VERDICTUM.IN

IN THE HIGH COURT OF JHARKHAND AT RANCHI
C.M.P. No. 641 of 2023

Maya Ram, aged about 59 years, son of late Mangal Ram, residents of H. No. 858, P.O. and P.S. Sonari, Town-Jamshedpur, District-East Singhbhum (Jharkhand)

….. Petitioner

Versus

1. Asha Ram, son of late Mangal Ram
2. Umed Ram, son of late Mangal Ram
   Both residents of Shiv Mandir Path, Ram Janam Nagar, Kadma, P.O. and P.S. Kadma, Town Jamshedpur, District-East Singhbhum

…... Opposite Parties

CORAM: HON'BLE MR JUSTICE SANJAY KUMAR DWIVEDI, J.

For the Petitioner : Mr. Vishal Kr. Trivedi, Advocate
Mr. Shresth Gautam, Advocate
Mr. Jai Mohan Mishra, Advocate
Mr. Raj Shekhar Jha, Advocate

For the Opp. Parties :

07/07.01.2025 By order dated 21.10.2024 notice has been issued upon the O.P. Nos. 1 and 2. The notice upon the O.P. Nos. 1 and 2 has been served and the matter was adjourned for 02.12.2024 inspite of that nobody appeared on behalf of the O.P. Nos. 1 and 2 and with a view to provide one more opportunity to the O.P. Nos. 1 and 2 the matter was again adjourned for 06.01.2025 and further for today. Today, also nobody appeared on behalf of the O.P. Nos. 1 and 2 and in view of that this matter is being heard in absence of O.P. Nos. 1 and 2.

2. Heard learned counsel for the petitioner.

3. This petition has been filed under Article 227 of the Constitution of India for quashing of the order dated 14.03.2023 (Annexure-9) passed by the learned Civil Judge (Sr. Division)-I, Jamshedpur in Original Title Partition Suit No. 100 of 2006 whereby learned court has been pleased to allow the application of the respondents-plaintiffs dated 16.05.2014 objecting to the report

VERDICTUM.IN

submitted by the pleader commissioner dated 10.04.2014 and has been further pleased to direct the appointment of fresh pleader commissioner.

4. Learned counsel for the petitioner by way of drawing the attention of the Court to the impugned order submits that the learned court had only noted the arguments of both the sides and thereafter accepted the objection of the plaintiffs/respondents and not accepted the pleader commissioner report and a fresh pleader commissioner has been directed to be appointed. He further submits that the said suit was meant for partition and the plaintiffs and defendant, respondents and petitioner herein are brothers and the suit land in question, detailed in schedule of the plaint was acquired by their father namely, late Mangal Ram from his own independent income and the father of the parties constructed a single storey building over the suit land and remained in peaceful possession of the same before the demise on 05.05.1976 leaving behind three sons. He further submits that in the suit decree has been passed allocating to 1/ 3rd share to each of the brothers. Thereafter pleader commissioner has submitted report and objection was filed by the plaintiffs/respondents. He further submits that in absence of any reason the pleader commissioner report was not accepted and new pleader commissioner has been directed to be appointed which is against the mandate of law. He further submits that unless there is any reason provided by the learned court the petitioner is not having any remedy either to wait for final decree or challenge the same as no reason has been provided and to buttress this argument, he relied in the case of ***"Kranti Associates Private Limited and Another Vs. Masood Ahmed Khan and Others"*** reported in ***(2010) 9 SCC 496***. He relied para 47 of the said judgment which is quoted hereinbelow:

> *" 47. Summarising the above discussion, this Court holds:*
>
> *(a) In India the judicial trend has always been to record reasons, even in administrative decisions, if such decisions affect anyone prejudicially.*
>
> *(b) A quasi-judicial authority must record reasons in support of its conclusions.*
>
> *(c) Insistence on recording of reasons is meant to serve the wider principle of justice that justice-must not only be*

VERDICTUM.IN

done it must also appear to be done as well.

(d) Recording of reasons also operates as a valid restraint on any possible arbitrary exercise of judicial and quasi-judicial or even administrative power.

(e) Reasons reassure that discretion has been exercised by the decision-maker on relevant grounds and by disregarding extraneous considerations.

(f) Reasons have virtually become as indispensable a component of a decision-making process as observing principles of natural justice by judicial, quasi-judicial and even by administrative bodies.

