

आदेश और पदाधिकारी का हस्ताक्षर

आदेश पर की गई¹ कार्रवाई के बारे में
टिप्पणी तारीख के
साथ

11/7/24

In the Court of Divisional Commissioner,
Santhal Pargana Division, DumkaReview Case No.-325/2023-24Satwan Kumar Singh and Others
-Versus-Baijnath Singh and others
Order

The instant review case has been filed against the order by this predecessor court in Title Appeal No.130 of 2010-11 by which the appeal is dismissed. The appellant preferred W.P (C) No.1444/2013 before Hon'ble High Court of Jharkhand, Ranchi and the Hon'ble High Court of Jharkhand, Ranchi has directed to have remedy by filing review case.

The fact of this case as submitted by the appellant is that the appellant filed a suit before the court of Sub-Judge-I, Dumka bearing as Title Petition Suit No.116 of 2006, the suit was dismissed with a liberty to file a fresh suit. The appellant filed a fresh suit being Title Suit No.74 of 2008 for its adjudication on merit but the same was rejected vide order dated 01.07.2010 on the ground that there is not any valid cause of action. The petitioner filed an appeal in the court of the principle Judge, it was registered as Title Appeal No.130 of 2011 for adjudication of the issues on merit but the appellate court dismissed it on the ground of the applicability of the principle of res-judicata. The facts of the case has not been adjudicated and without any adjudication, the learned court applied principle of res-judicata. The matter of fact in nutshell is that Sumitra Devi adopted daughter of Chintawati Darbain who filed case against the respondents for declaration of right, title and interest upon the scheduled property described in Schedule-(A) to "C" of the plaint and also for declaration on that defendant no.1 is not adopted son of Brahmawati Darbain and also for alleged Adoption Deed No.106 of 1963 is forged and fabricated and for its cancellation.

The case was admitted and it was sent to the court of the Sub-Judge, Dumka for trial and disposal being renumbered as T.P Suit No.116/2006 but later on due to some technical defect withdraw the above suit on 27.09.2008 with liberty to file a fresh suit with cost of Rs. 500/- to be paid to the defendants. Thereafter the mother of the appellant namely Sumitra Devi instituted a Title Suit No.74/2008 in the court of the

Settlement Officer, Dumka for declaration of Right, Title and Interest of plaintiffs and also for declaration to the defendant 1st party is not adopted son of Brahmawati Devi. The suit was dismissed by the learned Settlement Officer, Dumka at the stage of admission without following the norms and procedure of law. Against the order of the learned Settlement Officer, Dumka the appellants preferred an appeal before Hon'ble Commissioner, S.P. Division, Dumka which was registered as Title Appeal No.130/2010-11, which has also been dismissed on 07.04.2012 holding that appeal is barred by the law of res-judicata.

The mother of the appellant preferred W.P.(C) No.1444/2023 before Hon'ble High Court, Jharkhand, Ranchi, which was allowed on 06.07.2022 and quashed the order dated 07.04.2012 passed by this Court in Title Appeal No.130/2011, and the matter is remitted back before the Appellate Authority for its adjudication in accordance with law.

The learned counsel of appellant submitted that the learned predecessor court has wrongly and illegally dismissed the Title Appeal because issues involved in the case has not been decided. The learned Settlement Officer, Dumka dismissed the Title Suit No.74/2008 suo-moto, without framing issues and without taking documentary and oral evidences of both the parties. The learned lower court has wrongly applied the principle of res-judicata and without adjudication of any matter between the same parties on merit, the principle of res-judicata cannot be applied. The learned predecessor court of Hon'ble Commissioner, S.P. Division, Dumka without applying his Judicial mind dismissed Title Appeal No.130 of 2010-11 on 07.04.2012 wrongly holding the appeal is barred by the law of res-judicata as such the appeal has been illegally dismissed. The learned counsel prayed to allow Review case and pass afresh order.

The learned counsel of the respondents has earlier submitted the fact that the appellant filed Title Partition Suit No.45/2006 (116 of 2006) in the court of the Settlement Officer, Dumka, impleading the present respondent as defendant and claiming herself to be the adopted daughter of Chintamani Darbain and claimed share in the land of settlement J.B No.33 of Mouza-Mahua and J.B No.110 of Lagwa both within Jarmundi Police Station (Dumka) recorded in the name of Loknath Darbey s/o-Mahar Darbey, Rodanti Darbain w/o-Siban Darbey and Chintamani Darbain w/o-Makhan Darbey. The recorded tenant Loknath Darbey died leaving behind his two sons namely Ganesh Darbey and Daso Darbey died leaving behind his wife Brahmawati Devi and she had executed a Registered Deed of Adoption No.106/1963 showing adoption of respondent as her son. During the last settlement operation, in Objection Suit No.156 it has already been

decided that Loknath Darbey is the sole heir of Mohar Darbey in exclusion of said two widows they were only maintenance holder. The learned court of Sub-Judge-I has dismissed the suit and further the appellate court of the District Judge has dismissed Title Appeal No.46 of 1977. The learned court of the Settlement Officer, Dumka in Title Suit No. 74/2006, after hearing the parties and perusing the document, the purcha has already been issued in the name of defendants and as such the learned court of the Settlement Officer, Dumka has legally adjudicated the matter. The suit is being barred by Section-11 of the C.P.C (Resjudica) and the learned court of predecessor Hon'ble Commissioner, S.P. Division, Dumka has rightly dismissed the title appeal. In the light of above submissions and argument prayed to dismiss this review case.

Heard both the parties and perused entire documents and the order of predecessor Hon'ble court. I observed that the predecessor Court has elaborately decided and gone into the facts of the case and after broadly discussing the fact has arrived on the conclusion that the appeal is not maintainable. I find same facts repeated in this review case, justifying the illegality of the order of the previous predecessor court and emphasising on fact to decide the case in new dimension of the same fact. I find no merit in the Review Case as such.

The fact of the case has been legally considered by the civil court as well as the learned court of the Settlement Officer, Dumka. This predecessor court has also decided this case on justified and reasonable way in the legal horizons of facts and hence I am not inclined to interfere in the order of the predecessor court.

Therefore, it is dismissed.

Dictated and Corrected by me


11/7/24

Commissioner
Santhal Pargana Division,
Dumka


11/7/24

Commissioner
Santhal Pargana Division,
Dumka