
(1966) 08 OHC CK 0004

In the Orissa High Court

Case No : Civil Revision No. 372 of 1965

Basanta Mishra and Another

APPELLANT

Vs

Laxmi aias Jagnasini Mishrani

RESPONDENT

Date of Decision : 26-08-1966

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 33 Rule 2, Order 7 Rule 10, 15, 16, 17

Citation : (1967) 33 CLT 1056

Hon'ble Judges : G.K. Misra, J

Bench : Single Bench

Advocate : G. Rath, for the Appellant; H.G. Panda, for the Respondent

Final Decision : Dismissed

Judgement

G.K. Misra, J.—Jagnasini (Plaintiff) filed an application in the Court of Munsif, Sonapur, under Order 33, Rule 2, CPC for permission to sue as a pauper. Alongwith the application a copy of the plaint was filed. She pleaded that she was married to Narayan Misra, son of Basant (Defendant-I) and his wife Khirabati (Defendant-2). The marriage took place at village Lupursingha within the jurisdiction of Munsif, Sonapur, where the parents of the Plaintiff and now she reside. She and Narayan lived as husband and wife for two years when Narayan died in Jyestha 1953. A schedule of the properties was attached to the plaint showing that the joint family consisting of Defendant-1 and Narayan has 68.02 acres of land in village Rabidi within the jurisdiction of Munsif, Boudh, where the Defendants reside. She claimed two reliefs, namely, maintenance at the rate of Rs. 400/- per annum, or in the "alternative, partition of the suit lands in two equal shares, one half being allotted to her after demarcation. She averred that after the death of her husband, she continued to reside with the Defendants; but due to their ill-treatment, she lived in her father's house in 1956. When she wanted to come back, Defendants refused to entertain her.

During the course of an inquiry into pauperism, Defendants raised an objection that the Munsif, Sonapur, had no

I jurisdiction to entertain the suit. After hearing the learned advocates for the parties, the learned Munsif held that he had no jurisdiction to grant the relief for partition but had jurisdiction to grant the relief for maintenance. On this view he held that he had jurisdiction to try the whole suit. He accordingly overruled the objection as to want of jurisdiction. Against this order, the civil revision has been filed by the Defendants.

2. The following questions arise for consideration: (i) Has the Munsif, Sonapur, jurisdiction to try the suit for maintenance when the Defendants do not reside, and the properties are not situate, within his jurisdiction?

(ii) Has the Munsif jurisdiction to entertain the suit for partition?

(iii) (a) Is the Plaintiff entitled to maintenance when she is entitled to partition under Hindu Women's Right to Property Act, 1937 (hereinafter referred to as the Act)?

(b) If so, can both the reliefs for maintenance and partition be alternatively granted?

(iv) What course is the Court to adopt when one of the reliefs cannot be granted as being outside its jurisdiction.

3. Law is now well settled that a suit for separate maintenance by a Hindu wife against her husband can be instituted in the place where the parties were married as marriage forms a part of the cause of action? See *K. Vajravelu Mudaliar Vs. Rajalakshmi Ammal*, and *Chandrawati Vs. L. Suraj Narain*, . Mr. Rath however wants to distinguish these cases on the ground that therein the maintenance was claimed by the wife against the husband whereas, in this case, the maintenance is claimed against the father-in-law and the mother-in-law where marriage does not constitute a part of the cause of action. There is no substance in this contention and the distinction pointed out is not based on any principle of law.

Section 20(c), CPC lays down that subject to the limitations prescribed in Sections 15 to 19, every suit shall be instituted in a Court within the local limits of whose jurisdiction the cause of action, wholly or in part, arises. In *Mst. Chand Kaur v. Partab Singh* L.R. 15 IndAp 156, their Lordships observed as follows-

Now the cause of action has no relation whatever to the defence which may be set up by the Defendant, nor does it depend upon the character of the relief prayed for by the Plaintiff. It refers entirely to the grounds set forth in the plaint as the cause of action, or, in other words, to the media upon which the Plaintiff asks the Court to arrive at a conclusion in his favour.

In a suit for maintenance, marriage is the primary fact to be alleged and proved. The fact of marriage constitutes an integral part of the cause of action. In the place of marriage a part of the cause of action arises. A suit for maintenance can accordingly be filed where the marriage took place. No distinction in principle can

be made out as to whether the maintenance is claimed against the husband or against any other person in possession of the property belonging to the husband whereby the liability to pay maintenance accrues. Plaintiff's suit for maintenance on the allegation that the marriage took place in Lupursingha within the jurisdiction of Munsif, Sonapur, is maintainable.

4. Section 16(b), CPC lays down that subject to the pecuniary or other limitations prescribed by any law, suits for partition of immoveable property shall be instituted in the Court within the local limits of whose jurisdiction the property is situate. The disputed properties, in the present case described in the schedule, are admittedly situate in village Rabidi within the jurisdiction of Munsif, Boudh, and no part of it is situate within the jurisdiction of Munsif, Sonapur. The relief for partition cannot be granted by the Munsif, Sonapur. The suit for the alternative relief for partition is not maintainable in that Court.

5. Narayan died in 1953. Under the Act the Plaintiff is entitled to inherit the right, title and interest of her husband (deceased Narayan) in the disputed properties. She can claim partition of half of the properties. The question for consideration is whether her right to claim maintenance under the old Hindu Law still continues after the Act came into force. It has now been authoritatively settled that the right to claim partition by a widow under the Act does not negative her right to claim maintenance. The right conferred by the Act is merely an enabling right and it is open to her to claim maintenance without claiming partition. She cannot, however, enforce both the rights simultaneously—See *Jetti Varahamma Vs. Jetti Ammathalli Naidu (died) and Others*, and *Gajavalli Ammal and Another Vs. Narayanaswami Mudaliar*, . These two Bench decisions have critically analysed the law in support of this conclusion and it is unnecessary to traverse the same.

6. On the basis of the aforesaid analysis, the position that transpires is that the suit for maintenance is maintainable in the Court of the Munsif, Sonapur, who has no jurisdiction to grant the alternative relief for partition. Under such circumstances, the Court is to invoke the principles laid down in Order G, Rule 16, CPC Code, which lays down that the Court may at any stage of the proceedings order to be struck out or amended any matter in any pleading which may be unnecessary or scandalous or which may tend to prejudice, embarrass or delay the fair trial of the suit. As the relief for maintenance can be granted by the Munsif, Sonapur, he should have asked the Plaintiff in the first instance to delete the alternative prayer for partition. On Plaintiff's failure to carry out the directions of the Court, it was open to the Munsif to strike out the prayer for partition under this rule. After the case goes back to the learned Munsif, he would follow, the aforesaid procedure. As one of the reliefs can be granted by the Court, the plaint cannot be returned under Order 7, Rule 10 CPC See *Latu v. Smt. Rani Mahaluxmi Bai*.

7. Thus the view of the learned Munsif that the suit for maintenance is maintainable is correct while his view that the entire suit is maintainable is

wrong. He is now to deal with the case in accordance with the principles of law discussed above. Defendants contention that the entire suit is not maintainable cannot be accepted.

8. In the result, the order of the learned Munsif is modified, as indicated above and the Civil revision is allowed in part. Parties, to bear their own costs.

Revision allowed in part order modified.