
(2019) 03 OHC CK 0038
In the Orissa High Court
Case No : C.M.P. No.207 Of 2019

Basantilata Swain And Another	Vs	APPELLANT
State Of Orissa And Others		RESPONDENT

Date of Decision : 18-03-2019

Acts Referred:

Code Of Civil Procedure, 1908 — Section 80(1), 80(2)

Citation : (2019) 03 OHC CK 0038

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

Bench : Single Bench

Advocate : N.K. Sahu, B. Swain, R.P. Mohapatra

Final Decision : Allowed

Judgement

Dr. A.K. RATH, J

1. This petition challenges the order dated 24.01.2019 passed by the learned Civil Judge (Sr. Divn.), Jajpur in C.S. No.66(I) of 2019, whereby

and whereunder learned trial court rejected the application of the plaintiffs filed under Sec.80(2) CPC to waive notice.

2. Plaintiffs-petitioners instituted the suit for perpetual injunction against the defendants. They filed an application under sub-sec.(2) of Sec.80 CPC to

wave notice on the ground of urgency. They have also filed an application under Order 39 Rule 1 and 2 CPC for temporary injunction restraining the

defendants from entering upon the suit land. Learned trial court assigned the following reasons and rejected the application.

“The object of the provision u/s.80(2) of CPC is manifestly to give the government or any public officer sufficient notice of the case which is proposed to be

brought against it or him so that, it or he may consider the position and decide

for itself or himself which the claim of the plaint should be accepted or registered.

On the basis of this along with the facts and circumstances of the suit the petition is hereby rejected.â??

3. Heard Mr. N.K. Sahu, learned Advocate, along with Mr. B. Swain, learned Advocate for the petitioners and Mr. R.P. Mohapatra, learned A.G.A.

for the State-opposite party nos.1 and 2.

4. Mr. Sahu, learned Advocate for the petitioners submits that the plaintiffs-petitioners instituted the suit for perpetual injunction. They filed an application for injuncting the defendants from demolishing a portion of house standing over the suit land. The suit has been instituted to obtain an urgent relief against the Government. In view of the same, they filed an application under Sec.80(2) CPC to waive notice. Learned trial court without assigning any reason rejected the petition.

5. Per contra, Mr. Mohapatra, learned A.G.A. for the State-opposite party nos.1 and 2, submits that learned trial court rejected the petition filed by the plaintiffs under Sec.80(2) CPC and returned the plaint. It is open to the plaintiffs to take out the plaint, serve notice under Sec.80 CPC on the defendants and thereafter institute the suit. There is no infirmity in the said order.

6. Sub-sec.(2) of Sec.80 CPC, which is the hub of the issue, is quoted hereunder.

â??(2) A suit to obtain an urgent or immediate relief against the Government (including the Government of the State of Jammu and Kashmir) or any public officer in

respect of any act purporting to be done by such public officer in his official capacity, may be instituted, with the leave of the Court, without serving any notice as

required by Sub-section (1); but the Court shall not grant relief in the suit, whether interim or otherwise, except after giving to the Government or public officer, as the

case may be, a reasonable opportunity of showing cause in respect of the relief prayed for in the suit.

Provided that the Court shall, if it is satisfied, after hearing the parties, that no urgent or immediate relief need be granted in the suit, return the plaint for presentation

to it after complying with the requirements of Sub-section (1).â??

7. On a bare reading of the said provision, it is manifest that a suit to obtain an

