
(1990) 10 OHC CK 0011
In the Orissa High Court
Case No : Civil Revision No. 1839 of 1989

D. Laxman Reddy

APPELLANT

Vs

Narasingh Sahu and Others

RESPONDENT

Date of Decision : 30-10-1990

Acts Referred:

Civil Procedure Code, 1908 (CPC) — Order 2 Rule 3, Order 6 Rule 17

Citation : (1991) 1 OLR 123

Hon'ble Judges : K.C. Jagadeb Roy, J

Bench : Single Bench

Advocate : G.H. Panda and S. Panda, for the Appellant; S.D. Das, S.K. Samantaray, B.K. Kar and K.K. Bisoi, for the Respondent

Final Decision : Allowed

Judgement

K.C. Jagadeb Roy, J.—By order dated 16-2-1990 this Court directed to issue notice to the opposite parties on the question of admission. Pursuant to which the opposite parties have entered appearance and with the consent of the parties, the case was heard.

2. In this civil revision the petitioner challenges the order dated 1-9-1989 of the learned Subordinate judge, Berhampur passed in T. S. No. 81 of 1987 rejecting the petition of the petitioner-plaintiff dated 29-8-1988 for amending the plaint under Order 6, Rule 17, CP.C. The Court rejected the application of the petitioner for amendment on the ground that the pro- posed amendment would completely change the nature and character of the present suit. In the original plaint the plaintiff prayed for declaration of his title in respect of a suit; house on various grounds. While the suit was pending for hearing, it is alleged by the plaintiff that the defendants 1 to 5. have taken over possession of the house and in the process caused damage to the plaintiff by taking away some movables worth about Rs. 56,000/- without any authority. In the proposed amendment of the plaint, the plaintiff wanted to incorporate these facts and prayed for amendment of the prayer by adding an additional prayer for recovery of this amount of

damage.

3. Order 2, Rule 3 of the C.P.C. relates to joinder of causes of action which reads as follows :

"(1) Save as otherwise provided, a plaintiff may unite in the same suit several causes of action against the same defendant, or the same defendants jointly ; and any plaintiffs having causes of action in which they are jointly interested against the same defendants or the same defendants jointly may unite such causes of action in the same suit.

xx xx xx"

4. The contention raised by the learned counsel appearing for the petitioner is that by the changed circumstances it would be necessary for the plaintiff to claim damage against the defendants 1 to 5.

5. In a case reported in Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others, it was held :

"...Ordinarily, a suit is tried in all its stages on the cause of action as it existed on the date of its institution. But it is open to a Court including a Court of appeal to take notice of events which have happened after the institution of the suit and afford relief to the parties in the changed circumstances where it is shown that the relief claimed originally has (1) by reason of subsequent change of circumstances become inappropriate, (2) where it is necessary to take notice of the changed circumstances in order to shorten the litigation; or (3) to do complete justice between the parties."

This Court while dealing with the case of Gopal Chandra Choudhury v. The Life Insurance Corporation of India AIR 1983 Ori. 120 had noticed this Supreme Court decision and had allowed the amendment of the plaint wherein the plaintiff had made a prayer for damage to wall and floor of his building as a result of the projections and constructions of the defendant's building. Originally the plaintiff had instituted the suit against the defendant for permanent injunction to restrain it from making further constructions of projections and cornices and for mandatzry injunction to remove those which have already been constructed and for screening or closure of windows and openings. This Court while allowing the amendment observed that in view of the legal proposition as stated in Shikharchand Jain Vs. Digamber Jain Praband Karini Sabha and Others, the Court cannot shut its eyes to the r(sic)on of the Civil Court Commissioner which contained the fact that the western wall of the plaintiffs building had a crack from the bottom to the top which, as apprehended by the plaintiff, may rove been caused on account of the missive construction of the defendant's multisforied building close to it, as well as construction of projections almost, touching the plaintiff's wall on the western side.

This Court also held a similar view in the case of Paradip Port Trust Vs. Misrilal Mines (Pvt.) Ltd., stating therein that it is duty of the Court to take notice of

subsequent events and to grant relief to the parties. It is not merely the right of the Court to take notice of the subsequent events but casts duty on the Court to do so in the ends of Justice when required.

6. In the present case the acts of taking away of the movable's from the house of the plaintiff, as alleged cannot be; a disconnected fact to the cause of action. The plaintiff has challenged the legality of the execution proceeding (E. P."No. 55187) whereunder " the defendants, he.: c. now taken over the possession of the house from the plaintiff, when the plaintiff succeeded in the H. R. C. proceeding before, the House Rent Controller on the ground that there was no relationship of landlord and tenant. Between him and the ancestor of the defendants. On appeal, the appellate authority while directing eviction of the plaintiff, was silent about this finding. The material issue is as to whether the plaintiff was actually a tenant under the Act. According to the plaintiff without such finding, the eviction order was not proper and without jurisdiction and had challenged the execution proceeding and that the decree-holders have caused his damage by taking away his movables worth about Rs. 56,000"- has preferred a separate prayer to amend the plant for recovery of the said loss. As suth the joint action was permissible under Order 2, Rule 3 C. P. C. and the trial Court was wrong in passing the impugned order rejecting the prayer for amendment of the plaint.

7. In view of the facts discussed above, the impugned order is set aside, the amendment is allowed but in the circumstances of the case the parties will bear their respective costs of this civil revision.