
(2009) 07 OHC CK 0075
In the Orissa High Court

Binod Bihari Singh

APPELLANT

Vs

Cuttack Madhu Baisya Bhadraki Gudia Samiti and Others

RESPONDENT

Date of Decision : 07-07-2009

Acts Referred:

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

Citation : (2009) 108 CLT 261 : (2009) 2 ILR (Ori) 375 : (2009) 2 OLR 950 Supp

Hon'ble Judges : Indrajit Mahanty, J

Bench : Single Bench

Final Decision : Dismissed

Judgement

Indrajit Mahanty, J.—In the present writ application the Petitioner namely Binod Bihari Singh has sought to challenge an Order Dated 5.1.2007 passed by the Learned Civil Judge (Junior Division), First Cuttack, Cuttack in C.S. No. 37 of 2005 rejecting his application for intervention under Order 1, Rule 10 C.P.C.

2. Civil Suit No. 37 of 2005 has been filed by Opp. Party No. 1- Cuttack Madhu Baisya Bhadraki Gudia Samiti, wherein prayer has been made for eviction of the Defendants (tenants) from the suit schedule property namely, Indumati Rath and Sanjaya Rath who were Defendants 1 & 2. It is further stated that Indumati Rath has in the meanwhile passed away leaving behind her adopted son, Sanjaya Rath (Defendant No. 2) as her only legal heir/successor.

3. The intervener-Petitioner claims that he is a close friend of Defendant No. 2 and was closely associated with Defendant No. 1 (since deceased). Since Defendant No. 2 was residing at Bhubaneswar and Defendant No. 1 was residing at Cuttack, the Petitioner who lives at Cuttack claims to have come forward and treated Defendant No. 1 as his mother and claims that Defendant No. 1 treated the Petitioner like her son, and therefore claims to have become close to the deceased Defendant No. 1 even more than her adopted son (Defendant No. 2). It is further claimed by the Petitioner that during the pendency of the suit, since Defendant No. 1 was not in a position to look after the day to day affairs of the

litigation, the said Defendant No. 1 (since deceased) on 11.1.2006 executed an agreement assigning all her powers to the present intervenor-Petitioner for execution and registration of sale deed in his favour by paying the balance consideration money to the Plaintiff. In the said agreement it is claimed that Defendant No. 1 also confirmed the possession of the intervenor-Petitioner, over the suit land and further declared that the Defendant No. 2 cannot claim any right, title, and interest over the suit land. It is contended that on 3.5.2006 Defendant No. 1 expired at the age of 86 due to prolonged illness and since her death Defendant No. 1, the present Petitioner claims to be in peaceful possession of the property on the strength of the deed of agreement in his favour dated 11.1.2006.

4. In the light of the aforesaid circumstances, the Petitioner filed application under Order 1, Rule 10 C.P.C. on 1.9.2006, seeking intervention in the pending suit. It appears that the Plaintiff filed objections & Defendant No. 2 also filed objections and the Learned Civil Judge on consideration of the same vide Order Dated 5.1.2007 rejected the petition as not maintainable either in law or in facts on record (Annexure 3).

5. Learned Counsel for the Petitioner contended that the Trial Court failed to take into consideration the true scope and ambit of Order 1, Rule 10 C.P.C. It is stated that while the object of Order 1, Rule 10. C.P.C. was not to allow any change in the scope and character of the suit by adding new parties, but if such intervention would avoid litigation which might otherwise become necessary the same should have been allowed. It is stated that the question involved in the suit since the right, title and interest over the suit property is to be decided, therefore, for a complete final decision of the matter, the intervention should have been allowed, failing which the same would lead to multiplicity of proceedings. In this respect the Petitioner placed reliance upon the Judgment of the Supreme Court in the case of Custodian of Branches of Banco National Ultramarino Vs. Nalini Bai Naique, and Judgment of this Court in Gopal Krushna Badu Mohapatra and Others Vs. Girish Chandra Nayak and Others, .

