
(2019) 04 OHC CK 0026
In the Orissa High Court
Case No : C.M.P.No.219 Of 2019

Ananta Rout

APPELLANT

Vs

Kanduri Charan Rout And Others

RESPONDENT

Date of Decision : 19-04-2019

Acts Referred:

Constitution Of India, 1950 — Article 226, 227

Hindu Marriage Act, 1955 — Section 16(3)

Code Of Civil Procedure, 1908 — Order 1 Rule 10, Order 1 Rule 10(2)

Citation : (2019) 04 OHC CK 0026

Hon'ble Judges : Dr. A. K. Rath, J

Bench : Single Bench

Advocate : D.P.Mohanty, S.K.Mishra

Final Decision : Dismissed

Judgement

Dr.A.K.Rath, J

1. By this petition under Article 227 of the Constitution of India, challenge is made to the order dated 25.1.2019 passed by the learned Civil Judge

(Sr.Division), Balasore in C.S.No.993 of 2017, whereby and whereunder, learned trial court rejected the application of the petitioner under Order 1

Rule 10 CPC for impleadment.

2. This case has a chequered history. The petitioner as plaintiff instituted O.S.No.1 of 1968 in the court of the learned Subordinate Judge, Balasore for

partition for carving out his share claiming to be the son of Bipra. According to him, Netra, Saturi, Bikram and Mathuri were the four sons of Ainthu

Rout. Netra died leaving behind his widow Chanda. Bipra left behind him. The contesting defendants took a plea that he was the illegitimate son of

Chanda, the widow of Netra. Learned trial court decreed the suit. Learned

appellate court reversed the same holding that the plaintiff had not been able to establish his case, namely, that he was the son of Bipra. He filed Second Appeal No.209 of 1978 before this Court. By judgment dated

7.3.1986, this Court assigned the following reasons and dismissed the appeal.

“One significant fact that has come to my notice is that though in the plaint the plaintiff claimed that he was the son of Bipra, he did not allege that after the death

of Netra, Bipra married the widow Chanda Bewa and he (the plaintiff) was born out of that wed-lock. He examined himself as P.W.1 and stated that Ania was the wife

of Bipra and she was his mother. In paragraph 10 of his deposition, he stated that Chanda had a daughter, who was dead, and had left behind no other issue and she

had no son. In view of the said categorical statement of the plaintiff, reliance placed on the documents is misconceived. A totally different story is unfurled by Ext.5,

etc.; it is not the case of the plaintiff. Therefore, the plaintiff is not consistent about his case. The lower appellate Court has rightly disbelieved his plea that he was

the son of Bipra. Accordingly, I see no merit in this Second Appeal which is dismissed. But, in the circumstances, there would be no order as to costs.”

3. While matter stood thus, the plaintiff-opposite party no.1 instituted C.S.No.1544 of 2013 in the court of the learned Civil Judge (Sr.Division),

Balasore for declaration of title and permanent injunction. It was pleaded that the suit property was the ancestral property of the plaintiff and

defendants no.2 to 7. In the provincial settlement of the year 1898, schedule “A” property was recorded jointly in the names of Sanei, Sadei,

Jagannath, Bholi and Ainthu alias Sapani. Bholi died issueless. Sadei died leaving behind his four sons namely, Radhu, Nidhi, Madha and Markanda.

Sanei died leaving behind his only son namely Gendu alias Kinei alias Kinu. In the revisional settlement of the year 1908, schedule “A” property

was recorded jointly in the names of Kinu alias Gendu son of Sanei, Radhu, Nidhi, Madha and Markanda son of Sadei, Jagannath son of Pandav and

