

IN THE HIGH COURT OF JHARKHAND AT RANCHI
W.P.(C) No. 5635 of 2011

Somari Mandalain Petitioner
Versus
1. Jaleshwar Mandal
2. Maku @ Makundi Mandal
3. Hemlal Mandal
4. Mangleshwar Mandal Respondents

CORAM: HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For the Petitioner : Mr. Arvind Kumar Choudhary, Advocate
For the Respondents :

07/28.11.2014 Aggrieved by order dated 16.08.2011 in Title (P) Suit No. 118 of 2009 whereby the petition under Order VII Rule 11 (d) dated 23.04.2011 has been dismissed, the present writ petition has been filed.

In the application dated 23.04.2011, the defendant has pleaded that the plaintiff suppressed the fact that Somari Mandalain is the daughter of Kunwar Mandal and grand daughter of Bihari Mandal. It is further stated that the issue with respect to the statement made in paragraph nos. 8 and 9 has already been decided in Title Suit No. 54 of 1972 and thus, the suit is barred by res-judicata.

The learned counsel appearing for the petitioner refers to the paragraph nos. 8 and 9 and reiterated the plea taken in the application under Order VII Rule 11 (d) CPC and submitted that since the issue has already been decided in the Title Suit No. 54 of

1972, the present suit was barred by res-judicata and the plaint was liable to be rejected under Order VII Rule 11 (d) CPC.

It is well settled that an application under Order VII Rule 11 (d) CPC is to be decided strictly on the averments made in the plaint and no reference to the counter-affidavit or statement made in the application under Order VII Rule 11 (d) CPC can be referred to for deciding the application. Only if from the averments made in the plaint it can be conclusively determined that the plaint is barred under any law, an order under Order VII Rule 11 (d) CPC can be passed.

From perusal of the application under Order VII Rule 11 (d) CPC, it is apparent that the defendants have taken a plea of suppression of material facts. In as much as, the issue with respect to the statement made in paragraph no. 9 being concluded by the judgment in T.S. No. 54 of 1972 is concerned, it cannot be looked into at this stage. In view of the above, application under Order VII Rule 11 (d) CPC has rightly been rejected.

I find no merit and accordingly, this writ petition is dismissed.

(Shree Chandrashekhar, J.)

Tanuj/-