

Bitia Marandi and ors Vs. Premchand Baskey ? Lakhan Bask

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Court : Jharkhand

Decided On : Dec-19-2012

Appellant : Bitia Marandi and ors

Respondent : Premchand Baskey ? Lakhan Bask

Judgement :

IN THE HIGH COURT OF JHARKHAND, RANCHI. W.P(C) No.7475 of 2006 Bitia Marandi &Ors Petitioner(s) Versus Premchand Baskey @Lakhan Baskey(Pradhan) &Ors. Respondent(s) CORAM :- HON'BLE MR. JUSTICE P.P. BHATT For the Petitioner(s) :- Mr Rajeeva Sharma Sr. Adv. Mr.Manoj Kumar Adv. 2-19.12.2012 The present petitioners by way of filing this writ petition under Article 227 of the Constitution of India have prayed for quashing the order dated 26.5.2006 passed in T.S.Suit No. 9 of 1990 by the Sub-Judge-I Sahibganj whereby the petition dated 18.4.2006 filed under order 23 Rule 1,2 and 3 of the Code of Civil Procedure has been rejected. Heard the learned counsel appearing for the petitioners as well as the Respondent-State Government. So far as private respondents are concerned, though the notice is duly served upon the said respondents but they did not appear to contest this case. It appears that the plaintiffs/petitioners have instituted the Title suit in the year 1990 claiming title over the suit property. During pendency of the said suit, the plaintiffs/petitioners came to know about certain formal defects in the plaint. and they filed amendment application before the court below for amendment of the plaint but the said application was rejected and thereafter Revision application No. 403 of 2002 was filed before this Court but the same was dismissed by this Court vide order dated

7.1.2003 . Thereafter, the plaintiffs/petitioners filed an application before the court below seeking permission to withdraw the said title suit with a liberty to file a fresh suit under order 23 rule 1(3) of the Code of Civil Procedure but the said application was ordered to be rejected on merit. Being aggrieved and dissatisfied with the said order the plaintiffs/petitioners preferred Civil Revision No. 285 of 2003 before this Court and this Court by order dated 5.11.2003 passed the following order :- Heard the parties. The plaintiffs are petitioners. They have challenged the order dated 12.3.2003, passed by the First Subordinate Judge, Sahibganj, in Title Suit no. 9 of 1990, whereby their prayer to withdraw the suit with liberty to file a fresh suit was disallowed and the suit was simply permitted to be withdrawn without any such liberty and thereby it was dismissed, as withdrawn. It appears that during pendency of the suit, the plaintiffs sought for certain amendments in the plaint, which were disallowed and the Revision filed against the said order, under section 115 of the Code of Civil Procedure, was also rejected by this Court. Thereafter the plaintiffs filed petition (annexure-5) under order 23 Rule 1(3) of the Code of Civil Procedure to withdraw the suit and to institute a fresh suit. Now it was for the court below either to allow or reject the said petition and if the court below in its discretion was of the view that permission for withdrawal of the suit cannot be granted with liberty to file a fresh suit, then the petition (Annexure-5) should have been simply rejected. In my view, the court below committed an error of jurisdiction in splitting of the prayer made in the petition (Annexure-5), i.e. allowing the prayer for withdrawal of the suit and disallowing the second part of the prayer to file a fresh suit. Under order 23 Rule 1(3) of the Code of Civil Procedure, of course the court is empowered to dismiss the petition with observation that if the plaintiff so desires he can withdraw the suit, but he cannot be permitted to file a fresh suit regarding the same subject matter and thereafter it is the discretion of the plaintiffs either to withdraw the suit or to proceed with it. The court cannot divide the petition into two parts and accept the withdrawal and refuse the liberty in the same order to file a fresh suit. I, therefore, set aside the impugned order with liberty to the plaintiffs to proceed with the suit, if so desire. This Revision application is allowed with the above observations/ directions. Thereafter the petitioners moved an application before the court below for removal of the certain defects in the plaint but the court below rejected the said application. On the other hand the

plaintiffs/petitioners were allowed to withdraw the suit with a liberty to file a fresh suit. Under the circumstances, the petitioners/plaintiffs are not in a position to proceed further with the suit on merit. This court is of the view that in the interest of justice and with a view to do substantial justice, the present petitioners/plaintiffs are required to be permitted to remove the certain formal defects in the plaint so that they can proceed further with suit. As the present suit is of the year 1990, it would be just and proper to proceed further with the suit without entering into such technicalities. Accordingly this petition is allowed and the impugned order dated 26.5.2006 passed in Title suit No. 9 of 1990 is set aside with a liberty to the plaintiffs to carry out amendment which are formal in nature and proceed further with the said title suit. Since it is a suit of 1990 the court below shall also make endeavour to deal with and disposed of the same expeditiously. (P.P.Bhatt,J) SD

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