
(2017) 02 OHC CK 0029
In the Orissa High Court
Case No : CMP No. 1273 of 2015

Artatrana Behera

APPELLANT

Vs

Purna Behera

RESPONDENT

Date of Decision : 03-02-2017

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 1 Rule 8
Constitution of India, 1950 — Article 227

Citation : (2017) 172 AIC 809 : (2017) 1 OJR 371

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

Bench : Single Bench

Advocate : Mr. A.P. Bose, Advocate, for the Petitioners; Miss. Pratyusha Naidu, Advocate, for the Opposite Parties

Final Decision : Allowed

Judgement

Dr. A.K. Rath, J.—By this application under Article 227 of the Constitution, challenge is made to the order dated 21.8.2015 passed by the learned Civil Judge (Junior Division), Puri in T.S No.88 of 2000, whereby and where under the learned trial court directed the plaintiffs to file draft notice under Order 1, Rule 8 CPC in correct format so as to make paper publication.

2. The petitioners as plaintiffs instituted T.S No.88 of 2000 in the court of the learned Civil Judge (Junior Division), Puri seeking following reliefs;

"(a) let a decree be passed declaring the communal land of the plaintiffs villagers and their right of pasturing the land be confirmed and let it further be declared that the so-called order passed in W.L. Case No.83/93 is illegal invalid, fraudulent, collusive and acts of without jurisdiction which is not binding against the plaintiffs villagers in the suit property.

(b) Let a decree of permanent injunction be passed prohibiting the defendants from making the permanent construction or changing the nature and character in any manner.

xxx xxx xxx"

The plaintiffs filed an application under Order 1, Rule 8 CPC for publication of the notice. In the draft notice, the defendant no.1 has been described as Purna Behera son of Ganesh Behera. The same has been approved by the court. Accordingly, notice was published in the daily "Sambad" on 5.7.2015. Pursuant to the publication of notice, forty three persons entered appearance and filed a petition to be impleaded as defendants. The defendants 1 and 2 have also filed written statement. While the matter stood thus, defendants filed an objection stating therein that the name of the father of defendant no.1 has been wrongly described in the notice and, as such, the notice is defective one. It is stated that defendant no.1 is the son of Banchha Behera but in the notice, his father's name has been wrongly mentioned as Ganesh Behera. Learned trial court came to hold that the plaintiffs have mentioned the name of defendant no.1 Purna Behera as son of Ganesh Behera though in the plaint he has been described as Purna Behera son of Banchha Behera. The defect has not been pointed out by the office while preparing the draft notice. The defect in the description of the defendant hits the root of the matter with regard to identity of the party. The notice is defective. Accordingly, the plaintiffs have been directed to file draft notice under Order 1, Rule 8 CPC in correct format.

3. Heard Mr.A.P. Bose, learned counsel for the petitioners and Miss. Pratyusha Naidu, learned counsel for the opposite parties 3 and 4.

4. Mr. Bose, learned counsel for the petitioners, submitted that the plaintiffs have instituted the suit in a representative capacity. The draft notice was duly approved and the same was published. Pursuant to the same, forty three persons have entered appearance and filed an application for impleadment. Defendants 1 and 2 have also filed a written statement in the meanwhile. In view of the same, learned trial court has committed illegality in directing the plaintiffs to file a draft notice so as to publish the same in the daily newspaper.

5. Per contra, Miss. Naidu, learned counsel for the opposite parties 3 and 4, submitted that the draft notice was defective one. Purna Behera, defendant no.1 is the son of Banchha Behera. But then in the draft notice, he has been wrongly described as son of Ganesh Behera. The defect in the description of the defendant no.1 in the notice goes to the root of the matter and, as such, the learned trial court has rightly allowed the application. She further submitted that the notice as contemplated in Order 1, Rule 8 CPC is mandatory. The same is a sine qua non for maintaining the suit. To buttress her submission, she relied on the decisions of this Court in the case of Harihar Jena and others v. Bhagabat Jena and others, AIR 1987 Orissa 270 and Jogiram Mohapatra and others v. Sibaram Pradhan and others, 2005 (I) OLR 612.

6. Order 1, Rule 8 CPC provides as follows;

"8. One person may sue or defend on behalf of all in same interest - (1) xxx xxx xxx

(2) The Court shall, in every case where a permission or direction is given under Sub-rule (1), at the plaintiff's expense, give notice of the institution of the suit to all persons so interested, either by personal service, or, where, by reason of the number of persons or any other cause, such service is not reasonably practicable by public advertisement, as the Court in each case may direct."

7. In Harihar Jena (*supra*), the notice did not indicate the name of the plaintiff, the name of the suit and the relief claimed. This Court held that the notice under the provision must disclose the nature of the suit as well as reliefs claimed therein in order to enable the persons interested to get themselves impleaded as parties to the suit either to support the case or oppose it. The notice must state about why the suit has been filed and what is the relief claimed therein and it must also state as to who are the persons who have been selected to represent the cause. It was further held that it is the responsibility of the Court under Order 1, Rule 8 CPC to give proper notice and when it becomes defective, the trial of the suit becomes vitiated.

8. In Jogiram Mohapatra (*supra*), this Court held that the provisions contained under Order 1, Rule 8 of the Civil Procedure Code are mandatory and not merely directory. The same are essential pre-conditions for trial of a representative suit. The notice must disclose the nature of the suit as well as relief claimed therein in order to enable the persons interested to get them impleaded as parties to the suit either to support the case or to defend the case. Further the notice must mention the names of the persons who have been permitted to represent them so that the persons interested may have an opportunity of knowing who have been selected to represent them.

9. Reverting to the facts of the case at hand and keeping in view the aforesaid principles, this Court finds that Purna Behera is the defendant no.1 in the suit. He has been described as son of Ganesh Behera. Defendants 1(A) and 1(B) are sons and defendant no.2 is the widow of defendant no.1. They have been correctly described in the notice. It is not the case of the opposite parties that the notice did not disclose the nature of the suit as well as the relief claimed therein, the names of the plaintiffs and others who have been permitted to represent the villagers Katakapada or the subject matter of the suit and the disputed property. Pursuant to the notice, forty three persons entered appearance and filed an application for impleadment. Further, defendants 1 and 2 have also filed the written statement. Thus the description of the father's name of one of the defendants does not make the notice defective.

10. On taking a holistic view of the matter, this Court is of the opinion that the notice is not defective one. There is valid publication of draft notice in the daily newspaper.

11. Accordingly, the order dated 21.8.2015 passed by the learned Civil Judge (Junior Division), Puri in T.S No.88 of 2000 is quashed. The petition is allowed.