IN THE HIGH COURT OF JHARKHAND, RANCHI

C.M.P. No. 602 of 2024

Shahid Alam, aged about 65 years son of Md. Suleman Resident of Bhadedih, Ward No.3, Jhumri Telaiya Parishad, P.O. Jhumri Telaiya, PS Telaiya, District Koderma. ***..... Petitioner /Defendant***

-- Versus --

1.Arun Kumar Yadav @ Balmiki Yadav aged about 29 years son of Ramchandra Yadav, resident of Ward No.26 Belatanr, Jhumri Telaiya, Nagar Parishad, P.O. Jhumri Telaiya, PS Telaiya, District Kodarma

..... Plainfiff/ Respondent

2.Ramchandra Yadav aged about 57 years son of late Bhikhari Mahto
3.Ashok Yadav, aged about 40 years son of Late Bhikhari Mahto
4.Dewanti Devi aged about 55 years wife of late Bhikhari Mahto
5.Baijanti Devi aged about 50 years daughter of late Bhikhari Mahto
6.Chinta Devi, aged about 38 years daughter of Ramchandra Yadav
7.Anita Devi aged about 33 years daughter of Ramchandra Yadav
8.Rekha Devi aged about 32 years daughter of Ramchandra Yadav
9.Manjit Yadav aged about 22 years daughter of Ramchandra Yadav
10.Suraj Yadav aged about 17 years son of Ashok Yadav
11.Sujit Yadav aged about 15 years son of Ashok Yadav
12.Ajit Yadav aged about 12 years son of Ashok Yadav
13.Amarjit Yadav, aged about 09 years, son of Ashok Yadav

Nos.10 to 13 minor sons of Ashok Yadav, represented through their natural guardian and father Ashok Yadav

All the residents of Village of Belatanr, Ward No.26, Jhumri Telaiya, Nagar Parishad P.O.Jhumri Telaiya, P.S. Telaiya, District Koderma

…….. ***Pro-forma Defendants /Respondents***

CORAM: HON'BLE MR. JUSTICE SANJAY KUMAR DWIVEDI

For the Petitioner(s) :- Mr. Malay Kumar Laik, Sr. Advocate
Mrs Manjushri Patra, Advocate

For the Opposite Parties :-

6/16.01.2025 Heard Mr. Malay Kumar Laik, the learned Senior counsel appearing on behalf of the petitioner.

2. This petition has been filed under Article 227 of the Constitution of India praying therein for quashing of the order dated 03.08.2023 passed in O.S. No.175 of 2022 (O.S. No.47 of 2016) passed by learned Civil Judge (Senior Division)-III, Koderma, whereby the petition filed under Order XIV Rule 2(2) of

the Code of Civil Procedure has been rejected by the learned court.

3. Mr. Malay Kumar Laik, the learned Senior counsel appearing on behalf of the petitioner submits that the petition was filed for deciding the preliminary issue first and the learned court has wrongly rejected the same and in view of that the said order may kindly be set aside.

4. The Court has perused the impugned order dated 03.08.2023 and finds that the three preliminary issues were made i.e., first, Whether the suit is maintainable?; second, Has the plaintiff got locus-standi to institute the suit and claim for grant of relief, as prayed for in the suit?; and the third one is, Is the suit barred by principles of *res-judicata?.*

5. The Original Suit No.47 of 2016 was instituted for adjudication of joint title and possession of the plaintiff and pro-forma defendant nos.2 to 12 over the suit property of schedule "C" and for declaring the Sale Deeds Nos.5187, 5188 and 5189 dated 14.06.1989 as null and void.

6. The learned court by a reasoned order has concluded that the court is required to give finding on all the issues and the nature of preliminary issue itself suggest that it is the main issue and for deciding those issues, the evidences are required to be led by both the sides and to avoid unnecessary delay in deciding of the issues, the learned court has rightly held that all the issues will be decided simultaneously. There is no illegality in the said order.

7. C.M.P. No.602 of 2024 is dismissed.

8. Pending petition if any also stands disposed of accordingly.

(Sanjay Kumar Dwivedi, J.)

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