
(1985) 11 OHC CK 0014
In the Orissa High Court
Case No : Civil Revision No. 169 of 1984

Abdul Khalique

APPELLANT

Vs

Smt. Yasmin Sultana

RESPONDENT

Date of Decision : 28-11-1985

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 1, Order 33 Rule 5

Citation : AIR 1986 Ori 189

Hon'ble Judges : K.P. Mohapatra, J

Bench : Single Bench

Advocate : Y.S.N. Murty, for the Appellant; C.V. Murty, for the Respondent

Final Decision : Dismissed

Judgement

K.P. Mohapatra, J.—This revision is directed against the order passed by the learned Additional Subordinate Judge, Balasore permitting the opposite party to sue as an indigent person.

2. Indisputedly the opposite party is the legally married wife of the petitioner. Both of them lived in the house of the latter when there seems to have been some discord between them. According to the allegations made by the opposite party, when she was pregnant the petitioner took her out on the plea that it was necessary to get her examined by a doctor, but as a matter of fact left her in the home of her parents. Thereafter, despite requests he is not taking her back to the matrimonial home. She, therefore, intended to institute a suit for dissolution of marriage, for recovery of dower debt amounting to Rs. 950/- and for recovery of articles described in Schedule "A" of the plaint valued at Rs. 11,391.75. She had, however, no means to pay court-fee worth Rs. 1176.75 on the plaint and so she filed a petition under Order 33, Rule 1 of the CPC ("Code" for short) to sue as an indigent person.

3. The petitioner in his objection stated that the opposite party had gold and silver ornaments valued at Rs. 14,950/-. When she departed from his house she

took all the ornaments with her. Therefore, she had sufficient means to pay "court-fee on the suit.

4. The learned Additional Subordinate Judge on hearing both parties came to hold that the opposite party was able to establish that she was an indigent person. Accordingly he allowed her to sue as such.

5. Mr. Y.S.N. Murty, appearing for the petitioner urged that the opposite party did not satisfy the conditions laid down in Clauses (b) and (d) of Rule 5 of Order 33 of the Code and so the petition of the opposite party to sue as an indigent person is liable to be rejected. Mr. C.V. Murty, appearing for the opposite party, on the other hand, contended that there is sufficient evidence on record to prove that the opposite party is an indigent person in terms of Rule 1 of Order 33 of the Code and the allegations made in the petition, which includes the plaint, discloses a cause of action. Therefore, the conditions laid down in Clauses (b) and (d) of Rule 5, Order 33 of the Code have been duly satisfied. It is necessary to examine the contentions.

6. The opposite party examined herself and stated in court that when she was pregnant, the petitioner left her in the home of her parents. She had not brought her ornaments with her. The petitioner examined himself and two other witnesses to show that the opposite party had left her matrimonial home with all the gold and silver ornaments. Indisputedly, there was discord between the parties. The opposite party was pregnant and as a matter of fact, she was delivered of a child on the very night she was left at her parents' home. In such circumstances there is nothing to disbelieve her evidence to the effect that she was made to leave her matrimonial home in a state of advanced pregnancy without her gold and silver ornaments. It would be absurd to accept a theory that a woman quick with child would think of wearing gold and silver ornaments or while expecting to deliver of a child will carry them with her. In view of the evidence on record, I am in agreement with the finding recorded by the learned Additional Subordinate Judge that the opposite party proved that she is an indigent person.

7. Mr. Y.S.N. Murty urged that the learned court below did not record a positive finding after due enquiry that the opposite party has a cause of action. In the absence of such a finding, according to him, the petition under Order 1, Rule 33 of the Code is liable to be rejected. From the impugned order, it does not appear that any such contention was raised before the learned court below. On the other hand, it seems to have been assumed that the allegations made by the opposite party revealed a cause of action and on the basis of such assumption the case was disposed of. Moreover, at the stage of making an enquiry of this nature, it was not open to the learned Additional Subordinate Judge to embark upon a full-fledged enquiry amounting to a regular trial as to whether the allegations made by the opposite party revealed a cause of action or not. In this connection I would usefully quote the following from Vijay Pratap Singh Vs. Dukh Haran Nath Singh and Another, : --

"By the express terms of Rule 5, Clause (d), the court is concerned to ascertain whether the allegations made in the petition show a case of action. The court has not to see whether the claim made by the petitioner is likely to succeed : it has merely to satisfy itself that the allegations made in the petition, if accepted as true, would entitle the petitioner to the relief he claims. If accepting those allegations as true no case is made out for granting relief no cause of action would be shown and the petition must be rejected. But in ascertaining whether the petition shows a cause of action the court does not enter upon a trial of the issues affecting the merits of the claim made by the petitioner. It cannot take into consideration the defence which the defendant may raise upon the merits; nor is the court competent to make an elaborate enquiry into doubtful or complicated questions of law or fact. If the allegations in the petition, prima facie, show a cause of action, the court cannot embark upon an enquiry whether the allegations are true in fact, or whether the petitioner will succeed in the claims made by him. By the Statute, the jurisdiction of the Court is restricted to ascertaining whether on the allegations a cause of action is shown : the jurisdiction does not extend to trial of issues which must fairly be left for decision at the hearing of the suit."

Also see Gobardhan Das Babaji Vs. Raghunandan Das Babaji and Others, and AIR 1979 Mad 10 Rejendran v. Rajambal Animal. The allegations of the opposite party are that the petitioner took her out on the plea of consulting a doctor on account of her pregnancy, but without going to a doctor, he left her in the home of her parents. Subsequently, he declined to take her back despite requests. The parties are governed by Mahomedan law. These averments prima facie reveal a cause of action. In such circumstances, it cannot be ruled that the opposite party has no cause of action.

8. Before parting with the case, I would like to point out that the matter is pending in the court of the Additional Subordinate Judge, Balasore since 1981. The parties are young and there is possibility of a reconciliation. The learned Additional Subordinate Judge shall make sincere efforts to bring about a reconciliation between the parties. If for any reason, the effort of reconciliation would fail, the suit shall be disposed of by the end of March, 1986 positively.

9. For the reasons stated above, the Civil Revision is dismissed. Hearing fee is assessed at Rs. 50/-.