
(1991) 07 OHC CK 0021
In the Orissa High Court
Case No : Civil Revision No. 790 of 1990

Asit Kumar Swain

APPELLANT

Vs

Krupasindhu Swain and Another

RESPONDENT

Date of Decision : 29-07-1991

Acts Referred:

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

Citation : (1992) 1 OLR 138

Hon'ble Judges : A. Pasayat, J

Bench : Single Bench

Advocate : P.K. Misra, S.K. Swain, N.C. Pati, A.K. Nanda and B. Sahu, for the Appellant; D. Sahoo, H. Mallik, B.N. Rath, J.N. Rath, B.N. Misra, M.K. Panda and J.K. Shethy, for the Respondent

Final Decision : Allowed

Judgement

A. Pasayat, J.—Petitioner assails correctness of order passed by learned Subordinate Judge. Kamakshyanagar allowing prayer of ppp. party No. 2 for impletion as a defendant.

2. Factual back-drop is as follows :

A suit was filed by present petitioner for declaration of his right title and interest over suit land. Primarily his case as inferable from the plaint is that defendant had two daughters ; elder one was married to Gobinda, natural father of plaintiff; since the defendant had no son to look after him and his property, he kept Gobinda, in his house since his marriage to look after the properties; Gobinda was managing the family out of income from agriculture and his salary. He also bore entire expenses of marriage of Khulana, the younger daughter of defendant. After Gobinda had a second son, Krupasindhu wanted to adopt plaintiff in order to perpetuate his line of succession, to which natural parents of the plaintiff agreed; on 15- 5-1973 defendant with the consent of his wife took plaintiff on adoption after performance of requisite formalities ; out of love and affection,

defendant on the very day of adoption orally gifted lands described in the schedule of plaint and thereafter plaintiff was in possession thereof there was no registered document and during current settlement operation name of defendant had been recorded in the record of rights ; even though due to non-registration of the deed plaintiff had not acquired valid title, because of peaceful, continuous and open possession of land by plaintiff for a period of 12 years, he had acquired title over the gifted land by adverse possession; on 22-11-1989 taking advantage of recording of name of defendant in the record-of-rights. he wanted to transfer some of the suit lands and therefore, filing of the suit was necessitated.

3. Written Statement was filed by defendant (opp. party NO. 1 herein). Inter alia accepting the various pleas of plaintiff. This written statement was filed on 5-7-1990. Prior to filing of written statement, an application under Order 1, Rule 10 of the Code of Civil Procedure, 1908 (in short the" Code") was filed by opp. party No. 2 claiming that A. 1. 50 decimals of land have been gifted orally, by defendant to him on 7-9-1982, and therefore, he had an interest in the suit and he should be impleaded. Objections were filed by plaintiff and defendant to this application, on the ground that a case for impletion was not made out. Learned Subordinate Judge held that opp. party No. 2 had interest on a part of suit property, and his interest would be seriously affected if he is not impleaded.

4. Main plank of petitioner"s argument, is that defendant having accepted plea of plaintiff in to which amounted to compromise, disposal of application under Order 1, Rule 10 of the Code without considering the compromise is improper. Learned counsel for opp. party No. 2 however, submitted that order of learned Subordinate is proper; It is further submitted that a similar application filed was subject-matter of challenge in Civil Revision No. 701 of 1990 disposed on 7-5-1991 where I had declined to interfere, and the same course should be adopted in respect of the present revision application.

5. On consideration of rival submissions, I find that order passed by learned Subordinate Judge is indefensible. Opp. party No. 2 based his claim on an oral gift. Section 123 of Transfer of Property Act, 1882 (in short the" Act") mandates that for the purpose of making a gift of immovable property, transfer must be affected by a registered instrument signed by or on behalf of donor, and attested by at least two witnesses. A gift of immovable property can only be made by a registered instrument. A deed cannot be dispensed with, even though property is of small value, as in the case of a sale. As a further precaution attestation by two witnesses is imperated. Section 123 of the Act excluded every other mode of transfer, and even after intended done is put in possession, a gift of immovable property is invalid without a registered instrument. However 12 years possession under an oral gift may perfect title by prescription. The same is not the case here. Therefore, applicant opp. party No. 2 had no semblance of legal right over subject-matter of suit. A person who has direct interest in the subject-matter of litigation can be impleaded as a party. (See AIR 1985 SC 886 Razia Begum v. Sahabzadi Anwar Begum and Ors. Expression, direct interest" means direct

interest in the issues between the plaintiff and the defendant. A person is legally interested in the question involved in the suit only if he can show that it may lead to a result that may affect him legally, that is curtailing his legal rights. Interest must be one which law recognises. As indicated above, an oral gift in the particular circumstances cannot be said to have conferred any interest on the applicant-opp. party No. 2. Therefore direction for his impletion is not tenable and the impugned order is set aside. It may be Indicated here that in CR No. 791 of 1990 oral gift was said to have been made sometime in the seventies and therefore, as indicated above, plea of adverse possession after oral gift was available to be taken in the suit. The non-interference in the said Civil Revision is of no assistance to opp. party No. 2.

Civil Revision is therefore allowed, but in the circumstances of the case without any cost.