

(2003) 09 OHC CK 0007

In the Orissa High Court

Case No : Civil Revision No. 273 of 2002

Banamali Mishra

APPELLANT

Vs

Sri Achutananda Mishra and Others

RESPONDENT

Date of Decision : 22-09-2003

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Section 115
Constitution of India, 1950 — Article 226, 227

Citation : (2004) 97 CLT 25 : (2003) 2 OLR 568

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

Bench : Single Bench

Advocate : P. Kar, G.D. Kar and J.D. Behera, for the Appellant; A.K. Sahoo, K.K. Sahoo, R. Khatua and P. Mishra, for the Respondent

Judgement

P.K. Tripathy, J.—Heard.

2. This application has been filed in Court today. Copy is served.

3. Petitioner prays to convert the Civil Revision No. 273 of 2002 as a writ petition, on the ground that the Civil Revision Petition is not maintainable and therefore petitioner shall put forth his grievance before the Court under Article 227 of the Constitution.

4. Mr. Sahu, learned counsel for the opposite party relying on the case of Bharatkumar Agrawal, Mrs. Malli @ Madhulika Agrawal and Shri Jamnalal Bajaj Sewa Trust Vs. Anita Trust and Anita, argues that conversion of the proceeding from one u/s 115, CPC to a writ petition under Article 227 of the Constitution of India is not permissible. Indeed in the cited case, learned Judge from Nagpur Bench of Bombay High Court has expressed such a view on the ground that when Civil Revision u/s 115, CPC is not maintainable that remedy is also not available to the petitioner under Article 227 of the Constitution. With due respect to the view expressed in that case, this Court finds the said ratio is not to be applied because in the cited case, Honourable Judge has gone oh maintainability of the

application under Article 227 before registration of the case as a writ petition. Prayer which the petitioner makes is to change the nomenclature of the case by changing it from Civil Revision Petition to Writ Application. Therefore, the effect of allowing the application is to permit registration of the case under Articles 226 and 227 of the Constitution of India instead of u/s 115, CPC. While allowing change of nomenclature, this Court does not consider maintainability of such a proceeding. That aspect shall be considered only at the stage of admission. As on date, be it under Article 226 or 227 or both the provisions, it is the Division Bench of this Court which is competent to consider maintainability of the writ application.

5. For the reasons indicated above, the application is allowed. The Civil Revision be registered as a writ petition. Petitioner undertakes to file the amended copy of the writ petition with requisite numbers of additional copies within a period of two weeks. Hence, let that undertaking be complied by the petitioner within the aforesaid period.

6. The Misc. case is accordingly allowed.