

IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 337 of 2022

Ram Janam Ram, age about 74 years, Late Devki Ram, Resident of Village-
Ausane Tola Marhi, P.O.-Chanho, P.S.- Chainpur, District-Palamau

..... Petitioner

Versus

Kripa Nath Chaudhary, Son of Late Gopi Chaudhary, Resident of Village-
Ausane, P.O.- Chainpur, P.S.-Chainpur, District Palamau

.... Opp. Party

CORAM : HON'BLE MR. JUSTICE SUBHASH CHAND

For the Petitioner	: Mr. S.K. Sharma, Advocate
	: Mr. Manoj Kumar-II, Advocate
For the Opp. Party	: Md. Faruque Ansari, Advocate

Order No. 16 /Dated: 28th November, 2024

Heard the learned Counsel for the petitioner and the learned Counsel for the Opposite Parties and perused the materials available on record.

2 This C.M.P. has been directed against the order dated 05.05.2022 passed by the Civil Judge, (Sr. Division) III, Palamau at Daltonganj in Original Suit No. 134 of 2016 whereby the application under Order 23 Rule 1 of C.P.C. was rejected.

3 The Learned Counsel for the petitioner has submitted that the Original Suit was filed on behalf of the plaintiff being Original Suit No. 134 of 2016 with the prayer to declare the right, title and interest of the plaintiff over the suit land. In that suit, on behalf of the defendant, written statement was filed and the issues had not been framed and application was moved on behalf of the plaintiff for withdrawal of the suit with liberty to file the fresh suit. The copy of the application is also annexed with this petition but that petition was rejected by the learned Trial Court by passing the impugned order dated 05.05.2022 on the ground that since in the Original Suit, relief for declaration was sought and, for the same, limitation was three years and if the application of withdrawal was allowed, the suit would be barred with the limitation. The said finding given by the learned Trial Court is perverse based on the wrong interpretation of the legal provisions of CPC.

4 Per contra, learned Counsel for the Opposite Parties contended that virtually in the suit, the issues were not framed but the application for

withdrawal was filed on behalf of the plaintiff after lapse of six years. Therefore, the impugned order passed by the learned Trial Court bears no infirmity and has been rightly passed.

5 Heard and perused the material available on record.

6 From the perusal of the plaint, which is Annexure 1 of this C.M.P. it is found that the plaintiff Ram Janam Ram had instituted a suit against Kripa Nath Chaudhary in regard to the land, details of which is shown at the foot of the plaint to declare his right, title and interest in regard to the same on these averments that the plaintiff is the raiyat of the land in suit and in the survey report, name of his great-grandfather was recorded. After the death of great-grand father, the name of his three sons were recorded as successor who after their death, also left their legal heirs. In this way has averred to declare his right, title and interest in the land in suit.

6.1 In this Original Suit No. 134 of 2016, the written statement was also filed on behalf of the defendant, the copy of the same is Annexure No. 2 of this C.M.P.

6.2 Admittedly, in the Original Suit No. 134 of 2016, issues were not framed and the application was filed on behalf of the plaintiff who is petitioner herein to withdraw the Original Suit with liberty to file the fresh one. The copy of this withdrawal petition is Annexure No. 3 of this C.M.P. From the very perusal of this petition, it is found that plaintiff has sought the withdrawal of the suit with liberty to file the fresh one on the ground of formal defect in the suit itself.

6.3 Against this application, on behalf of defendant, the objection/rejoinder was filed which is Annexure No. 4 of this C.M.P. in which on behalf of the defendant, this application has been vehemently opposed on the ground of delay.

6.4 The learned Trial Court has passed the impugned order basing its finding on the ground that since the relief sought in the plaint was for simple declaration of the right, title and interest and this relief being barred by the provisions of Article 58 of the Limitation Act. In view of the Order 23 Rule 2 of the C.P.C., this application for withdrawal was rejected.

6.5 Herein it would be pertinent to reproduce the statutory provisions of Order 23 Rule 1, Rule 1A and Rule 2 of C.P.C. which are reproduced

hereinbelow.

