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Arjun Prasad Singh Vs. Dhananjay Kumar Singh and ors.

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Court : Jharkhand

Decided On : Apr-22-2010

Judge : D.N. Patel, J.

Appellant : Arjun Prasad Singh

Respondent : Dhananjay Kumar Singh and ors.

Disposition : Petition dismissed

Judgement :

D.N. Patel, J.

1. Learned Counsel for the petitioner has submitted that the present petition has been preferred against the order passed by the learned Munsif-II, Dhanbad dated 28th March, 2009 in Title Suit No. 111 of 2000 whereby, certain documents have been given exhibit numbers, despite the petitioner (Original defendant) has raised several objections against this order for granting exhibit numbers to the documents in Title Suit No. 111 of 2000. The present petition has been preferred by the original defendant.

2. Having heard learned Counsel for both the sides and looking to the facts and circumstances of the case, I see no reason to entertain this writ petition, mainly for the following facts and reasons:

(i) Respondent No. 1 is original plaintiff, who has instituted Title Suit No. 111 of 2000 before the Court of learned Munsif-II, Dhanbad.

(ii) It appears that several documents have been presented by the original plaintiff and that have been referred in Examination-in-Chief affidavit. These documents are inclusive of certain sale deeds etc., which are referred in paragraph No. 3 of an application, preferred by the original plaintiff (Annexure-1 to the memo of the petition).

(iii) It appears that the present petitioner (original defendant) has raised several objections for granting of exhibits numbers to these documents as they are secondary evidences and the photocopies.

(iv) It further appears from the facts of the case that it is alleged by the original plaintiff that the original copies of these documents are in possession and custody of the present petitioner, who is original defendant and is deliberately not presenting the same before the Court and therefore, the secondary evidences ought to be given exhibit numbers whose evidentiary value will be given at the time of final hearing of Title Suit No. 111 of 2000.

(v) Looking to the decision rendered by the Hon'ble Supreme Court in the case of Bipin Shantilal Panchal v. State of Gujarat and Anr. as reported in (2001) 3 SCC 1, it appears that no error has been committed by the Trial Court, in giving exhibit numbers, which will be treated as tentative exhibit numbers and the objections, raised by the present petitioner will be considered, at the time of final hearing of the suit. Paragraph Nos. 13 and 14 of the aforesaid decision, read as under:

13. It is an archaic practice that during the evidence-collecting stage, whenever any objection is raised regarding admissibility of any material in evidence the court does not proceed further without passing order on such objection. But the fallout of the above practice is that: Suppose the trial court, in a case, upholds a particular objection and excludes the material from being admitted in evidence and then proceeds with the trial and disposes of the case finally. If the appellate or the revisional court, when the same question is re-canvassed, could take a different view on the admissibility of that material in such cases the appellate court would

be deprived of the benefit of that evidence, because that was not put on record by the trial court. In such a situation the higher court may have to send the case back to the trial court for recording that evidence and then to dispose of the case afresh. Why should the trial prolong like that unnecessarily on account of practices created by ourselves. Such practices, when realised through the course of long period to be hindrances which impede steady and swift progress of trial proceedings, must bed recast or remoulded to give way for better substitutes which would help acceleration of trial proceedings.

14. When so recast, the practice which can be a better substitute is this: Whenever an objection is raised during evidence-taking stage regarding the admissibility of any material or item of oral evidence the trial court can make a note of such objection and mark the objected document tentatively as an exhibit in the case (or record the objected part of the oral evidence) subject to such objections to be decided at the last stage in the final judgment. If the court finds at the final stage that the objection so raised is sustainable the Judge or Magistrate can keep such evidence excluded from consideration. In our view there is no illegality in adopting such a course. (However, we make it clear that if the objection relates to deficiency of stamp duty of a document the court has to decide the objection before proceeding further. For all other objections the procedure suggested above can be followed.)

(Emphasis Supplied)

In view of the aforesaid decision, exhibit numbers, which are given to the documents, which are referred in paragraph-3 of an application, preferred by the original plaintiff (Annexure-1 to the memo of the petition) will now be treated as tentative exhibit numbers and the objection, which are raised by the petitioner (original defendant) will be considered at the time of final hearing of the aforesaid Title Suit No. 111 of 2000.

3. As a cumulative effect of the aforesaid facts and reasons and judicial pronouncement, I see no reason to upset the decision delivered by the learned Munsif-II, Dhanbad dated 28th March, 2009 in Title Suit No. 111 of 2000.

4. In view of the aforesaid observations, this writ petition is dismissed.

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