(g) Reasons facilitate the process of judicial review by superior courts.

(h) The ongoing judicial trend in all countries committed to rule of law and constitutional governance is in favour of reasoned decisions based on relevant facts. This is virtually the lifeblood of judicial decision-making justifying the principle that reason is the soul of justice.

(i) Judicial or even quasi-judicial opinions these days can be as different as the judges and authorities who deliver them. All these decisions serve one common purpose which is to demonstrate by reason that the relevant factors have been objectively considered. This is important for sustaining the litigants' faith in the justice delivery system.

(j) Insistence on reason is a requirement for both judicial accountability and transparency.

(k) If a judge or a quasi-judicial authority is not candid enough about his/her decision-making process then it is impossible to know whether the person deciding is faithful to the doctrine of precedent or to principles of incrementalism.

(l) Reasons in support of decisions must be cogent, clear and succinct. A pretence of reasons or "rubber-stamp reasons" is not to be equated with a valid decision-making process.

(m) It cannot be doubted that transparency is the sine qua non of restraint on abuse of judicial powers. Transparency in decision-making not only makes the judges and decision-makers less prone to errors but also makes them subject to broader scrutiny. (See David Shapiro in Defence of Judicial Candor)

(n) Since the requirement to record reasons emanates from the broad doctrine of fairness in decision-making, the said requirement is now virtually a component of human rights and was considered part of Strasbourg Jurisprudence. See Ruiz Torija v. Spain EHRR, at 562 para 29 and Anya v. University of Oxford, wherein the Court referred to Article 6 of the European Convention of Human Rights which requires,

"adequate and intelligent reasons must be given for judicial decisions".

(o) In all common law jurisdictions judgments play a vital role in setting up precedents for the future. Therefore, for development of law, requirement of giving reasons for the decision is of the essence and is virtually a part of "due process".

5. Relying on the above judgment, learned counsel for the petitioner submits that even a quasi-judicial authority is required to

VERDICTUM.IN

give reasons for passing any order. He submits in that view of the matter the impugned order may kindly be set aside and the matter be remanded back to the learned court to decide afresh.

6. It is an admitted position that the petitioner/defendant and respondents/plaintiffs are full brothers. The suit was for partition which was decreed in favour of all the brothers and share of 1/3rd each was allocated. The pleader commissioner has submitted report pursuant to that plaintiffs/respondents have filed objection. The arguments of both sides have been noted in the impugned order however in one line the learned court has not accepted the said report by saying that plaintiffs have serious objection with regard to share allocated to him. The reasons have not been disclosed in not accepting the same.

7. The practice of appointing a second Commissioner without formally recording objections to the first Commissioner's report without considering whether the first Commissioner's report should be superseded, or not is a practice which cannot be too strongly condemned. Reasons for superseding the first Commissioner's report must be recorded in writing by the Court. A second commission should not be issued to deal with one and the same subject unless it is thought that the report of the first Commissioner is not satisfactory in which case the earlier commission should be wiped out altogether and attention should be paid only to what is reported by the second Commissioner. Instead of that if the Judge balances the report of one Commissioner against that of the other and expresses a preference for the view of the first Commissioner, he acts with great impropriety and contrary to what is contemplated by Order 26, Rule 10(3) of C.P.C.

8. The order appointing a second Commissioner, without assigning any reasons why the report of the previous Commissioner is ignored, is not only contrary to the provisions of Order 26, Rule 10(3) but is to be condemned. A reference may be made to the case of ***"K.S. Ramchar V. K.S. Krishnachar" reported in AIR 1949 Madras 612***.

9. Further reference may be made to the case of

VERDICTUM.IN

" Kandaswamy V. K.C. Ramaswami" reported in 1988 (2) Madras LW 440 wherein it has been held that:-

> *"There is There is no provision of law which would enable a Court to appoint a second Commissioner with the consent of the previous Commissioner, A Presiding Officer of the Court cannot function by relying upon the commonsense aspect as known of him, but has to function relying corners of the Code of Civil Procedure, to Merely because certain objections have been filed, it would not result in a second Commissioner being appointed, on that day itself. It is obligatory on the part of the Court to give convincing reasons as to why the previous report filed cannot be acted upon."*