1. Withdrawal of suit or abandonment of part of claim.-(1) *At any time after the institution of a suit, the plaintiff may as against all or any of the defendants abandon his suit or abandon a part of his claim: Provided that where the plaintiff is a minor or other person to whom the provisions contained in rules 1 to 14 of Order XXXII extend, neither the suit nor any part of the claim shall be abandoned without the leave of the Court.*

(2) An application for leave under the proviso to sub-rule (1) shall be accompanied by an affidavit of the next friend and also, if the minor or such other person is represented by a pleader, by a certificate of the pleader to the effect that the abandonment proposed is, in his opinion, for the benefit of the minor or such other person.

(3) Where the Court is satisfied,-

(a) that a suit must fail by reason of some formal defect, or

(b) that there are sufficient grounds for allowing the plaintiff to institute a fresh suit for the subject matter of suit or part of a claim,

It may, on such terms as it thinks fit grant the plaintiff permission to withdraw from such suit or such part of the claim with liberty to institute a fresh suit in respect of the subject-matter of such suit or such part of the claim.

(4) Where the plaintiff-

(a) abandons any suit or part of claim under sub-rule (1), or

(b) withdraws from a suit or part of a claim without the permission referred to in sub-rule (3),

he shall be liable for such costs as the Court may award and shall be precluded from instituting any fresh suit in respect of such subject-matter or such part of the claim.

(5) Nothing in this rule shall be deemed to authorise the Court to permit one of several plaintiffs to abandon a suit or part of a claim under sub-rule (1), or to withdraw, under sub-rule (3), any suit or part of a claim, without the consent of the other plaintiff.]

1A. When transposition of defendants as plaintiffs may be permitted.-

Where a suit is withdrawn or abandoned by a plaintiff under rule 1, and a defendant applies to be transposed as a plaintiff under rule 10 of Order I the Court shall, in considering such application, have due regard to the question whether the applicant has a substantial question to be decided as against any of the other defendants.]

2. Limitation law not affected by first suit.-

In any fresh suit instituted on permission granted under the last preceding rule, the plaintiff shall be bound by the law of limitation in the same manner as if the first suit had not been instituted.

6.6 The plaintiff has filed this application for withdrawal of the suit with the averment that there were the formal defects in the suit and, therefore, he wants to withdraw the same with a liberty to file the fresh suit. Against this application, the only objection which was raised before the Trial Court on behalf of the defendant, that was on ground of the delay and same herein also, the learned counsel for the respondent opposed this application on the ground of delay.

6.7 The learned Trial Court while rejecting the application for withdrawal has misconstrued the very provisions of Order 23 Rule 2 of

C.P.C. and also the very provisions of Article 58 of the Limitation Act which is provided in the Schedule of Limitation Act.

6.8 Herein it would be pertinent to mention that the Article 58 of Limitation Act in regard to obtaining the declaration is certainly three years but the same would not be applicable in the case in hand. **Since, the plaintiff in the Original Suit itself has sought the relief for declaration of right, title and interest in the land in suit which is immovable property and in regard to get the declaration of the same, the Article 65 would be applicable which will start from the date when the possession becomes adverse.**

6.9 Though all these provisions that is Article 58 and 65 of the Limitation Act are not relevant herein, yet it was incumbent upon the learned Trial Court to see whether the application for withdrawal of the suit seeking the liberty was on showing the formal defect or not?

6.10 So far as the period of limitation is concerned, in Order 23 Rule 2 of C.P.C. itself, it has been provided that in any fresh suit instituted on permission granted under the last preceding rule of Order 23, the plaintiff shall be bound by the law of limitation in the same manner as if the suit had not been instituted **which means, once the permission is granted to withdraw the suit with liberty to file the fresh suit, the law of limitation will apply only as if the very suit after granting the permission by the Court has been instituted afresh.**

6.11 So far as the contentions made by learned counsel for the respondent that he has been litigating the suit for last six years, for the same, the defendant/respondent may be compensated by way of cost.

7 Therefore, the impugned order passed by the learned Trial Court needs interference and this C.M.P. deserve to be allowed.

8 This C.M.P is hereby allowed. The impugned order passed by the learned Trial Court is set aside. The application for withdrawal is allowed at the cost of Rs. 1,000/- which has to be deposited by the petitioner before the learned Trial Court and permission to withdraw the suit is accorded to the plaintiff with liberty to file the fresh suit.

9 Accordingly, this C.M.P. stands disposed of.

(Subhash Chand, J.)

Jharkhand High Court, Ranchi
Dated: 28th November, 2024
Rashmi/- A.F.R.