Ainthu. Jagannath died issueless. There was amicable family partition between the recorded tenants in respect of khata no.8 of schedule “A”

property. In the partition, schedule “A” property along with some other

properties were allotted to the share of Ainthu. The same was recorded in the name of Ainthu in the C.S. R.O.R. of the year 1922-1923. While matter stood thus, Ainthu died leaving behind his four sons, namely, Netra, Saturi, Bipra and Mathuri. They succeeded to the properties of Ainthu. There was a mutual partition between them. In the said partition, schedule â??Aâ?? land along with some other properties were allotted to Mathuri. Mathuri used to pay rent. Netra and Saturi died issueless. Bipra died leaving behind his only daughter namely, Gouri Pradhan, defendant no.3. Mathuri died in the year 1970 leaving behind his four sons and two daughters, namely, Kanduri, Surendra, Rabindra, Gajendra, Jasoda alias Pradhan and Parbati alias Das. In the mutual partition, schedule â??Aâ?? land along with some other properties fell to the share of the plaintiff. Schedule â??Aâ?? property is the part and parcel of the homestead land of the plaintiff. In the Major Settlement as well as Raghupati Settlement, the said land had been wrongly recorded in the name of the State Government.

4. The petitioner filed an application under Order 1 Rule 10 CPC for impleadment stating therein that he is the son of Netra. To substantiate the case, he filed the voter ID Card, Aadhar Card and ID Card of Chandramani Bewa. The plaintiff filed objection stating that the matter has attained finality in the Second Appeal No.209 of 1978. The intervenor is not the son of Netra. The branch of Netra has extinct. He is an imposter.

5. Learned trial court dismissed the petition holding inter alia that from the observation made by this Court in S.A.No.209 of 1978, it is evident that the intervenor had admitted during his evidence in O.S.No.1 of 1968 that Ania was the wife of Bipra. She was his mother. In the said suit, he claimed that Chanda is his mother. Chanda had a daughter, who is dead. She had no son. He further admitted that he was the son of Ania and Bipra. Chanda had no son. But then he claims to be the son of Chanda and Netra, which is contradictory to the plea of admission.

6. Heard Mr.D.P.Mohanty, learned Advocate for the petitioner and Mr.S.K.Mishra, learned Advocate for opposite party no.1.

7. Mr.Mohanty, learned counsel for the petitioner submitted that Netra, Saturi, Bikram and Mathuri were the sons of Ainthu. Petitioner is the illegitimate son of Chanda through Bipra. He has a share in the suit schedule property. He is a necessary party to the suit. The petitioner has

described himself to be the son of Netra and sought for impleadment. This is obviously a mistake. The mistake occurs either out of confusion or

misreading the judgment passed in the earlier suit. Learned trial court fell into a patent error in law in not allowing the application for impleadment. He

places reliance on the judgment of the apex Court in the case of Revanasiddappa and another v. Mallikarjun and others, (2011) 11 SCC 1.

8. Per contra, Mr. Mishra, learned counsel for opposite party no.1 submits that the matter has been set at rest in the Second Appeal No.209 of 1978.

The petitioner has taken prevaricating stand. He is neither a necessary nor proper party to the suit.

9. The distinction between a necessary party and a proper party is well known. In Mumbai International Airport Private Limited v. Regency

Convention Centre and Hotels Private Limited and others, AIR 2010 SC 3109, the apex Court held:

“8. The general rule in regard to impleadment of parties is that the plaintiff in a suit, being dominus litis, may choose the persons against whom he wishes to litigate

and cannot be compelled to sue a person against whom he does not seek any relief. Consequently, a person who is not a party has no right to be impleaded against

the wishes of the plaintiff. But this general rule is subject to the provisions of Order I Rule 10(2) of Code of Civil Procedure ('Code' for short), which provides for

impleadment of proper or necessary parties.”

