

(2015) 08 OHC CK 0010
In the Orissa High Court
Case No : TRP (C) No. 92 of 2013

Alaka and Others

APPELLANT

Vs

Bishnupriya Mohapatra and Others

RESPONDENT

Date of Decision : 12-08-2015

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 24

Citation : (2015) 2 ILR Ori 764

Hon'ble Judges : Akshaya Kumar Rath, J.

Bench : Single Bench

Advocate : Gautam Mishra, for the Appellant; Amit Prasad Bose, for the Respondent

Final Decision : Allowed

Judgement

Dr. Akshaya Kumar Rath, J.—This is an application under Section 24 of the Civil Procedure Code for transfer of Civil Suit No. 359 of 2009-I instituted in the court of learned Civil Judge (Senior Division), Balasore to the court of learned Civil Judge (Senior Division), Bhadrak and to try the same analogously with Civil Suit No. 48 of 2005. The petitioner No. 1 and opposite party No. 1 claim to be the wives of late Madhabananda Mohapatra. The petitioner No. 1 and her son laid a suit in the court of learned Civil Judge (Senior Division), Bhadrak for declaration that the plaintiffs and the defendant No. 3 are only the legal heirs and successors of deceased Madhabananda Mohapatra and the defendant Nos. 1 and 2 (opposite parties 1 and 2) are not the legal heirs and successors of late Madhabananda Mohapatra, which is registered as Civil Suit No. 48 of 2005. Opposite parties 1 and 2 as plaintiffs instituted another Civil Suit No. 359 of 2009-I in the court of learned Civil Judge (Senior Division), Balasore for declaration that they are entitled to receive the matured LIC amount of the deceased being the nominee; with further prayer to restrain defendant Nos. 1 and 2 (petitioners) from creating any obstruction for disbursement of the schedule amount. In both the suits, parties are common and issues are almost identical. The main issue in both the

suits is whether plaintiffs in Civil Suit No. 48 of 2005 or the plaintiffs in Civil Suit No. 359 of 2009-I are the legal heirs and successors of late Madhabananda Mohapatra.

2. Heard Mr. Gautam Mishra, learned counsel for the petitioners and Mr. Amit Prasad Bose, learned counsel for the opposite parties 1 and 2.

3. Mr. Mishra, learned counsel for the petitioners, submitted that in both the suits, parties are common and issues are almost identical. Further, petitioner No. 1 who is the plaintiff No. 1 in Civil Suit No. 48 of 2005 is a deaf and dumb woman. It will be very difficult on her part to attend the court at Balasore. He further submitted that most of the witnesses are staying closure to Bhadrak. In view of the same, Civil Suit No. 359 of 2009-I pending before the learned Civil Judge (Senior Division), Balasore may be transferred to the court of learned Civil Judge (Senior Division), Bhadrak.

4. Per contra Mr. Bose, learned counsel for the opposite parties 1 and 2, submitted that it will be inconvenient on the part of the opposite party No. 1 to attend the court at Bhadrak. He further submitted that both the suits should be transferred to a middle place so that both the suits can be heard analogously.

5. Both the petitioner No. 1 and opposite party No. 1 claim to be the wives of late Madhabananda Mohapatra in both the suits. Parties are common and issues are almost identical. When such a situation arises, the court has to consider the balance of convenience, having regard to all the circumstances of the two suits. Thus in the interest of justice the aforesaid two suits be tried analogously at one place in order to avoid conflict of decisions.

6. Admittedly petitioner No. 1 is a deaf and dumb woman. It will be difficult on her part to attend the Court at Balasore. The distance between two places is near about 68 K.M. The opposite parties 1 and 2 may not face any difficulty to attend the court at Bhadrak. In view of the analysis made in the above paragraphs, this Court is of the opinion that ends of justice will be better served if Civil Suit No. 359 of 2009-I pending in the court of learned Civil Judge (Senior Division), Balasore is transferred to the court of learned Civil Judge (Senior Division), Bhadrak. Learned Civil Judge (Senior Division), Balasore is directed to transmit the entire record of Civil Suit No. 359 of 2009-I to the court of learned Civil Judge (Senior Division), Bhadrak, who after receipt of the records from the court of learned Civil Judge (Senior Division), Balasore shall try both the suits analogously and conclude the hearing within a period of six months thereafter. The transfer petition is allowed.