

(1987) 02 OHC CK 0003

In the Orissa High Court

Case No : Civil Revision No. 487 of 1980

Basanta Kumar Praharaj

APPELLANT

Vs

Soot. Jasoda Dibya alias Sahimani Dibya

RESPONDENT

Date of Decision : 25-02-1987

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 22 Rule 5, Order 43 Rule 1, Order 43 Rule 1A, 105

Citation : (1987) 64 CLT 353

Hon'ble Judges : S.C. Mohapatra, J

Bench : Single Bench

Advocate : M.N. Das and M.M. Das, for the Appellant; K.C. Mohanty and Y. Das for O.P. Nos. 2, 3 and 6, for the Respondent

Final Decision : Allowed

Judgement

S.C. Mohapatra, J.—Aggrieved by the order refusing to substitute the Petitioner in place of deceased Defendant No. 6 Mukta, this civil revision has been filed by the proposed legal representatives.

2. The suit out of which this civil revision arises is one for partition among the coparceners, Plaintiff, and Defendant Nos. 1 to 6. During the final decree proceeding an application was filed on behalf of Defendant No. 6, Mukta Dibya, to add the Petitioner as a party since she had adopted him. The petition could not reach finality as Defendant No. 6 died during pendency thereof. The Petitioner applied to be substituted in place of deceased Defendant No. 6 Mukta as her adopted son. Plaintiff contested the assertion. Trial Court having determined under Order 22, Rule 5, CPC that the Petitioner is not the adopted son, he assailed the order in Civil Revision No. 272 of 1986 which was allowed on 20-2-1970 and the trial Court was directed to give full opportunity to the parties for hearing arguments without giving them any chance to lead further evidence and thereafter to dispose of the case in accordance with law. The impugned order has been passed on that basis.

3. The scope of interference in exercise of the revisional power is very limited. The determination of the dispute whether a person is the legal representative is essentially a question of fact. legislature has provided for right of appeal against the decrees and against some judicial orders as listed out in Order 43, Rule 1, CPC giving freedom to challenge other erroneous orders when an appeal is filed against the decree as provided in Section 105 and Order 43, Rule I-A, C.P. C. An appeal has been provided only against the order refusing to set aside the abatement and not against an order of determination under Order 22, Rule 5, C. P. Co. The legislature intent is, therefore, clear that the power of civil Revision is to be exercised in respect of those orders sparingly with care and caution.

4. In view of the scheme of the CPC normally I would not have interfered with the order in this Civil Revision. However, the right Of the Petitioner in the peculiar circumstances of this case is going to be sealed for all time to come. Not being a party, he cannot prefer an appeal against the final decree. A separate suit by him would be ineffective in view of the finding of the trial Court that he is not the adopted son. The Petitioner would sustain irreparable injury and the order would occasion failure of justice if allowed to stand in spite of my finding that the same is erroneous. In the peculiar situation. I am to examine if the order is to be sustained.

5. There is no dispute that the Court had jurisdiction to determine the question. The only other ground on which there is scope for interference is that the trial Court has exercised jurisdiction with material irregularity. Whether there is material irregularity in exercise of the jurisdiction could depend upon the facts and circumstances of the case and no hard and fast rule can be laid down.

6. Parties in this case are Hindus governed by the provisions of the Hindu Adoptions and Maintenance Act, 1956. Petitioner claims to be the adopted son. For a valid adoption giving and taking are essential. This can be presumed where a document signed by the person giving and the person taking discloses such adoption to have been made. Petitioner has relied upon the adoption deed (Ext. 1) and the petition on behalf Mukta Dibya (Defendant No. 6) to implead the Petitioner as a Defendant on his adoption (Ext. 4). Ext. 1 has been discarded on the finding to the effect that the natural father did not sign the document when it was executed and registered, but the same has been added subsequently. Ext. 4 has been discarded on the ground that the same has not been signed by Mukta Dibya who was in the hospital at the time of filing of the application and Mayadhar (p.w.5) her brother, the natural father of the Petitioner was in a position to dominate the will of Mukta.

7. Ext. C, the register in the office of the Sub-Registrar where the contents of Ext. 1 were entered was containing the same corrections and additions as in Ext. 1. Evidence was led to prove that the said register was also interpolated. However, no evidence was led to indicate who interpolated or corrected the same. Interpolation or correction of a register in public office is a criminal act if not authorised. Clear and cogent proof is necessary to come to that conclusion.

P.ws.3 and 5 the officials of the Sub-Registrar, stated that the interpolations and corrections were not there when they wrote and compared the entries. They have no direct knowledge who committed the mischief, if any. In such circumstance Ext. C, cannot be discarded. In the absence of direct evidence, it is to be inferred that the interpolation, correction and addition were made under due authority, Merely because, the Sub-Registrar has not signed the same would not be a ground to discard the register. I am inclined to hold that rejection of a document on such ground as in this case would amount to exercise of jurisdiction with material irregularity. Ext. 1 is the same as the entries in the register (Ext, C). The scribe of Ext. J has proved that both Mukta and Mayadhar signed the document at the time of execution of the document which was prior to its presentation for registration. In the circumstances, the trial Court acted with material irregularity in not accepting Ext. L.

8. Ext. 4 has been signed by the Advocate. It is not the case that the Advocate who signed was not the Advocate for Mukta. The Advocate has not been examined in this case. No explanation has been given why he could not be examined. In the circumstances, the assertion in Ext. 4 on behalf of Mukta that she adopted the Petitioner is to be accepted.

9. Discrepancies and inconsistencies in the oral evidence have been brought to my notice. Once Ext. 1 and Ext. 4 are accepted, all other evidence were to be read in that light 111 case, I conclude the matter by holding that Petitioner is the adopted son by assessing the evidence the Defendants may not get a chance to agitate the question in appeal any further. The question would also depend upon appreciation of evidence. Interest of justice would be best served in case 1 set aside the order subject to direction that the presumption under Ext. 1 is available to be rebuttable on appreciation of other materials. In case any of the parties pray, the trial Court shall give an opportunity to examine the Advocate who signed Ext. 4 to explain under what circumstances he signed the application to file the same.

10. Subject to the aforesaid direction, this Civil Revision is allowed. No costs.