(2). The said provision makes it clear that a court may, at any stage of the proceedings (including suits for specific performance), either upon or even

without any application, and on such terms as may appear to it to be just, direct that any of the following persons may be added as a party: (a) any person who ought

to have been joined as plaintiff or defendant, but not added; or (b) any person whose presence before the court may be necessary in order to enable the court to effectively and completely adjudicate upon and settle the question involved in the suit. In short, the court is given the discretion to add as a party, any person who is

found to be a necessary party or proper party. A 'necessary party' is a person who ought to have been joined as a party and in whose absence no effective

could be passed at all by the Court. If a 'necessary party' is not impleaded, the suit itself is liable to be dismissed. A 'proper party' is a party who, though not a necessary party, is a person whose presence would enable the court to completely, effectively and adequately adjudicate upon all matters in disputes in the suit,

[illegible]

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12. Let us consider the scope and ambit of Order I of Rule 10(2), CPC regarding striking out or adding parties. The said sub-rule is not about the right of a non-party

to be impleaded as a party, but about the judicial discretion of the court to strike out or add parties at any stage of a proceeding. The discretion under the sub-rule can be exercised either suo motu or on the application of the plaintiff or the defendant, or on an application of a person who is not a party to the suit. The court can

strike out any party who is improperly joined. The court can add anyone as a plaintiff or as a defendant if it finds that he is a necessary party or proper party. Such

deletion or addition can be without any conditions or subject to such terms as the court deems fit to impose. In exercising its judicial discretion under Order 1 Rule

10(2) of the Code, the court will of course act according to reason and fair play and not according to whims and capriceâ?|â?|â?|â?|â?|â?|..

[illegible][illegible]

10. In *Razia Begum v. Sahebzadi Anwar Begum and others*, AIR 1958 SC 886, the apex Court held that it is firmly established as a result of judicial

decisions that in order that a person may be added as a party to a suit, he should have a direct interest in the subject matter of the litigation whether it raises questions relating to moveable or immoveable property.

11. Reverting to the facts of this case and keeping in view of the law laid down by the apex Court in the decisions cited (supra), the instant case may

be examined. The admitted fact of the case is that Netra, Saturi, Bipra and Mathuri were the four sons of Ainthu. Netra died leaving behind his widow

Chanda. The petitioner claiming to be the son of Bipra instituted O.S.No.1 of 1968 before the Subordinate Judge, Balasore for partition. The

contesting defendants took the plea that plaintiff is the illegitimate son of Chanda, the widow of Netra. The suit was decreed. Learned appellate court

reversed the decree. The matter travelled to this Court in Second Appeal No.209 of 1978. This Court dismissed the second appeal holding that though

in the plaint the plaintiff claimed that he was the son of Bipra, he did not allege that after the death of Netra, Bipra married the widow Chanda and he

was born out of that wedlock. He was examined as P.W.1. He stated that Ania was the wife of Bipra. She was his mother. Chanda had a daughter,

who is dead and left behind no other issue. She had no son. It was further held that the plaintiff is not consistent about his case. He was not the son of

Bipra. The matter has attained finality. The petitioner has filed the application under Order 1 Rule 10 CPC stating that he is the son of Netra. After

having unsuccessful in the earlier suit, the petitioner cannot again reagitate the same issue by way of an application under Order 1 Rule 10 CPC. The

petitioner is a neither necessary nor proper party to the lis.

12. The intervenor has taken prevaricating stand. In the application for impleadment he described as the son of Netra. He filed the voter I.D. Card

and Aadhar Card to substantiate the claim that he is the son of Netra.

13. In Revanasiddappa, the question which cropped up in the facts of the case is whether illegitimate children are entitled to a share in the

coparcenary property or whether their share is limited only to the self-acquired property of their parents under Section 16(3) of the Hindu Marriage

Act ? Since there are divergent views, the matter has been referred to the Larger Bench. The decision in the case of Revanasiddappa is

distinguishable on facts.

14. At this juncture, Mr.Mohanty, learned counsel for the petitioner submits that

liberty may be granted to the petitioner to file a better application. The Court cannot allow a party to re-agitate the claim again and again. The same would be an abuse of process of Court. Thus, no liberty can be granted to the petitioner to re-agitate the claim.

15. In view of the foregoing discussions, the petition is dismissed. No costs.

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