10. Further reference may be made to the case of ***"Ummer v. Muhammed"*** reported in ***1983 Ker LT 258 (AIR 1984 NOC 197),*** wherein it has been held that:-

> *"The Court can issue a second commission only under O. 15, R. 10(3) of the Code. As per the above provision, the Court should, for any reason, be dissatisfied with the proceedings of the Commissioner already deputed. The dissatisfaction can be before the submission of the report or after that No question of setting aside the report arises if the Court was dissatisfied about the work of the Commissioner and issued a second commission before he submitted the report. Proceedings of the Commissioner cannot but include the report of the Commissioner if a report has been submitted. If the Court is dissatisfied about what the Commissioner did, can the report be salvaged simply because the report is not specifically made mention of in R. 10(3). Not only that, the Court gets jurisdiction to issue a second commission only if the Court for any reason is dissatisfied with the work of the first Commissioner. In this case, not only that the Court did not express any dissatisfaction about the work of the first Commissioner."*

11. In the case in hand the learned court has only noted the arguments of both the sides and have come to the conclusion that plaintiffs have serious objection and he has not accepted the report which is against the mandate of law that too in absence of any cogent reason for not accepting the pleader commissioner's report.

12. The Court finds that the learned court has not accepted the pleader commissioner's report however the said report was not set aside by the learned court and second pleader commissioner has been directed to be appointed. Reference may be made to the Division Bench judgment of the Kerala High Court in the case of ***"Swami Premananda Bharathi V. Swami Yogananda***

VERDICTUM.IN

Bharathi" reported in AIR 1985 Kerala 83 wherein it has been held that the issuance of a second commission without passing order under Order 26, Rule 10(3) C.P.C. is a vital or flagrant violation of law and that the same amounts to a jurisdictional error. The relevant portion of the judgement reads as thus (at page 89):-

> *"Appointment of second Commissioner, without setting aside previous Commissioner's report and proceedings, being Illegal or otherwise beset with a Jurisdictional error, S. 99 of C.P.C. can be of no avail. In this context, it is to be remembered that the word "Jurisdiction" has acquired a wide meaning in recent times. The word "Jurisdiction" is a "verbal cast of many colours", and the dividing line between lack of jurisdiction or power and erroneous exercise of it, is very thin, but nonetheless the distinction between the two has not been completely wiped out and in the final analysis, the concept of jurisdiction for the purpose of judicial review, has been one of public policy. It appears that, if the error of law, committed by the Court or Tribunal is "vital" or a "flagrant one", it is considered to be a jurisdictional error....."*

13. In that case the Bench further held that a restricted compliance of Order. 26 Rule 12, C.P.C. is necessary on the ground of public policy. The relevant portion of the judgment reads thus:-

> *"Appointment of second Commissioner and the reports filed by him without setting aside first Commissioner's report, is wholly illegal and without jurisdiction. In such case reliance on second Commissioner's report for deciding case will be unauthorized and without jurisdiction. Only if the Court has reason to be dissatisfied with the proceedings and report of the first Commissioner for reasons stated, it can appoint a second commissioner for further inquiry. This is condition precedent. The provision contained in Order 26, Rule 12, is vital. Strict adherence alone will facilitate speedier, effective and cheaper administration of justice. The rule is enacted on around of public policy."*

14. In view of above discussions, it is well settled that the Court can issue a second commission only under Order 26 Rule 10(3) C.P.C. As per the said provision the Court should, for any reason, be dissatisfied with the proceedings of the Commissioner already deputed. The dissatisfaction can be before the submission of the report or after that no question of setting aside the report arises if the Court was dissatisfied about the work of the Commissioner and issue a second commission before he submitted the report. But if the second commission is to be issued after the commission already deputed submitted his report, that cannot be

VERDICTUM.IN

without setting aside the report.

15. In view of above facts, reasons and analysis the impugned order dated 14.03.2023 passed by the learned Civil Judge (Sr. Division)-I, Jamshedpur in Original Title Partition Suit No. 100 of 2006, is set aside. The said petition is restored to the file of learned court and the learned court will proceed afresh by giving opportunities to both sides in accordance with law and will decide the said petition.

16. This petition is allowed and disposed of. Pending I.A. if any, stands disposed of.

(Sanjay Kumar Dwivedi, J)

Satyarthi/A.F.R.