

IN THE HIGH COURT OF JHARKHAND AT RANCHI

W. P. (C) No. 4669 of 2011

.....

1. PRABHASH MOHAN, SON OF SRI MOHAN PRASAD SINGH, R/O
UPPER BAZAR, PS- KOTWALI, PO- RANCHI
2. DEEPAK BIHARI SRIVASTAVA SON OF LATE JAI BIHARI LAL,
R/O RATU ROAD, PS- SUKHDEONAGAR, PO- RANCHI, DIST
RANCHI
3. BRAJESH KUMAR SHARMA, SON OF LATE RAM DARESH
SINGH, R/O B.I.T. MORE, PS- SADAR, PO- B.I.T. MESRA, DIST-
RANCHI
- PETITIONERS

VERSUS

1. DEO NARAYAN MAHTO, SON OF LATE TIRATH NARAYAN
MAHTO, R/O VILL- KHATANGA, PS- SADAR, PO- SADAR, RANCHI
2. BHANU PRATAP SAHU, SON OF LATE NAND LAL SAHU, R/O
LOWER BURDWAN COMPOUND, PS- LALPUR, PO- LALPUR, DIST-
RANCHI
- RESPONDENTS

3. KRISHNA RAI, WIFE OF BHANU PRATAP RAI, R/O B.I.T. MESRA,
PS- SADAR, PO- B.I.T. DIST RANCHI
4. SWATI SUBHAM AND
5. SWASTI SHUBHAM

BOTH DAUGHTERS OF LATE MADHURI KUMARI, R/O C/O SRI
NARMADESHWAR PRASAD SINGH, KRISHNA NAGAR, BOOTY
ROAD, PS SADAR, PO BIT MESRA, DIST RANCHI

.... ... PROFORMA RESPONDENTS

CORAM : HON'BLE MR. JUSTICE SHREE CHANDRASHEKHAR

For the Petitioners : Mr. Pandey Neeraj Rai, Advocate

Mr. Rohit Ranjan, Sinha, Advocate

For the Respondent : Mr. D.K. Malityar, Advocate

12/ Dated: 30th September, 2016

Per Shree Chandrashekhar, J.

Aggrieved of order dated 11.03.2011 passed in Title
Suit No.306 of 2009, whereby a part of the amendment vide
application dated 19.11.2010 was rejected, the instant writ petition
has been filed.

2. The petitioners are the plaintiffs in Title Suit No.306 of

2009 which was instituted for a decree of declaration of their title alongwith proforma-defendants over the suit property and for a declaration that sale-deed no.7631 dated 09.07.1991 is void *ab-initio* besides, a decree for declaration of their possession and a direction to defendant nos.1 and 2 not to interfere with their right, title and possession over the suit property.

3. During the trial, as noticed above, an application for the following amendment in the plaint was filed:

"(i) After para 20 of the plaint, the following paras be added-

*20(A). That during pendency of the suit, the defendant no.1 and 2 have illegally and fraudulently executed and got registered one Sale Deed No.- 18444 dated 13.08.2010 entered in Book No.- I, Volume- 802, Pages- 359 to 402 for the year 2010, in favour of 1. Sri Shekhar Bathwal S/o Sri Om Prakash Bathwal, resident of A/4 Sarovar Enclave Raja Bagan Kanke Road, Ranchi, P.S.- Gonda, District- Ranchi and 2. Sri Arun Kumar Bathwal S/o Late Mohanlal Bathwal resident of Lake Road, Ranchi, P.S.- Kotwali District- Ranchi, which is illegal and void *ab-initio* as the same is barred under Section 52 of the Transfer of Property Act.*

20(B). That if the above Sale Deed No.- 18444 dated 13.08.2010 is left outstanding, it may cause serious injury to the plaintiffs, so the Sale Deed is liable to be cancelled and declared null & void and not binding upon the plaintiffs.

(ii) After prayer (B), a new prayer be added as under:-

"B(a). A decree be passed canceling the Sale Deed No.-

18444, dated 13.08.2010 entered in Book No.- I, Volume-802, Pages- 359 to 402 for the year 2010 declaring the same as null & void and not binding upon the plaintiffs"

(iii) The alleged purchasers named in the Sale Deed No.- 18444 dated 13.08.2010 be added as defendants under serial no.- 2/A and 2/B, as under:-

2/A. Sri Shekhar Bathwal S/o Sri Om Prakash Bathwal, resident of A/4 Sarovar Enclave Raja Bagan Kanke Road, Ranchi, P.S.- Gonda, District- Ranchi

2/B. Sri Arun Kumar Bathwal S/o Late Mohanlal Bathwal resident of Lake Road, Ranchi, P.S.-Kotwali, District-Ranchi"

4. The trial court, though allowed amendment in the prayer clause incorporating the prayer for a decree cancelling the sale-deed no. 18444 dated 13.08.2010 and declaring the same as null and void and not binding upon the plaintiffs, however, the prayer for adding the purchasers through the aforesaid sale-deed dated 13.08.2010, was declined.

5. Order dated 11.03.2011 passed in Title Suit No.306 of 2009 has not been challenged by the defendants and consequently, the prayer seeking cancellation of the sale-deed dated 13.08.2010 stands incorporated in the plaint. The effect of the aforesaid amendment would be that in absence of the purchasers, who now have valuable rights involved in the suit property, the prayer for cancellation of sale-deed dated 13.08.2010 has to be adjudicated. Since the prayer for adding the purchaser(s) has been declined, the contesting defendants also cannot take a plea during the trial that in the absence of purchaser(s) the amended prayer in Title Suit

No.306 of 2009 cannot be adjudicated. Obviously, this would become an irreconcilable situation.

6. Considering the aforesaid facts, I am of the opinion that once the prayer clause in the plaint was permitted to be amended by incorporating a new prayer for cancellation of the sale-deed dated 13.08.2010, the purchasers also should have been added as parties in Title Suit No.306 of 2009. The impugned order dated 11.03.2011 to the extent that the prayer for adding the purchaser(s) has been declined, is set-aside.

7. The writ petition stands allowed in the aforesaid terms.

(Shree Chandrashekhar, J.)

R.K.