natural justice. If on account of fault of the deceased-defendant in not filing written statement within time stipulated in the Code, he was debarred from filing written statement, that does not mean that legal representative of the deceased-defendant who were not at fault, can be debarred from contesting the suit. Moreover, the plaintiff could have availed the provisions of sub- rule (4) of Order 22 C.P.C. by making a prayer for expunging the name of the deceased-defendant instead of substituting the legal representative but the plaintiff, instead of doing so, made a prayer for substitution of the legal representative of the deceased-defendant by filing an application in that behalf. In such a situation, in my considered opinion, it would highly unjust and unfair to the legal representatives, if they are not allowed to contest the suit by raising the defence available to them. Learned Senior counsel for the respondents has sought to distinguish the judgment relied upon by the petitioners rendered in the case of Sumtibai & Ors. (Supra) stating that the Hon'ble Supreme Court found that the two sons of the deceased defendant were in fact co-owners as per the sale deed itself and had an independent right to seek impleadment under Order 1 Rule 10 apart from seeking substitution on the death of the original defendant. In the background of serious laches on the part of the original deceased defendants, these petitioners also do not deserve to be allowed to file written statement as it would amount to delaying the adjudication of the main suit itself. Learned Senior counsel for the respondent has relied upon the judgment rendered by this Court in the case of Shyam Sunder Bazaz Vs. Sanwarmal Jalan & Ors. reported in 2005 (2) JCR115. Factual canvass of the case noticed hereinabove goes to show that original defendant no. 1 was definitely not diligent in filing written statement in a partition suit instituted in 2007, which was restored on 24.06.2011. He was, therefore, debarred from filing the written statement on 11.04.2014 by learned Trial Court. However, the plaintiff himself sought substitution of the present petitioners as legal heirs of the original defendant no. 1 through an application made on 15.05.2014 immediately after death of -5- defendant no. 1 on 11.05.2014. The substitution having been allowed in terms of the provisions of Order XXII Rule 4, the substituted heirs i.e. the present petitioners should have been granted opportunity

to file written statement, in such circumstances, by the learned Court below. The facts of the present case appear to be almost identical to the fact of the case of Bako Bibi (Supra). Para-13 containing the opinion of the learned Court in the facts of the said case, quoted hereinabove, squarely apply to the facts of the present case. Denial of opportunity to file written statement in the circumstances noticed hereinabove would be contrary to the Principles of natural justice which is embodied in the Civil Procedure Code in greater detail. In the opinion of this Court, when the learned Trial Court allowed substitution of the present petitioners at the instance of the plaintiff himself, the impugned order rejecting the application of these petitioners to file written statement cannot be upheld in the eyes of law and in light of the law laid down by the Apex Court in the case of Sumtibai & Ors. (Supra) and by this Court in the case of Bako Bibi (Supra) discussed hereinabove. This Court is, therefore, inclined to set aside the impugned order dated 12.06.2015 passed by learned Civil Judge, Sr. Division-VI, Jamshedpur in Title (Partition) Suit No. 101 of 2007. Accordingly, it is quashed. However, in view of the facts and reasons record hereinabove, this Court is not inclined to interfere in the order dated 11.04.2014 impugned in the connected writ petition W. P. (C) No. 294 of 2016 whereunder the original defendant no. 1 has been debarred from filing written statement and his recall petition has also been rejected. Consequently W. P. (C) No. 3166 of 2015 is allowed in the manner and to the extent indicated hereinabove. W. P. (C) No. 294 of 2016 is dismissed. (Aparesh Kumar Singh, J.) Kamlesh/