
(1998) 12 OHC CK 0008
In the Orissa High Court
Case No : Civil Revision No. 160 of 1997

Adhikari Naik

APPELLANT

Vs

Sadhu Charan Biswal and Others

RESPONDENT

Date of Decision : 10-12-1998

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8, Order 1 Rule 8(2), Order 1 Rule 8(3), Order 1 Rule 8(4), Order 1 Rule 8(5)

Citation : (1999) 1 OLR 263

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

Bench : Single Bench

Advocate : B. Pujari, I. Parida and A.K. Jena, for the Appellant; B.H. Mohanty, D.P. Mohanty, R.K. Nayak, J.K. Bastia and B. Das, for the Respondent

Final Decision : Allowed

Judgement

P.K. Misra, J.—The present opposite party No. 7 had filed T.S. No. 185 of 1996 in the Court of the Civil Judge (Sr. Dvn.), Bhubaneswar, under Order 1, Rule 8, of the CPC (hereinafter referred to as the "C.P.C") for and on behalf of Sabara Community of village Gadakana for declaration of their communal right over the disputed land and for injunction prohibiting the State Government from paying any compensation to defendant No. 1 (present opposite party No. 1). Opposite party No. 7 had also filed an application under Order 39, Rules 1 and 3, C.P.C, which had been numbered as Misc. Case No. 196 of 1996 for restraining the present opposite party No. 1 from receiving compensation amount in Land Acquisition Case No. 164 of 1987. On 6.5.1997 the present opposite party No. 7 filed a memo stating that he did not want to proceed with the case. On 7.5.1997 the present petitioner filed an application purporting to be under Order 1, Rule 8(5), C.P.C., to substitute himself in place of the original plaintiff (present opposite party No. 7) in the suit as well as in the Misc. Case under Order 39, Rules 1 and 2, C.P.C., seeking permission to proceed with the case. The Civil Judge dealt with the application under Order 39, Rules 1 and 2, C.P.C., and the application of the present petitioner by a common order and rejected both the

petitions. The present Civil Revision is directed against the part of the order rejecting the application of the present petitioner under Order 1, Rule 8(5), C.P.C.

2. Order 1, Rule 8, C.P.C. provides institution of suit commonly known as suit in representative capacity. Order 1, Rule 8(1), C.P.C. envisages that where there are numerous persons having the same interest in one suit, one or more of such persons may sue on behalf of all persons so interested. Sub-rule (3) of Rule 8 of Order 1, C.P.C, envisages that any person on whose behalf, or for whose benefit, a suit is instituted may apply to the Court to be made a party to such suit. Sub-rule (4) of Rule 8, Order 1, C.P.C. envisages that no part of the claim in any such suit shall be condoned and no such suit shall be withdrawn and no compromise shall be recorded unless appropriate notice is given at the expense of the plaintiff to all persons so interested. Order 1, Rule 8(5), C.P.C, which is relevant for the present Civil Revision provides :

"8. One person any sue or defend on behalf of all in same interest -

xx xx xx xx (5) Where any person suing or defending in any such suit does not proceed with due diligence in the suit or defence, the Court may substitute in his place any other person having the same interest in the suit."

Sub-rule (6) of Rule 8 of Order 1, C.P.C, envisages that a decree passed in such a representative suit is binding on all persons for whose benefit, the suit is instituted. The provisions contained in Order 1, Rule 8, C.P.C, leave no room for doubt that the person files such a suit on behalf of others does not do so in his individual capacity but does so in a representative capacity. The provisions are intended to benefit the numerous persons having the same interest in the suit and safeguards are provided to see that the person suing or defending on behalf of numerous persons does not prejudicially affect the rights of such numerous persons by his negligent action or lack of diligence.

3. The trial Court has rejected the application of the present petitioner . by relying upon certain decisions relating to applicability of Order 1, Rule 10, C.P.C, relating to implemen of new parties in matters arising out offend acquisition references u/s 18 or 30 of the Land Acquisition Act. While considering the application under Order 1, Rule 8(5), C.P.C., the Court is not required to find out about the merit of the suit itself. In the present case, there is no doubt that the suit had been brought by present opposite party No. 7 in representative capacity for and on behalf of the members of the Sabar community of the village. He himself had filed a memo not to proceed with the suit. In view of the provisions contained in Order 1, Rule 8(4), C.P.C., no part of the claim in any suit shall be abandoned without giving notice at the expense of the plaintiff to all persons interested in the matter. Such notice is envisaged under Sub- rule (4), evidently with a view to permit other persons having same interest to continue the suit. Sub-rule (5) envisages a situation where the question of abandonment of the suit or compromise of the suit may not be there and yet the persons on whose behalf the suit has been filed are likely to be prejudiced due to lack of diligence on the

part of the person representing them in the suit. If the Court is satisfied that the person suing or defending the suit is not proceeding with due diligence, direction is given to the Court to substitute any other person in place of the original plaintiff.

In the facts of the present case, there is no doubt that the original plaintiff (present opposite party No. 7) did not want to pursue the suit and wanted to abandon the suit. As such, before taking any other action it was the duty of the Court to issue notice in accordance with Sub-rule (4) and as that stage any person having common interest could have come forward to proceed with the suit. In the present case, the present petitioner came forward to proceed with the suit even before such notice as contemplated under Sub-rule (4) had been issued but that does not take away from the jurisdiction of the Court to consider such application. In fact, keeping in view the intention of the provisions contained in Sub-rules (4) and (5), it can be said that it was the duty of the Court to see that the persons on whose behalf the suit had been filed, were not to be prejudiced on account of the action of the original plaintiff. There cannot be any doubt that the original plaintiff did not show due diligence in pursuing the suit and, as such, the application of the present petitioner should have been allowed.

4. For the aforesaid reasons, the Civil Revision is allowed and the present petitioner is permitted to substitute himself as plaintiff in representative capacity in place of original plaintiff (present opposite party No. 7).

It is made clear that the suit itself should be disposed of on its own merit in accordance with law without being prejudiced by any observations made by the Civil Judge in the impugned order or any observations made in the present Civil Revision. The fact that the Civil Revision has been allowed and the petitioner is substituted as plaintiff, should not be considered as expressing any opinion on the merit of the case. There will be no order as to costs.