

Shri Bharat Kallu Ghat ... Petitioner

Shri Kallu Aappana Ghat and others ... Respondents

CORAM : R. G. KETKAR, J.
DATE : 10th AUGUST, 2015

Heard Mr.Abhijeet Desai i/b Prashant P.Kulkarni, learned Counsel for the petitioner and Mr.Rahul S.Kulkarni, learned Counsel for respondent at length.

3. In support of this Petition, Mr.Abhijeet Desai and Mr.Prashant Kulkarni strenuously contended that the learned trial Judge rejected the application mainly on the ground that earlier, plaintiff had filed application at Exhibit 70 for issuing witness

summons. By order dated 13/11/2014, the learned trial Judge rejected that application. The plaintiff has filed present application Exhibit 71 for reconsidering the order passed on 13/11/2014. The learned trial Judge without giving reasons observed that there was no substance in the present application. I do not find any merit in the submission. As noted earlier, on 13/11/2014, plaintiff made application Exhibit 70 for issuing summons to i) Mallu Aappana Ghat and ii) Mahavir Aappana Ghat. Perusal of the application Exhibit 70 shows that plaintiff contended that Mallu and Mahavir have requisite information as regards suit property and therefore, he prays for issuing witness summons. By order dated 13/11/2014, the learned trial Judge rejected that application. That order was not challenged by the plaintiff.

4. Mr.Prashant Kulkarni relied upon paragraph 19 of the written statement. In paragraph 19, defendants No. 1 to 3 contended that earlier partition was effected among the sons of Kallu (father of plaintiff), Mallu and Mahvir being the sons of Aappana and to that effect, memorandum of partition was executed. It is further contended that as per earlier partition, parties were to be in possession of their respective shares. Reference was made to decree passed in Regular Civil Suit No. 156 of 2000 as also decision in Appeal No. 164 of 2004. It was thereafter contended that though in the Courts below, it was admitted that earlier partition was effected,

still 7/12 extracts are not as per the actual position. I do not find any merit in the submission. The learned trial Judge while rejecting the application at Exhibit 70 on 13/11/2014 observed that plaintiff has filed affidavit of evidence in lieu of examination in chief on 04/12/2013 and his cross examination was over on 18/06/2014. The matter was adjourned at the instance of plaintiff for leading further evidence. By order below Exhibit 69, last opportunity was given to the plaintiff to lead further evidence subject to costs of Rs.500/-. The plaintiff did not pay costs as also did not keep the witness present. The learned trial Judge, therefore, observed that plaintiff is delaying the proceedings. Though application at Exhibit 66 was filed for issuing witness summons, the names of witnesses were not set out. The learned trial Judge further observed that it is not necessary to issue witness summons and accordingly, rejected the application.

5. The plaintiff thereafter filed present application Exhibit 71 once again applying for issuing witness summons to Mahavir and Mallu. The learned trial Judge held that earlier the application was rejected and therefore, he did not find any substance in the present application. I do not find that the learned trial Judge has committed any error in passing the impugned order. Needless to say that it will be open to the plaintiff to substantiate his case by leading evidence. Hence, no case is made out invocation of powers under Article 227 of

the Constitution of India. Petition fails and the same is dismissed. It is, however, expressly made clear that where a decree is appealed from by the petitioner, any error, defect or irregularity in the impugned order, affecting the decision of the case, may be set forth as a ground of objection in the memorandum of appeal as contemplated by Section 105(1) of C.P.C.

(R. G. KETKAR, J.)