In the Judgment of the Custodian of Branches of BANCO National Ultramarino (supra), Their Lordships dealt with the term "legal representative" found in Order 22 Rules 4 & 9 C.P.C. The said Judgment is not a Judgment on the issue at hand, i.e. interpretation of Order 1 Rule 10 C.P.C. which requires determination as to whether the intervenor-Petitioner was necessary or proper party or not. Therefore, the Judgment of the Hon''ble Apex Court is not of any relevance for adjudication of the present case. The next case relied upon by the Petitioner is the case of Gopal Krushna Badu Mohapatra (supra). In this Judgment, a Division Bench of this Court after analyzing the decision of the Hon''ble Supreme Court has come to hold that a party seeking a joinder as a proper party will have to prima facie establish that such a party has interest in the subject matter of the litigation & as such should be before the Court. A simple test in such controversy would be as to whether the presence of such a party is "appropriate" in view of

the subject matter in the adjudication. If the answer is in the affirmative, joinder can be permitted by reason of direct interest in the subject matter or require simply to see whether the addition is necessary. As a general rule, the principle of "dominus litis" in favour of the Plaintiff as a rule of universal application should not be applied. The Court must examine the propriety or otherwise of the merits of the case as reflected and demonstrated in the intervention petition & if it arrives at a conclusion addition is for effective final adjudication between the parties. Their Lordships have further directed that the discretion of the Court should be exercised in a reasonable manner, so as not to cause inconvenience or embarrassment and before directing a party to implead the Court has to be prima facie satisfied about the "bona fide" of the application, the plausibility of the claim and "genuineness" of the litigation. In the light of the aforesaid principle, the law evolved by this Court in the aforementioned Judgment, it now becomes necessary to vet the Order Dated 5.1.2007 passed by the Civil Judge (Jr. Division), First Court, Cuttack and to ascertain as to whether it has properly appreciated the facts and the relevant law or not.

6. Learned Counsel for Opposite Party No. 1 (Plaintiff) strenuously urged that the Plaintiff had filed a "suit for ejectment of a tenant" and, there can be no occasion for impleading any third party-Petitioner, because of the fact that, the suit is in the nature of personam and not in rem. In this regard, reliance was placed by the Opposite Party in the case of Pravat Kumar Misra Vs. Prafulla Chandra Misra and Another, wherein it is held that in a suit for ejectment of a tenant addition of a Defendant under Order 1, Rule 10 CPC of a third party to the suit is not permissible. Apart from the aforesaid Judgment, various other citations in support of the contentions were also cited. It was further argued that a third party Petitioner who is not a tenancy and has got no nexus to the suit properties can be impleaded as a party-Defendant to a suit for eviction.

Learned Counsel appearing for Opposite Party No. 2 (Defendant No. 2) also submitted that Defendant No. 2 being the sole legal heir of Defendant No. 1 (deceased) & the present suit being a suit for ejectment of the tenant/Defendant from the suit house, this party-intervenor Petitioner has got no nexus with the suit for which, his prayer for being impleaded as a Defendant to the suit is not maintainable.

7. In the light of the aforesaid contentions, it becomes incumbent to take note of the findings arrived at by the Learned Civil Judge in the impugned order. The Learned Civil Judge, has come to a finding that the intervenor Petitioner-Binod Bihari Singh, essentially relies upon an agreement dated 11.1.2006 said to have been executed in his favour by the deceased-Defendant No. 1, and while the intervenor Petitioner may claim to possess a legal right he has the legal remedy to enforce the same by initiating an appropriate litigation, if any, since the present suit was a suit for eviction of the real tenant and further, since the Plaintiff did not recognize the intervenor Petitioner as a tenant under him in respect of the present suit land. Learned Civil judge further reached a finding

that the alleged agreement dated 11.1.2006, between the intervenor (Petitioner) and the deceased Defendant No. 1 do not bear the signature of Defendant No. 1, who knew how to write and sign and had put her signature in the written statement and instead of doing so, the alleged agreement does not bear Defendant No. 1's signature but only the L.T.I. Therefore, the Learned Civil Judge came to hold that the deed appears to be suspicious and the subject matter of such agreement, if any, cannot be adjudicated in the pending eviction suit since the present suit had a limited purpose for seeking eviction of the tenant and it may be open for the intervenor Petitioner to file a suit for specific performance of the contract, if at all.

8. In consideration of the aforesaid facts, case laws and law as noted hereinabove, I am in complete agreement with the views expressed by the Learned Civil Judge since the Trial Court was prima facie not satisfied about the "bona fide" of the Petitioner-intervenor nor the plausibility of his claim and the "genuineness" of his interest in the litigation was found to be suspicious. Therefore, as held by this Court in the case of Gopal Krushna Badu Mohapatra (supra), the application under Order 1 Rule 10 C.P.C. filed by the Petitioner (intervenor) deserves to be rejected and accordingly, the writ application is hereby, dismissed by affirming the order passed by the Learned Civil Judge dated 5.1.2007, all interim orders stand vacated.

This writ application stands dismissed.